12-29-88
Vol. 53 No. 250
Pages 52623-52970

federal register

Thursday
December 29, 1988

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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

Agricultural Stabilization and Conservation Service

7 CFR Part 719

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Reconstitution of Farms, Allotments, Quotas, Bases, and Acreages

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Interim Rules.

SUMMARY: This rule adopts as final, without change, the interim rule which was published on March 1, 1988 (53 FR 6119) which amended 7 CFR Part 719.

This rule also sets forth an interim rule which amends the regulations at 7 CFR Part 719 governing the reconstitution of allotments, marketing quotas, bases, and acreages under the production adjustment, and marketing quota and conservation programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC). These amendments are necessary to improve the administration of programs authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: The final and interim rules are effective December 29, 1988.

Comments: With respect to the interim rule, comments must be received January 30, 1989 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments on the interim rule to the Director, Cotton, Grain, and Rice Price Support Division, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 3630–South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Salem, Management Analyst, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–7635.

SUPPLEMENTARY INFORMATION: The final rule and interim rule have been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Regulations 1515–1 and Executive Order 12291, and has been classified as "not major." It has been determined that these program provisions will not result in : (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The provisions of 7 CFR Part 719 do not provide financial assistance to producers of agricultural commodities. Accordingly, the Catalog of Federal Domestic Assistance does not list titles and numbers for the reconstitution of allotments, quotas, bases, and acreages. However, the constitution of a farm does provide the basis for determining producer eligibility with respect to programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC) which are identified by program numbers 10.051 through 10.068 in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule or this interim rule since neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of either rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Information collection requirements contained in the regulations (7 CFR Part 719) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0560–0025 and 0560–0033. This interim rule amends 7 CFR Part 719 to make changes which will result in more efficient program administrations and to make certain changes for clarity.

Final Rule

The regulations governing the reconstitution of allotments, marketing quotas, bases, and acreages under production adjustment, marketing quota and conservative programs which are administered by ASCS and CCC are found at 7 CFR part 719. An interim rule was published on March 1, 1988 (53 FR 6119) which amended this part for clarity and to provide for the more effective administration of programs administered by ASCS and CCC. One comment was received in response to the interim rule. The commenter stated that the rule called for "the decombining of all farms which have a peanut quota and are combined across county lines where the owners are not the same". This suggested change was not adopted because the intent of the interim rule was to provide regulations for constitution and reconstitution of farms which were initiated subsequent to the publication date of the rule, and not to decombine farms comprised of land which was properly constituted under prior regulations. Accordingly, the March 1, 1988 interim rule is adopted as a final rule without change.

Interim Rule

Based upon a further review of the regulations set forth at 7 CFR Part 719 it has been determined that additional amendments will further clarify the manner in which reconstitutions of farms are made by ASCS and will provide enhanced administration of ASCS and CCC programs by providing

more flexibility to producers with respect to the reconstitution of farms. Accordingly, the following changes are made by this interim rule.

Section 719.2(f) of the current regulations defines the term "cropland". This interim rule clarifies and expands the definition to provide that in addition to one-row shelterbelt plantings that two-row shelterbelt plantings may be considered to be cropland.

Section 719.2(ff) is added to define the term "substantive change" which is used to determine whether a reconstitution of land is required.

Section 719.3(b)(3) of the current regulations is applicable to all allotment and quota crops. This interim rule amends § 719.3(b)(3) to provide that the provision applies to tobacco only and expands the provision to provide for more flexibility in considering land a single farming unit with respect to crops of tobacco.

Section 719.3(b)(7) of the March 1, 1988 interim rule is applicable to all crops. This interim rule amends § 719.3(b)(7) to provide that the provisions of that section apply only to acreage base crops and expands the provision to provide for more flexibility in considering land as a single farming unit with respect to acreage base crops.

This interim rule also adds a § 719.3(b)(8) for clarity to provide specific provisions for peanuts. It is not intended that this provision will require the division of any peanut farm that contains land located in different counties provided the farm was and is otherwise correctly constituted.

Section 719.3(d)(1) of the current regulations provides, generally, that a reconstitution is required when a change occurs that results in the farm no longer meeting the criteria for a single farming unit. This interim rule amends this section to provide that a change in an operation must be substantive and not merely to transfer allotments which are subject to sale or transfer.

Section 719.3(d)(3) refers to "his". This interim rule removes the gender specific term.

Section 719.3(d)(7) of the March 1, 1988 interim rule is redesignated § 719.3(d)(9). In order to enhance the administration of the Conservation Reserve Program, this interim rule adds a new § 719.3(d)(7) to provide that a reconstitution shall be required when one or more owners of the farm refuse to sign a Conservation Reserve Program contract, while one or more owners on the same farm want to enter into a Conservation Reserve Program contract.

This interim rule further adds a new § 719.3(d)(8) to provide that the Deputy Administrator may require reconstitution of land sold for or devoted to nonagricultural uses.

Section 719.7(b)(1)(iv) of the March 1, 1988 interim rule is applicable to reconstitutions of farms by division or combination. This interim rule amends § 719.7(b)(1)(iv) to provide that the provision applies to reconstitutions by division only so that abuses of acreage reduction programs are minimized.

In order to provide producers greater flexibility in reconstituting land as one unit, this interim rule adds a § 719.7(b)(4) to provide that reconsitutions of farms on which there is no cropland may be effective for the current crop year.

Section 719.8(c)(4)(i) of the March 1, 1988 interim rule refers to the seller and purchaser of land. For clarity, this interim rule amends § 719.8(c)(4)(i) to refer to transferring owner and transferee in lieu of seller and purchaser.

Section 719.8(c)(4)(iii) of the March 1, 1988 interim rule provides that with respect to reconstitutions using the designation by landowner method of division, neither the tract transferred from the parent farm nor the remaining portion of the parent farm shall receive or retain allotments, quotas, or bases in excess of allotments, quotas, and bases for similar farms in the same area having allotments, quotas, and bases with respect to the commodity or commodities involved. In order to more accurately establish farms for purposes of program administration, this interim rule provides that, in addition to those provisions, the cropland available for and adapted to producing the commodity shall be considered. The interim rule further provides that with respect to upland cotton and rice, both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain at least one-tenth acre of crop acreage base.

Section 719.8(d)(2) of the March 1, 1988 interim rule refers to divisions which became effective in the 1985 or earlier crop year. This interim rule removes that reference and consolidates the provisions of that section for clarity.

Section 719.10 of the March 1, 1988 interim rule excludes land devoted to trees from being considered to be cropland. Since trees may be planted as vegetative cover under several CCC conservation programs, the exclusion has been removed. This interim rule further provides that with respect to preservation of cropland classification, the Deputy Administrator may determine the period of time vegetative cover will be classified as cropland.

Since producers will soon be executing contracts to participate in the 1989 price support and production adjustment programs, this interim rule will become effective upon date of publication in the **Federal Register**. Comments are requested on this interim rule, however, and will be taken in consideration in developing the final rule.

List of Subjects in 7 CFR Part 719

Acreage allotments.

PART 719

Final Rule

The interim rule published in the **Federal Register** on March 1, 1988 (53 FR 6119) is adopted as a final rule without change.

Interim Rule

7 CFR Part 719 is amended as follows:

PART 719—[AMENDED]

1. The authority citation for 7 CFR Part 719 is revised to read as follows:

Authority: 52 Stat. 66, as amended, 72 Stat. 995, as amended, 79 Stat. 1211, as amended, 7 U.S.C. 1375, 1378, 1379; 79 Stat. 1206, as amended, 1210, 7 U.S.C. 1801 note, 1838, 1305; 99 Stat. 1460–1464, as amended, 7 U.S.C. 1461–1469.

2. In § 719.2, paragraphs (f) (2), (3), and (4) are revised and paragraph (ff) is added to read as follows:

§ 719.2 Definitions.

* * * * *

(f) * * *

(2) Is not currently tilled, but it can be established that such land:

(i) Has been tilled in a prior year; and

(ii) Is suitable for crop production.

(3) Is currently devoted to one- or two-row shelterbelt planting.

(4) Is preserved as corpland in accordance with § 719.10. Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(i) Removed from agricultural production;

(ii) No longer suitable for production of crops;

(iii) Devoted to trees (other than those set forth in accordance with § 719.10 or one- or two-row shelterbelt plantings) which were planted in the preceding year except that land planted to trees:

(A) From September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year.

(B) In the current year shall retain its cropland classification for the current year; or

(iv) No longer preserved as cropland in accordance with the provisions of § 719.10 and does not meet the conditions in paragraphs (f) (1) through (3) of this section.

* * * * *

(ff) Substantive change means a significant modification in cropping practice, equipment, labor, accounting system or management with respect to a farming operation.

3. In § 719.3, paragraphs (b)(3), (b)(7), (d)(1), and (d)(3) are revised, paragraph (d)(7) is redesignated as (d)(9) and revised, and paragraphs (b)(8), (d)(7) and (d)(8) are added to read as follows:

§ 719.3 Farm constitution.

* * * * *

(b) * * *

(3) Land across county lines when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, owner, or operator. However, this paragraph shall not apply if:

(i) All of the land is owned and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same state and are owned by the same person if:

(A) A burley tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 719.4(e); or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

* * * * *

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties touch at a corner;

(ii) Counties are divided by a river;

(iii) Counties do not touch because of a correction line adjustment; or

(iv) The land is within 20 miles, by road, or other land that will be a part of the farming unit.

(8) For peanut quotas, land across:

(i) County lines when the peanut quotas established for the land involved cannot be transferred; or

(ii) State lines.

* * * * *

(d) * * *

(1) A substantive change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

* * * * *

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership.

* * * * *

(7) One or more owners of the farm refuse to sign a Conservation Reserve Program contract, while one or more owners on the same farm want to enter into a Conservation Reserve Program contract;

(8) In accordance with guidelines issued by the Deputy Administrator, land is sold for or devoted to nonagricultural uses;

(9) Notwithstanding the provisions of paragraphs (d)(1) through (d)(7) of this section, a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(i) Increase the amount of program benefits received;

(ii) Meet the acreage reduction requirements of production adjustment programs;

(iii) Avoid liquidated damages or penalties which are assessed under a production adjustment program;

(iv) Correct an erroneous acreage report; or

(v) Circumvent any other program provision.

4. In § 719.7, paragraph (b)(1)(iv) is revised and paragraph (b)(4) is added to read as follows:

§ 719.7 Reconstitution of allotments, quotas, bases, and acreages.

* * * * *

(b) * * *

(1) * * *

(iv) Notwithstanding the provisions of paragraph (b)(1) (i) and (ii) of this section, a division may be effective for the current program year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is:

(A) To avoid the statutes and regulations governing commodity programs;

(B) To obtain additional program benefits for the relevant crop year;

(C) To avoid the assessment of liquidated damages under a protection adjustment contract;

(D) To eliminate a marketing quota penalty;

(E) To correct an erroneous acreage report;

(F) To gain allotment, quota, or base history protection;

(G) To plant excess acreage of a program crop in an acreage reduction program; or

(H) To avoid cross compliance requirements.

* * * * *

(4) Reconstitutions of farms on which there is no cropland may be effective for the current crop year.

5. In § 719.8, paragraphs (c)(4) (i), (iii), and (d)(2) are revised to read as follows:

§ 719.8 Rules for determining farms, allotments, quotas, bases and acreages when reconstitution is made by division.

* * * * *

(c) * * *

(4) * * *

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The heirs of an estate that acquire an interest in real property may use this method to designate the allotments, quotas, bases, and acreages for allocation to a tract of land which is sold before dividing the parent farm among the heirs in settling an estate. The designation by the administrator or executor of the estate shall not be accepted in lieu of a designation by the heirs.

* * * * *

(iii) Both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain allotments, quotas, and bases that are consistent with allotments, quotas, and bases for similar farms in the same area having allotments, quotas, and bases with respect to the commodity or commodities involved, considering the cropland available for and adapted to producing the commodity. With respect to upland cotton and rice, in addition to the above provisions, both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain at least one-tenth acre of these crop acreage bases.

* * * * *

(d) * * *

(2) *Bases.* (i) Unless the provisions of paragraph (b) or (c) of this section apply, the contribution method shall be used to divide crop acreage bases when:

(A) The farm being divided is the result of reconstitution by a combination which became effective with respect to the 1982 or subsequent crop year;

(B) A crop acreage base was established for one or more tracts at the time of combination; and

(C) Acreage did not exceed the crop acreage base in any year the farm was in combination.

(ii) The contribution method shall not be used to divide crop acreage bases when the county committee determines, with the concurrence of the State committee, that the use of the contribution method would not result in an equitable distribution of crop acreage bases considering available land, cultural operations, and changes in type of farming.

6. Section 719.10 is revised to read as follows:

§ 719.10 Preservation of cropland.

Cropland acreage established and maintained in vegetative cover under authorized conservation programs administered by the Agricultural Stabilization and Conservation Service, or comparable practices carried out without Federal cost-sharing, including approved volunteer cover, shall retain its cropland classification for the period of time that the cover is maintained or as otherwise established by the Deputy Administrator.

Signed at Washington, DC on December 22, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-29916 Filed 12-28-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-103]

Pork Promotion, Research, and Consumer Information

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends regulations issued under the Pork Promotion, Research, and Consumer Information Order (Order) by: (1) Revising the table which lists the Tariff Schedule of the United States (TSUS) numbers identifying imported pork and pork products subject to assessments under the Order to conform with a new numbering system—the Harmonized Tariff System (HTS) to be implemented by the U.S. Customs Service (USCS), and (2) including a new chart listing the HTS numbers of live porcine animals subject to assessment.

DATES: Effective January 1, 1989. Comments must be received by January 30, 1989.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA, Room 2610-S; P.O. Box 96456; Washington, DC 20090-6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building, 14th and Independence Avenue, SW; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447-2650.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512-1, and is hereby classified as a nonmajor rule under the criteria contained therein.

This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) Many importers may be classified as small entities. This interim final rule merely (1) revises the table containing the numbers identifying imported pork and pork products listed in the table in § 1230.110 (53 FR 27478) in the regulations from the former TSUS numbers to the HTS numbers to conform with the USCS conversion to the new HTS, and (2) includes a table listing HTS numbers of live porcine animals subject to assessment. In addition, the action will not impose any requirements on importers beyond those previously discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), when it was determined that the Order would not have a significant effect upon a substantial number of small entities. The conversion to the new HTS numbering system to be implemented by the USCS is merely a technical change and will impose no new requirements on the industry. Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact upon a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment of 0.25 percent of the market value of live porcine animals sold in the United States and an equivalent amount on imported live porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898) and assessments began on November 1, 1986. The Order requires importers of live porcine animals to pay an amount equal to 0.25 percent of their market value, and importers of pork and pork products to pay an amount which represents 0.25 percent of the value of the live porcine animals from which the pork and pork products were derived, based upon the most recent annual seven-market average price for barrows and gilts, as published by the Department. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound. The formula for converting the live animal equivalent of 0.25 percent of the value of the live animal to an assessment per pound is described in the supplementary information accompanying the Order and published in the September 5, 1986, issue of the **Federal Register** (51 FR 31901). The schedule of assessments is listed in a table in § 1230.110 of the regulations (53 FR 27478) for each type of pork and pork product identified by a TSUS number. Although TSUS numbers for imported live porcine animals did not appear in the table in § 1230.110 of the regulations (53 FR 27478), such animals were subject to assessment at a rate specified in § 1230.71 of the Order (7 CFR 1230.71). The TSUS numbers of live porcine animals subject to assessment under the Order were published in an issue of the Department of Treasury News, United States Customs Service dated September 26, 1986.

The USCS is implementing a new numbering system, the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized Tariff System (HTS), to replace the current TSUS numbering system. The HTS numbering system will become effective January 1, 1989, as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107).

The purpose of this interim final rule is to revise the present table found under § 1230.110 of the regulations (53 FR 27478) to reflect the change from the

current TSUS numbering system listed therein to the HTS numbering system, and to include the HTS numbers for live porcine animals. This revised table lists the HTS numbers for pork and pork products which conform to the previously listed TSUS numbers. Additionally, a separate table lists the HTS numbers of imported live porcine animals subject to assessment. This change will permit the USCS to collect assessments due on imported live porcine animals, pork, and pork products in conjunction with its regular importation processing and collection system.

The new HTS uses an 11 digit number to identify specific imports of live porcine animals, pork, and pork products compared with a 7 digit number used in the TSUS system. Under the HTS, some of the major TSUS categories for live porcine animals, pork, and pork products subject to assessment have been subdivided into new categories which have been assigned HTS numbers; other major TSUS categories remained unchanged, but were renumbered with HTS numbers.

As a result of these changes from the TSUS system to the HTS, the 13 TSUS categories of pork and pork products listed in the table in § 1230.110 of the regulations (53 FR 27478) subject to assessment have been expanded to 27 HTS categories, and the one TSUS catagory for live porcine animals has been expanded to three HTS categories. The live porcine animals, pork, and pork products subject to assessment and the assessment remain unchanged.

A comparison of the new HTS numbers and the former TSUS numbers of live porcine animals, pork, and pork products subject to assessment under the Act and Order, and a description of the type of pork, pork products, or porcine animals represented by corresponding new HTS numbers may be found in the following chart.

HTS No.	HTS article description	TSUS No.
	Imported Live Porcine Animals	
	Live swine:	
0103.10.00004	Purebred breeding animals	100.8500
	Other:	
0103.91.00006	Weighing less than 50 kg each	100.8500
0103.92.00005	Weighing 59 kg or more each	100.8500
	Imported Pork and Pork Products	
	Meat of swine, fresh, chilled, or frozen:	
	Fresh or chilled:	
0203.11.00002	Carcasses and half-carcasses	106.4020
	Hams, shoulders and cuts thereof, with bone in:	
0203.12.10009	Processed	107.3020
020312.90002	Other	106.4020
	Other:	
0203.19.20000	Processed	107.3060
0203.19.40006	Other	106.4020
	Frozen:	
0203.21.00000	Carcasses and half-carcasses	106.4040
	Hams, shoulders and cuts thereof, with bone in:	
0203.22.10007	Processed	107.3020
0203.22.90000	Other	106.4040
	Other:	
0203.29.20008	Processed	107.3060
0203.29.40004	Other	106.4040
	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen:	
0206.30.00006	Of swine, fresh or chilled	106.8000/106.8500
	Of swine, frozen:	
0206.41.00003	Livers	106.8000/106.8500
0206.49.00005	Other	106.8000/106.8500
	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
	Meat of swine:	
0210.11.00003	Hams, shoulders and cuts thereof, with bone in	107.3020
	Bellies (streaky) and cuts thereof:	
0210.12.00208	Bacon	107.3040/107.3540
0210.12.00404	Other	107.3040/107.3540
0210.19.00005	Other	107.3060
	Sausages and similar products, or meat, meat offal or blood; food preparations based on these products:	
1601.00.20007	Pork	107.1000/107.1500
	Other prepared or preserved meat, meat offal or blood:	
	Of swine:	
	Hams and cuts thereof:	
	Containing cereals or vegetables	
	Other:	
	Boned and cooked and packed in airtight containers:	
1602.41.20203	In containers holding less than 1 kg	107.3515/107.3525
1602.41.20409	Other	107.3515/107.3525
1602.41.90002	Other	107.3020
	Shoulders and cuts thereof:	
	Boned and cooked and packed in airtight containers:	
1602.42.20202	In containers holding less than 1 kg	107.3515/107.3525
1602.42.20408	Other	107.3515/107.3525
1602.42.40002	Other	107.3020
	Other, including mixtures Offal	
	Other:	
	Not containing cereals or vegetables:	
1602.49.20009	Boned and cooked and packed in airtight containers	107.3560

HTS No.	HTS article description	TSUS No.
1602.49.40005	Other	107.3060

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107) requires that the USCS implement the HTS numbering system effective January 1, 1989, with the existing TSUS system in place until that date. Publication of this interim final rule, with an effective date of January 1, 1989, will provide for the continuation of the collection of assessments on imported live porcine animals, pork, and pork products under § 1230.110 of the regulations (53 FR 27478) issued under the order (7 CFR Part 1230), as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), by the USCS in conjunction with its regular importation processing and collection system; and (2) interested persons are afforded a 30-day comment period to submit written comments. Any comments which are received by January 30, 1989, will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Live porcine animal, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations, by revising §1230.110 to read as follows:

§ 1230.110 Assessments on imported live porcine animals, pork, and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live Porcine animals	Assessment
0103.10.00004	0.25 percent customs entered value.
0103.91.00006	0.25 percent customs entered value.
0103.92.00005	0.25 percent customs entered value.

The following HTS categories of pork and pork products are subject to assessment at the rate specified.

Pork and Pork products	Assessment
0203.11.00002	.18 cents/lb.
0203.12.10009	.18 cents/lb.
0203.12.90002	.18 cents/lb.
0203.19.20000	.21 cents/lb.
0203.19.40006	.18 cents/lb.
0203.21.00000	.18 cents/lb.
0203.22.10007	.18 cents/lb.
0203.22.90000	.18 cents/lb.
0203.29.20008	.21 cents/lb.
0203.29.40004	.18 cents/lb.
0206.30.00006	.18 cents/lb.
0206.41.00003	.18 cents/lb.
0206.49.00005	.18 cents/lb.
0210.11.00003	.18 cents/lb.
0210.12.00208	.19 cents/lb.
0210.12.00404	.19 cents/lb.
0210.19.00005	.21 cents/lb.
1601.00.20007	.25 cents/lb.
1602.41.20203	.28 cents/lb.
1602.41.20409	.28 cents/lb.
1602.41.90002	.18 cents/lb.
1602.42.20202	.28 cents/lb.
1602.42.20408	.28 cents/lb.
1602.42.40002	.18 cents/lb.
1602.49.20009	.25 cents/lb.
1602.49.40005	.21 cents/lb.

Done at Washington, DC, on December 22, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–29915 Filed 12–28–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1260

[No. LS-88-101]

Beef Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Beef Promotion and Research Order (Order) to (1) change the Tariff Schedule of the United States (TSUS) numbers which identify imported cattle, beef, and beef products subject to assessments under the Order to conform with a new numbering system—the Harmonized Tariff System to be implemented by the U.S. Customs Service; (2) expand the table concerning the assessment rates for imported cattle, beef, and beef products to include four new categories for edible meat offal of bovine animals; and (3) clarify the language pertaining to the expenses of the Cattlemen's Beef Promotion and Research Board (Board).

DATES: Effective January 1, 1989. Comments must be received by January 30, 1989.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA, Room 2610–S; P.O. Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building, 14th and Independence Avenue, SW; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1, and is hereby classified as a nonmajor rule under the criteria contained therein.

This action was also reviewed under the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 et seq.). Many importers may be classified as small entities. This interim final rule (1) revises the table containing the numbers identifying imported cattle, beef, and beef products listed in table 1260.172 in the Order (7 CFR 1260.172) from the former Tariff Schedule of the United States (TSUS) numbers to the Harmonized Tariff System (HTS) numbers to conform with the USCS conversion to the new HTS, (2) expands the table to include four new categories for edible meat offal of bovine animals, and (3) clarifies the language pertaining to expenses of the

Cattlemen's Beef Promotion and Research Board. Except for the second change, this action will not impose any requirements on importers beyond those previously discussed in the July 18, 1986, issue of the **Federal Register** (51 FR 26132), when it was determined that the Order would not have a significant effect upon a substantial number of small entities. The conversion to the new HTS numbering system to be implemented by the USCS is merely a technical change and will impose no new requirements on the industry. It is estimated that the increase in total assessments collected on imports as a result of the change made in this interim final rule will be less than 1 percent over a 12-month period as a result of the new assessments. This impact will be minimal. Any additional costs will be outweighed by the benefits derived from the operations of the Beef Promotion and Research Program. The changes in the language pertaining to the expenses of the Board are merely for clarification. Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact upon a substantial number of small entities.

The Beef Promotion and Research Act of 1985 (7 U.S.C. 2901 *et seq.*) approved December 23, 1985, authorizes the establishment of a national beef promotion and research program. The program is funded by a $1.00 per head assessment on all cattle marketed in the United States and an equivalent amount of assessment on imported cattle, beef, and beef products. The final Order establishing a beef promotion and research program was published in the July 18, 1986, issue of the **Federal Register** (51 FR 26132) and assessments began on October 1, 1986. The Order requires importers of cattle to pay to the USCS, upon importation, an assessment of $1.00 per head of cattle imported. Also importers of beef and beef products, which includes veal, must pay to the USCS, upon importation, an assessment equivalent to $1.00 per head. As a matter of practicality, the assessment on imported beef and beef products is expressed in dollars per pound for each type of such products. The formula for converting the live animal equivalent of $1.00 per head to an assessment per pound is described in the supplementary information accompanying the Order and published in the July 18, 1986, issue of the **Federal Register** (51 FR 26136). The initial schedule of assessments is listed in a table in § 1260.172 (7 CFR 1260.172) of the Order for each type of beef and beef product identified by a TSUS number. Edible meat offal of bovine animals was not previously included in the list of TSUS numbers listed in the Order as subject to assessment upon importation. It is estimated that total assessments collected on imports will increase by less than 1 percent over a 12-month period as a result of these assessments.

The USCS is implementing a new numbering system, the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized Tariff System (HTS), to replace the current Tariff Schedule of the United States numbering system. The HTS numbering system will become effective January 1, 1989, as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107).

One of the purposes of this interin final rule is to revise the present table found under § 1260.172 (7 CFR 1260.172) of the Order to reflect the change from the current TSUS numbering system listed therein to the HTS numbering system. This revised table lists (1) the HTS numbers for imported cattle, beef, and beef products which conform to the previously listed TSUS numbers and are subject to assessment under the Order, and (2) the HTS numbers for edible meat offal of bovine animals which were not identified under the previous TSUS numbering system but are subject to assessment under the Order. This change permits the USCS to continue to collect assessments due on imported cattle, beef, and beef products already being assessed, and begin collection of assessments due on edible meat offal of bovine animals in conjuncton with its regular importation processing and collection system.

The new HTS system uses an 11 digit number to identify specific imports such as cattle, beef, or beef products compared with a 7 digit number used in the TSUS system. Under the HTS, some of the major TSUS categories for cattle, beef, and beef products subject to assessment have been subdivided and the new categories have been assigned HTS numbers; other major TSUS categories remained unchanged, but were renumbered with HTS numbers; and the veal category under the TSUS numbering system has been subdivided and renumbered with HTS numbers.

Under the TSUS system, edible beef offal was not identified by a specific TSUS number as were other types of beef and beef products. Consequently, edible beef offal was not included in the table in § 1260.172 (7 CFR 1260.172) of the Order for assessment purposes. However, under the new HTS, edible beef offal is identified by four separate HTS numbers. These numbers have been included in the revised table.

As a result of these changes from the TSUS system to the HTS system there are 8 categories which cover imported cattle subject to assessment compared with the previous 10 TSUS categories. The 16 TSUS categories of beef and beef products listed in the table in the Order subject to assessment have been expanded to 24 HTS categories and 2 subcategories. Four new categories have been added. The cattle, beef, and beef products subject to assessment and the assessment under the TSUS system remain unchanged. The four new categories will be assessed at a rate equivalent to $1.00 per head according to the formula described in the supplementary information accompanying the Order and published in the July 18, 1986, issue of the **Federal Register** (51 FR 26136). The assessment rate is .20 cents per pound for each new category. The following chart lists a comparison of the new HTS numbers and the former TSUS numbers for imported cattle, beef, and beef products subject to assessment under the Act and Order.

HTS No.	HTS article description	TSUS No.
	Imported Live Cattle	
	Live bovine animals:	
	Purebred breeding animals:	
	Dairy:	
0102.10.00103	Male	100.0130
0102.10.00201	Female	100.0140
	Other:	
0102.10.00309	Male	100.0130
0102.10.00504	Female	100.0150

HTS No.	HTS article description	TSUS No.
	Other:	
0102.90.20004	Cows imported specially for dairy purposes	100.5000
	Other:	
0102.90.40206	Weighing less than 90 kg each	100.4000/100.4300
0102.90.40402	Weighing 90 kg or more but less than 320 kg each	100.4500
0102.90.40607	Weighing 320 kg or more each	100.5300/100.5500
	Imported Beef and Beef Products	
	Meat of bovine animals, fresh or chilled:	
	Carcasses and half-carcasses:	
0201.10.00103	Veal	106.1080
0201.10.00906	Other	106.1020
	Other cuts with bone in:	
	Processed:	
0201.20.20009	High-quality beef cuts	107.6100
0201.20.40005	Other	107.6200
0201.20.60000	Other	106.1020
	Boneless:	
	Processed:	
0201.30.20007	High-quality beef cuts	107.6100
0201.30.40003	Other	107.6200
0201.30.60008	Other	106.1060
	Meat of bovine animals, frozen:	
	Carcasses and half-carcasses:	
0202.10.00102	Veal	106.1080
0202.10.00905	Other	106.1040
	Other cuts with bone in:	
	Processed:	
0202.20.20008	High-quality beef cuts	107.6100
0202.20.40004	Other	107.6200
0202.20.60009	Other	106.1040
	Boneless:	
	Processed:	
0202.30.20006	High-quality beef cuts	107.6100
0202.30.40002	Other	107.5500/107.6200
0202.30.60007	Other	107.6200
	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:	
0206.10.00000	Of bovine animals, fresh or chilled	na
	Of bovine animals, frozen:	
0206.21.00007	Tongues	na
0206.22.00006	Livers	na
0206.29.00009	Other	na
	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
0210.20.0002	Meat of bovine animals	107.4000/107.4500/(na-edible beef offal).
	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:	
	Other:	
1601.00.40003	Beef in airtight containers	107.2000
	Other	
1601.00.60204	Beef	107.2520
	Other prepared or preserved meat, meat offal or blood:	
	Of bovinal animals:	
1602.50.05004	Offal	107.4000/107.4500
	Other:	
	Not containing cereals or vegetables:	
1602.50.09000	Cured or pickled	107.4820/107.4840
	Other:	
	In airtight containers:	
	Corned beef:	
1602.50.10203	In containers holding less than 1 kg	107.4820/107.4840
1602.50.10409	Other	107.4840
	Other:	
1602.50.20201	In containers holding less than 1 kg	107.5220/107.5240
1602.50.20407	Other	107.5240
1602.50.60006	Other	107.6300

This interim final rule also clarifies the language pertaining to the expenses of the Cattlemen's Beef Promotion and Research Board found in § 1260.151(a) of the Order (7 C.F.R. 1260.151(a)) and established in the final rule on July 18, 1986, at 51 FR 26141. That section provides that the Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and enable it to exercise its powers and perform its duties in accordance with that subpart. It further provides that such expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. The same provision in the proposed rule, found at 51 FR 8990 and designated as § 1260.171, stated that "administrative expenses" incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period.

The Beef Promotion and Research Act (7 U.S.C. 2901 *et seq.*) which authorizes the Order limits only "administrative expenses" to the 5 percent limit. Section 2904(4)(D) (7 U.S.C. 2904 (4)(D)) provides

that the total costs of collection of assessments and administrative staff incurred by the Board during any fiscal year shall not exceed 5 percentum of the projected total assessments to be collected by the Board for such fiscal year.

It is in a separate provision, not subject to the 5 percent limitation, that the Act authorizes a reasonable reserve. Section 2904(8)(C) (7 U.S.C. 2904(8)(C)) provides that the assessments shall be used for payment of the costs of plans and projects as provided for in paragraph (4), and expenses in administrating the Order, including administrative costs incurred by the Secretary after the order has been promulgated, and to establish a reasonable reserve.

Thus, under the Act, only those expenses associated with the annual cost of collecting assessments and maintaining the Board's administrative staff ("administrative expenses") are subject to the 5 percent limit. The Act does not include the reserve as an administrative expense and therefore the reserve is not to be included in the 5 percent limit.

To clarify that the reserve is not subject to the 5 percent limitation under the Act and the Order, this interim final rule substitutes the word "Administrative" for the word "such" as the first word in the second sentence of § 1260.151(a) (7 CFR 1260.151(a)) and the phrase "expenses authorized in the paragraph" is substituted for the word "such" in the last sentence of that same paragraph.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107) requires that the USCS implement the HTS numbering system effective January 1, 1989 with the existing TSUS system in place until that date. Publication of this interim final rule with an effective date of January 1, 1989 will provide for the continuation of the collection of assessments on imported cattle, beef, and beef products under the Beef Promotion and Research Act (7 U.S.C. 2901 *et seq.*) and Order (7 CFR Part 1260) by the USCS in conjunction with its regular importation processing and collection system; (2) this action expands the table concerning the assessment rates for imported cattle, beef and beef products to include four new categories for edible meat offal which will appear in the new HTS numbering system and therefore, these changes should be implemented concurrently with the HTS numbering changes; (3) the remaining changes in this action concerning the expenses of the Board are for clarity; and (4) interested persons are afforded a 30-day comment period to submit written comments. Any comments which are received by January 30, 1989 will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Beef and beef products.

For the reasons set forth in the preamble, 7 CFR Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. Revise 1260.151 to read as follows:

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1260.172.

* * * * *

3. Revise § 1260.172(b)(2) to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

	Assessment
Live cattle:	
0102.10.00103	$1.00/hd.
0102.10.00201	1.00/hd.
0102.10.00309	1.00/hd.
0102.10.00504	1.00/hd.
0102.90.20004	1.00/hd.
0102.90.40206	1.00/hd.
0102.90.40402	1.00/hd.
0102.90.40607	1.00/hd.
Beef and beef products:	
0201.10.00103	.77 cents/lb.
0201.10.00906	.20 cents/lb.
0201.20.20009	.28 cents/lb.
0201.20.40005	.27 cents/lb.
0201.20.60000	.20 cents/lb.
0201.30.20007	.28 cents/lb.
0201.30.40003	.27 cents/lb.
0201.30.60008	.27 cents/lb.
0202.10.00102	.77 cents/lb.
0202.10.00905	.20 cents/lb.
0202.20.20008	.28 cents/lb.
0202.20.40004	.27 cents/lb.
0202.20.60009	.20 cents/lb.
0202.30.20006	.28 cents/lb.
0202.30.40002	.27 cents/lb.
0202.30.60007	.27 cents/lb.
0206.10.00000	.20 cents/lb.
0206.21.00007	.20 cents/lb.
0206.22.00006	.20 cents/lb.
0206.29.00009	.20 cents/lb.
0210.20.00002	.35 cents/lb.
1601.00.40003	.25 cents/lb.
1601.00.60204	.25 cents/lb.
1602.50.05004	.35 cents/lb.
1602.50.09000	.35 cents/lb.
1602.50.10203	.35 cents/lb.
1602.50.10409	.35 cents/lb.
1602.50.20201	.37 cents/lb.
1602.50.20407	.37 cents/lb.
1602.50.60006	.38 cents/lb.

* * * * *

Done at Washington, D.C. on December 22, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–29914 Filed 12–28–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–196]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Puerto Rico from Class Free to Class A.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8389.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 20, 1988 (53 FR 36433–36434, Docket Number 88–134), we amended the regulations in 9 CFR Part 78 governing the interstate movement of cattle because of brucellosis by changing the classification of Puerto Rico from Class Free to Class A. Comments on the interim rule were required to be postmarked or received on or before November 21, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle are moved interstate for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Puerto Rico from Class Free to Class A imposes certain testing and other requirements on the interstate movement of cattle from Puerto Rico. However, these requirements will not affect the interstate movement of cattle to recognized slaughtering establishments or quarantined feedlots, or the interstate movement of cattle from certified brucellosis free herds. The change in the brucellosis status of Puerto Rico may decrease the opportunity for other movements of cattle out of Puerto Rico since, in most cases, the cattle would first have to be tested and found negative for brucellosis. However, no cattle are being moved out of Puerto Rico, either interstate or into foreign countries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this part contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 36433–36434 on September 20, 1988.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, D.C., this 22nd day of December 1988.

James Glosser,

Administrator, Animal and Plant Health Inspection Service.

December 21, 1988.

[FR Doc. 88–29913 Filed 12–28–88; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is amending its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. The revised fee schedules will result in those power reactor, fuel cycle facility and materials applicants and licensees requiring the greatest expenditure of NRC resources paying the greatest fees. This permits NRC to more completely recover under 10 CFR Part 170 costs incurred for identifiable services for power reactor, fuel cycle facility and major materials applicants and licensees. This action also implements fee legislation enacted by Congress in December 1987. All applicants and licensees currently subject to fees under 10 CFR Parts 170 and 171 are affected by this rule.

EFFECTIVE DATE: January 30, 1989.

ADDRESSES: Copies of the written public comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Assistant Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20055, Telephone: 301–492–7351.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Changes Included in the Final Rules
IV. Section-by-Section Analysis
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis

I. Background

On June 27, 1988 (53 FR 24077–24093), the Commission published in the **Federal Register** a notice of proposed rulemaking for revisions to 10 CFR Part 170 ("Fees for Facilities and Materials Licensees and Other Regulatory Services * * *") and Part 171 ("Annual Fees for Power Reactor Operating Licenses"). This action was necessary for the Commission to update the current fee schedules in Part 170 and to implement the requirements of section 5601 of the Omnibus Budget Reconciliation Act of 1987, as signed into law on December 22, 1987 (Pub. L. 100–203). Section 5601 amended section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA—Pub. L. 99–272), which requires the Commission to collect annual charges from its licensees. As discussed in the notice of proposed rulemaking published on June 27, 1988, the amendment requires the NRC to collect under 10 CFR Parts 170 and 171, as well as under other provisions of law, not less than 45 percent of the Commission's budget for each of Fiscal Years 1988 and 1989 (Option 1).

The proposed rule also sought comments on a second option to not change 10 CFR Part 170, but only raise the annual fees under 10 CFR Part 171 to reach the 45 percent mandate of Pub. L. 100–203 for FY 1988. On August 12, 1988, the Commission published an interim final rule for 10 CFR Part 171 (53 FR 30423) applicable to collections for FY

1988 based upon the second option. The interim rule increased collections from 33 percent to 45 percent of the Commission's FY 1988 budget. Adjusted invoices based on the interim rule were sent to reactor licensees on August 16, 1988.

As discussed in the interim rule, the Commission will proceed with option 1 rather than option 2 as a long-term rule for annual fees. The method for assessing annual fees in this final rule presents a more equitable distribution among the licensed nuclear power reactors of the amount needed to be collected by taking into account the kind of reactor, its location and other considerations in relation to the generic research and other costs associated with power reactor regulation. Under the revised rule, those who require the larger expenditure of NRC resources will pay the larger fees.

II. Responses to Comments

The Commission received thirty-two (32) letters commenting on the proposed rule. Twenty letters were from persons mainly concerned with Part 50 facilities and twelve commented on fees for materials licenses.

The comments fell into the following categories:

Part 170 Comments:

1. Removal of ceilings.
2. Removal of routine inspection frequencies.
3. Fees for standardized design review.
4. Disparity in certain materials fee categories.

Part 171 Comments:

1. Legality of fees.
2. Allocate costs to all persons.
3. Exclude costs serving an independent public benefit.
4. Base fees on specific identifiable services.
5. Exclude research until NRC acts on that research.
6. Include fines, penalties, and interest in fee collections.
7. Other Comments.

The Commission's responses to the comments are as follows:

Comments on Part 170

1. Removal of ceilings for reactor and major fuel cycle permits, licenses, amendments, reactor related topical reports and services; and for transportation cask packages and shipping containers. Commenters' main concern about the removal of ceilings for applications and other services is that it removes the predictability of costs for budgeting purposes. In the area of topical reports, commenters were concerned that it would discourage participation in the topical report program as well as defeat the overall objective of encouraging new and improved predictive models and products.

Response: Ceilings are being removed because the Commission strongly supports the concept that those requiring the greatest expenditure of NRC resources should pay the greatest fees. Ceilings contradict that objective. Appendices A and B that were included in the proposed rule of June 27, 1988 (53 FR 24092 and 24093), are non-binding schedules of estimated fees which may still be used for planning purposes in the absence of ceilings and provide adequate information for planning purposes. The upper range in these schedules would only be increased slightly for FY 1989 as a result of using FY 1989 budget costs which changed the hourly rate from $80 (based on FY 1988 budget) to $86 for FY 1989. With respect to topical report reviews, the Commission finds no compelling argument to justify retaining a ceiling since those who request reviews of topical reports that require considerable staff work should bear their share of the review costs. The Commission recognizes, however, that there may be some topical reports that are of particular importance and use to the NRC. Therefore, as a matter of agency policy, the NRC may, upon its own initiative or at the request of the applicant, exempt all or part of the topical report fee pursuant to § 170.11(b)(1).

2. Removal of routine inspection frequency. Most materials commenters are concerned that the removal of the frequency for routine inspections will take away their ability to predict what they should budget for inspection fees and create a potential for more frequent inspections than are needed.

Response: The Commission's routine inspection program is a structured program to assure that licensees comply with their license conditions and Commission regulations and standards to the extent that the health and safety of the company employees and public are not endangered. As long as a licensee's operations are in compliance with the NRC-issued license, regulations, and standards, the frequency of inspections is not generally expected to be more frequent than what was stipulated in the previous regulation. Therefore, from a budgeting standpoint, if a licensee operates in conformance with its license and the Commission's regulations and standards, the predictability for inspection fee budget costs remains essentially unchanged.

3. Fees for standardized design. Nuclear power industry commenters questioned the Commission's proposal to defer fees for review of standardized reference designs until referenced by an applicant, or at the end of 5 years (10 years if a design is certified) after design approval, whichever comes first. A few commenters felt that fees should not be charged or should be waived for standardized design reviews to remove any disincentive for the standardization program and what could possibly be unusually extensive costs as a result of the review being a "first-of-a-kind" that might require extensive safety reviews.

Response: The Commission's decision to defer fees for standard reference design reviews is based upon a balancing of policy considerations. On the one hand, it is clearly the policy of the Government, and the intent of the Congress, that the Commission collect fees for services rendered to applicants. Thus, standard reference design reviews are not to be performed free of charge. On the other hand, there is a sound and persuasive public policy need to avoid a disincentive to the submittal of standard designs by vendors incorporating the best safety features available for a future generation of reactors. For years, the Commission has supported the use of standard designs (see, e.g., 10 CFR Part 50, Appendix O, and 10 CFR 2.110). On balance, the Commission believes that the deferral of fees for standard design reviews is a reasonable compromise that serves the public interest. Accordingly, the Commission will retain its proposed treatment of fees for standard reference designs.

4. Disparity in certain materials fee categories. Two materials licensees questioned why the license and inspection fees in certain areas are higher when compared with other areas.

Response: The NRC recognizes that a part of the current Part 170 fee schedule for materials licenses is outdated and needs revision. For example, the labor rates (staff hours and fees applied) used in calculating fees are based on data that is several years old. The NRC has determined that this is not the appropriate rulemaking to make the necessary adjustments. The NRC contemplates initiating a rulemaking on this issue next year.

Part 171 Comments

The Commission notes that the rulemaking to which the following comments are again addressed is of a very limited scope with respect to Part 171. The rulemaking adds two new

definitions to which no comments were addressed, it changes the percent of recovery from 33 percent of the Commission's budget to at least 45 percent, enters a more refined allocation of the annual fee among different classes of power reactors, and eliminates the provision for refunds of collections in excess of 45 percent. The Commission received some comments that go beyond these limited subjects and are therefore not relevant to this rulemaking. Nonetheless, the Commission is responding to them. The response to comments beyond the scope of the rulemaking should not, however, be taken as an admission by the Commission that the issues raised are again open to challenge. Responses to these comments are seen as a matter of courtesy to the commenters and not as reopening these issues to further litigation. These comments and the responses thereto are:

1. Legality of fees. Several commenters, in particular law firms representing operators of nuclear power reactors, commented on issues of a legal nature.

Response. These comments for the most part repeated comments addressed to the first issuance of 10 CFR Part 171 (final rule issued September 18, 1986; 51 FR 33224) promulgated to implement section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985. That rule was challenged and upheld in its entirety in Florida Power & Light Co. et al. v. United States, 846 F.2d 765 (D.C. Cir. 1988). A petition for writ of certiorari challenging that decision is pending in the Supreme Court (Florida Power & Light Co. v. United States, No. 88-234).

2. Allocation of costs. Some commenters stated that annual fees should be levied on all persons such as materials licensees receiving services from the Commission.

Response. Congress provided the Commission with the discretion to determine which categories of licensees or other persons should be charged an annual fee by the Commission. The Commission's decision not to charge materials licensees annual fees was upheld in Florida Power & Light v. United States, supra. The Commission has reaffirmed its determination that it will not impose an annual fee on its materials licensees. The Commission has more than 8000 materials licensees. Regulation of these entities requires a minimal expenditure of NRC resources (less than 3 percent of the NRC budget). Moreover, these licensees are an extremely varied class, ranging from large uranium processing operators to small operators involving well logging, radiography, or the use of gauging devices. In light of the relatively minor resources devoted to regulating these entities and the obvious administrative difficulties in determining how to calculate appropriate annual fees for this large, diverse class of licensees, the Commission will not impose an annual fee on these licensees at this time.

3. Some commenters asserted that the cost basis for annual fees should exclude costs serving an independent public benefit.

Response. The concept that costs related to an independent public benefit should not be charged to licensees derives from the case law on application of the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA). It is not a concept applicable to annual fees charged under COBRA, as amended. The annual fee statute has its own standard independent of the standards applicable to IOAA. In any case, the research performed by the NRC primarily benefits power reactor licensees as part of the system under which those facilities are regulated and allowed to operate in a manner that provides adequate protection to the public health and safety. Therefore, none of the services for which fees are charged provide "independent public benefits" even if this concept were deemed applicable. The Commissions' position on this issue was also upheld in Florida Power & Light v. United States, supra.

4. Some commenters took the position that fees should be based on specific identifiable services benefitting individual licensees and not on generic agency action.

Response. The concept that fees should be levied only for specific services to identifiable recipients is an IOAA standard. It is not a standard that applies to annual fees under COBRA, as amended. It is the Commission's continuing view that the Congress did not intend that IOAA principles be applied to the collection of annual fees under COBRA, as amended. The Commission's determinations in this area were upheld in Florida Power & Light v. United States, supra.

5. Some commenters stated that the Commission should not include in its cost basis for annual fees research cost until the Commission acts upon that research and it is shown to provide a benefit.

Response. It is the position of the Commission that research devoted to the continued safety of nuclear power reactors is a present service and benefit. This research either confirms that reactors are safe, that some changes will improve safety, or that certain regulations may no longer be necessary for safe operation. The conduct of research resulting in any of these outcomes is a present benefit. This research provides continuing confidence that licensed reactors can be operated consistent with the public health and safety and the Commission's regulations. We again note that the DC Circuit Court of Appeals in Florida Power & Light v. United States, supra, upheld the Commission's decision to include such costs in its annual fee basis.

6. One commenter felt that monies from the collection of fines, penalties and interest should be included in the 45 percent required to be collected.

Response. Although related here to the 45 percent level of collection, the same comment was presented with respect to the rule promulgating the 33 percent ceiling. The Commission adheres to its prior position. Fines, penalties and interest are not cost recovery measures, but are disciplinary and intended to deter persons who violate Commission regulations and orders, as well as other licensees, from future violations. Public policy dictates that those paying penalties, fines, or interest should not benefit by recovering a portion of the penalty, fine or interest through a reduced fee. Again, this Commission decision was upheld in Florida Power & Light v. United States, supra.

7. Other Comments on Part 171 Amendments.

a. Some licensees and their vendors have stated that the additional costs assessed for B&W type reactors are not justified because these plants are not problem plants requiring the greatest expenditure of staff funds and manpower when compared with other reactors.

Response. The basis for assessing B&W owners under Part 171, or any licensee (by vendor type), is not based upon performance, but it is an allocation of fee based upon corresponding costs (FTE and obligations) to the NRC to perform generic type activities associated with that type of reactor (vendor type). Some specific activities questioned (i.e., "Continuing Experimental Capability" and "Technical Integration Center") have been reallocated based upon a more detailed identification matrix of licensee groups.

b. Florida Power Corporation commented that Agency and industry research supports exclusion of reactors east of the Rockies from the list of reactors benefitting from special seismic studies.

Response. Although its service area lies within a region of low seismicity, the Florida Power Corporation, as explained below, benefits substantially from NRC seismic research, including maintenance of the NRC-funded seismograph networks east of the Rocky Mountains. Seismic research through the years has shown that Florida is less prone to earthquakes than a large part of the eastern and central U.S., and thus allows for less stringent seismic design bases for critical facilities. Ongoing seismic monitoring will continue to confirm that conclusion or identify possible errors of judgment.

Recent experience (1982 New Brunswick and New Hampshire earthquakes, the 1987 southern Illinois earthquake and the reservoir induced seismicity at Monticello Reservoir, South Carolina) indicates that high accelerations at relatively high frequencies can be generated locally by moderate to small magnitude earthquakes, usually at relatively shallow depths (several kilometers). It is possible that earthquakes of these sizes could occur in Florida (although the probability is low). Accelerations can result that exceed OBE or SSE design bases for critical facilities. We do not believe that these ground motions (short duration, high accelerations at high frequencies) are the kind that result in damage to seismically designed critical facilities, but research in this area is ongoing. The occurrences are extremely difficult to handle even with no evidence of damage. The seismic networks are the main sources of data that are basic to resolving this issue.

Another major issue regarding eastern U.S. seismicity is the nature of the tectonic structures that are currently responsible for the earthquakes. Suspect structures include faults in rocks ranging in age from Paleozoic through Triassic and into Tertiary (several hundred million years old to several million years old). These faults are widely distributed in rocks throughout the east, including rocks beneath Florida. Much of current seismic and geologic research funded by the NRC is focused on identifying and defining the tectonic structures that are causing the earthquakes. The most definitive information about seismic sources, which are deeply buried, is obtained from the analysis of recordings of earthquake ground motions. Builders and operators of critical facilities in low seismic areas derive as much benefit from this type of research as those in more seismic areas in view of the relatively short historic seismic record.

c. Level of budget detail. Several utilities' overall criticism of the proposed rule concerns their perception of the need to breakout budgeted obligations to a level lower than the Program—Program Element—Activity structure used in the NRC planning process in the area of research. These utilities further comment on the fact that the budget detail, maintained at the activity level and provided to the Public Document Room (PDR) does not allow them access to greater detail (to see if the NRC developed its budget, thus its user charges, accurately).

Response. This suggestion has been adopted. We have gone one level below the activity level to the project level (FIN) in developing fees for research activities. Using the FIN level permits a more detailed breakout of fee categories. However, FIN information used in developing these fees cannot be placed in the PDR now because it contains predecisional contracting information—amounts set aside for specific procurements that have not yet been awarded. To release this information before contracts are awarded would be in violation of the Federal Procurement Law. Accordingly, we do not envision placing the FIN data used in developing this fee schedule in the PDR until sometime during the following fiscal year.

d. MIST program costs. Several commenters stated that the Commission agreed to share in the funding of Multi-Loop Integral System Test (MIST), the program with the B&W Owners Group (OG). However, it is in the research costs set forth in Table IV of the proposed rule. It is inappropriate for NRC to pass its share of the MIST costs on to B&W Owners through license fees.

Response. The NRC does provide funding for the MIST program as well as other cooperative programs. Being an agency cost item, the MIST program as well as the costs for all other current and future cooperative programs should be used in the cost allocation data base. Moreover, we do not view this as a breach of the co-funding agreement by NRC with the OG because the current agreement is about to expire and a new agreement is being negotiated. All of the $2.7 million included in the user fee base is for activities that would be funded by the new agreement rather than the existing one. Before entering the new agreement, this final rule will have been promulgated putting the OG on notice of the agency's revised user fee policies.

It should also be pointed out that in the past two phases of MIST co-op research (Phase 3 and Phase 4), the owners group paid only about one-half of the NRC contributions for Phase 3 and did not contribute any funds for Phase 4. Because almost 90 percent of all funds budgeted in areas subject to fee recovery under Part 171 will be collected through user fees, if co-op research programs were exempt from the fee base, the co-op groups would receive fee exemptions not available for other research—inequitably shifting the fee burden to other licensees.

e. Comments on specific changes to Part 171. Comments on the proposed changes to Part 171 fall into three primary groups: (1) The Commission is in error in considering the 45 percent collection target as a floor, and not as a ceiling, (2) the Commission is in error in eliminating the provision for refunds for excess annual fee collections (§ 171.21), and (3) the Commission should adopt option 2 identified in the notice of proposed rulemaking. Under that option, the previously adopted method for calculating annual fees would be retained. The only significant change would be raising the annual fee to collect 45 percent of the NRC budget. Other commenters suggested that Option 2 not be adopted.

Response. The Commission addressed all three of these issues in its notice of interim rule published August 12, 1988, in the **Federal Register** (53 FR 30423). There the Commission stated its view that reading the 45 percent in Omnibus Budget Reconciliation Act (OBRA) (amending COBRA) as a ceiling would be contrary to the language and plain meaning of the statute, quoting, "* * * in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year." (Section 5601, Omnibus Budget Reconciliation Act of 1987.) The Commission adheres to that view again emphasizing that fees will exceed the 45 percent target by a trivial amount.

The elimination of the provision for refunds results from the Commission's view of the operative effect of the 45 percent constituting a floor for collections. In presenting the 45 percent as a floor, and not a ceiling, OBRA removed the necessity to make refunds which was implicit in COBRA when the latter imposed a 33 percent ceiling prior to its amendment. In short, the change in the law from a 33 percent ceiling to a 45 percent floor for collections eliminates the need to make a refund of amounts collected in excess of 45 percent. Accordingly, consistent with its view of Congressional intent, the Commission is permanently removing § 171.21 from its regulations.

With respect to the suggestion that option 2 be adopted and the fee

collection methodology remain unchanged, the Commission does not support this approach. The Commission is firmly committed to assessing fees based on the principle that those licensees requiring the greatest expenditure of NRC resources pay the greatest fees. Option 2 is contrary to this policy.

f. One commenter requested that consideration of the utility's rate base be included among the exemption criteria in 10 CFR 171.11.

Response. This comment is also outside the scope of the rulemaking because the rulemaking does not propose any change to the exemption criteria in Part 171. Nonetheless, the Commission believes that factors related to a utility's rate base may be considered in passing on requests for exemptions in § 171.11 Rate base matters may be considered under § 171.11(c) and under § 171.11(e). In the Commission's view, the commenter's request is already accommodated in Part 171 as initially codified.

III. Changes Included in the Final Rules

The changes included in the final rule are as follows and permit the NRC to recover approximately, but not less than, 45 percent of its budgeted costs for fiscal years 1988 and 1989, respectively. These changes were set forth in the proposed rule published on June 27, 1988 (53 FR 24077). Any differences between the final rule and the proposed rule are explained in the following discussion.

1. Changing the hourly rates under 10 CFR 170.20 which range from $53 to $62 for the various program offices to $86 for all program offices based on the FY 1989 budget and providing for an annual adjustment if there is a need for increase or decrease. The $86 hourly rate is an increase from the proposed $80 hourly rate. This increase is as a result of using the FY 1989 budget in lieu of the FY 1988 budget. The method used for calculating the hourly rate is exactly the same as that used in the proposed rule. An analysis of the budget which generated this rate is provided in the Part 171 Section-by-Section Analysis.

2. Removing the 10 CFR Part 170 fee ceilings for application reviews, services, and inspections for reactors; fuel cycle facilities; transportation cask packages and shipping containers.

3. Amending 10 CFR 170.31 to charge for each routine inspection conducted by the NRC and to delete the maximum billing frequency. For user convenience, the fee schedule previously included in 10 CFR 170.32 has been incorporated in 10 CFR 170.31.

4. In 10 CFR Part 170, removing the application fee and deferring the payment of costs for the review of applications for standardized reactor design reviews and certifications until a standardized design is referenced.

5. In 10 CFR Part 170, removing application filing fees for reactor applications and for reactor related topical reports.

6. Increasing the annual fees assessed under 10 CFR Part 171 and charging based on the principle that licensees requiring the greatest expenditure of NRC resources shall pay the greatest fee. Again, as in the development of the hourly rate, the method use for determining the annual fee is the same as that described in the proposed rule except that budget obligations have been identified one level below the detail shown in the proposed rule based on the comments received, and FY 1989 budget data have been used in lieu of the FY 1988 data used in the proposed rule.

7. Including in the NRC collection, moneys recovered from the Nuclear Waste Fund, as managed by the Department of Energy under the Nuclear Waste Policy Act, as amended, for costs incurred by the NRC in preparing for licensing a high-level waste repository.

The agency workpapers which support the changes to 10 CFR Parts 170 and 171 are available in the Public Document Room, at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

IV. Section-by-Section Analysis

The following section-by-section analysis of the affected sections provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

Part 170

Section 170.12 Payment of fees.

Paragraphs (c), (d), (e), and (f) are changed to remove the $150 application fee for reactor license amendments and other approvals.

Within paragraph (e), Approval fees, the current reference to facility standard reference design approvals is changed to remove the application fee and to permit deferral of review and certification fees until the design is referenced, payable thereafter in 20 percent increments as the design is referenced. However, regardless of whether the design is referenced, the full costs of a preliminary design approval (PDA)/final design approval (FDA) will be recovered by the NRC from the holder of the design approval within 5 years from the date of approval. If the design is certified, the five-year period is extended to 10 years from the date of the design certification with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the standardized design approval application is denied, withdrawn, suspended, or action on the application is postponed, fees will be collected when the review, to that point, is completed and the five (5) installment payment procedure will not apply.

Section 170.20 Average cost per professional staff-hour.

This section is modified to reflect an agency-wide professional staff-hour rate based on the FY 1989 budget. The section is also modified to reflect that the hourly rate will be adjusted each fiscal year, with notice of the new rate published in the **Federal Register** if the hourly rate increases or decreases. Accordingly, the professional staff rate for the NRC for FY 1989 is $86 per hour, or $150.9 thousand per FTE (professional staff year) rather than $80 per hour as set forth in the proposed rule. An analysis of the budget which generated this rate is provided in the Part 171 section-by-section analysis. In each subsequent year, the hourly rate will be adjusted to reflect current cost per direct staff FTE.

On August 19, 1987, Part 170 and other regulations under Title 10 of the Code of Federal Regulations were amended to reflect NRC organizational changes. These revisions as published August 21, 1987 (52 FR 31601), in final form, inadvertently changed 10 CFR 170.20 to delete the $53 hourly rate for regional staff inspection and other identifiable services. In computing costs for invoices, the $53 hourly rate will continue to be used for regional review staff time until the effective date of this final rule at which time the $86 hourly rate will be used.

Section 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Within the schedule of fees, all services (other than most application filing fees) will be changed from the current specified cost to "Full Cost." The schedule for Standard Reference Design Review is modified to reflect the amendment of § 170.12 addressed above.

With the removal of ceilings for certain services, the costs for those reviews for which a ceiling previously established has been reached will not be billed if prior to the effective date of this

rule the review of the application is completed. For administrative reasons, where the review has not yet been completed, NRC will not seek to recover those costs which it incurred after the current ceiling was reached and before this revised rule becomes effective. Costs incurred after the effective date of this final rule will be billed. The professional staff-hours expended up to the effective date of this rule will be at the professsional rates established for the June 20, 1984 rule. Any professional hours expended after the effective date of this rule will be assessed at the FY 1989 rates reflected in this final rule. The same applies to the removal of ceilings under the revisions of § 170.31 below. The footnotes to this schedule also are modified to bring them into conformity with the amendments to this schedule.

Section 170.31 Schedule of fees for materials licenses and other regulatory services.

Like § 170.21, this section is modified to (a) reflect the removal of ceilings on certain categories of fees, (b) charge full costs for those services, and (c) incorporate the inspection fee schedule previously set forth in § 170.32.

Inspection fee ceilings for selected services are also removed and the remaining fixed fees are retained since the ratio of NRC costs to fees collected is approximately equivalent to the percentage of the budget to be collected into the General Treasury. Currently if the frequency of inspection, for example, for a category is 2 years and an inspection is next conducted 1 year and 11 months after the previous inspection, no fee is assessed. Often times inspections of different licensees are scheduled because of their close proximity. This scheduling represents a more efficient use of resources. Accordingly, § 170.31 and the footnotes are being revised to indicate that fees will be assessed for each inspection conducted by the NRC. Footnotes to the schedule that are affected by this action are revised to be consistent with this revision. Previous inspection footnotes 1 through 4 are now being combined as one footnote and will become 1(e) and footnote 5 remains as 5.

Section 170.32 Schedule of fees for health, safety, and safeguards inspections for materials licenses.

Under the proposed rule, § 170.32 was published as a separate schedule to cover inspection fees for materials licensees. The reformatting to include materials inspection fees under § 170.31 is for user convenience and to shorten the rule. By doing this, as in § 170.21, all fees for each license category are now together rather than in two different schedules. The rule has not been changed from its proposed form. Footnotes have been consolidated and renumbered as specified above.

Part 171

The following is a section-by-section analysis of those areas affected by this final rule. All references are to Title 10, Chapter I, Code of Federal Regulations.

Section 171.5 Definitions.

The following definitions are being added.

The term "Budgeted obligations" is defined to be the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal year to provide regulatory services to licensees. Budgeted obligations include, but are not limited to amounts of orders to be placed, contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

The term "Overhead costs" is defined to include three components: (1) Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) Travel costs; (3) Direct overhead, e.g., supervision, program support staff, etc.; and (4) Indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory services provided to the licensees and, therefore, within the meaning of section 7601, COBRA.

Section 171.13 Notice.

Under the current rule, one fee is applicable to all licensed reactors. Under this final rule, each reactor will be assessed fees based on those NRC activities from which it benefits as a type or within a class of reactors. Accordingly, annual fees are expected to be different for each of the various types or classes of reactor operating licenses. Each bill will reflect those specific activities applicable to each operating license as required by the revised § 171.15 discussed below.

Section 171.15 Annual Fee: Power reactor operating licenses.

Paragraph (c) is modified to reflect a minimum target percentage of 45 percent rather than a maximum percentage of 33 percent. The formula used to calculate the annual fee is modified to reflect the inclusion of moneys expected to be collected from the Nuclear High Level Waste (HLW) Fund administered by the Department of Energy and the estimated collections under Part 170 for each fiscal year. Funds will be collected from the Nuclear HLW fund beginning in FY 1989. The sum of these funds will be subtracted from the amount reflecting 45 percent of the NRC budget prior to determining the annual fee for each licensed power reactor.

In FY 1989, the Commission must recover not less than 45 percent of its congressionally enacted budget of $420,000,000. Applying the fee rates set out in this rule, the NRC estimates that it will collect in FY 1989 $50 million pursuant to Part 170 and $15 million from the Nuclear Waste Fund. In accordance with the formula provided in § 171.15, for FY 1989: $189 million minus approximately $50 million for Part 170 plus $15 million for Nuclear Waste Fund equals approximately $124 million to be recovered through annual fees. Because at least 45 percent is to be collected, the amount charged under Part 171 will also be dependent on the number of exemptions granted pursuant to § 171.11 and the number of new power reactor licenses issued during the fiscal year.

The following areas are those NRC programs which comprise the annual fee. They have been expressed in terms of the NRC's FY 1989 budget program elements and associated activities in lieu of the FY 1988 activities used in the proposed rule.

Program element	Activity
—Reactor Performance Evaluation.	—Generic Communications. —Engineering/Safety Assessments.
—Reactor Maintenance and Surveillance.	—Maintenance and Surveillance.
—License Performance Evaluation.	—Quality Assurance.
—License and Examine Reactor Operators.	—Program Development and Assessment/ Regional Oversight. —Generic Activities.
—Region-Based Inspections.	—Lab and Technical Support. —Regional Assessment.
—Specialized Inspections.	—Vendor Inspections.

Program element	Activity
—Regulatory Improvements.	—Technical Specifications.
	—Safety Goal Implementation.
	—Inspection/Licensing Integration and Research and Standards Coordination.
—Licensee Reactor Accident Management Evaluation.	—Concept of Operations and Implementing Technical Procedures.
	—Regional Assistance Committees.
—Safeguards Licensing and Inspection.	—Regulatory Effectiveness Reviews.
—Reactor Vessel and Piping Integrity.	—Pressure Vessel Safety.
	—Piping Integrity.
	—Inspection Procedures and Techniques.
	—Chemical Effects.
—Aging of Reactor Components.	—Aging Research.
—Reactor Equipment Qualification.	—Equipment Qualification Methods.
—Seismic and Fire Protection Research	—Earth Sciences.
	—Component Response to Earthquakes.
	—Validation of Seismic Analysis.
	—Seismic Design Margin Methods.
—Accident Management	—Individual Plant Examinations.
	—Ex-Vessel Accident Management.
	—In-Vessel Accident Management.
	—External Event Safety Margins.
—Reactor Applications	—Containment/Balance of Plant.
	—Technical Support Center.
	—Nuclear Plant Analyzer/Database/Simulator.
—Plant Performance	—B&W Testing.
	—PWR Large Break LOCA Testing.
	—PWR Small Break LOCA Testing.
	—Other Experimental Programs.
	—Modeling.
—Human Performance	—Human Factors Research.
	—Human Error Data Collection and Analysis.
—Reliability of Reactor Systems.	—Performance Indicators.
	—Plant and Systems Risk and Reliability.
	—Dependent Failure Analysis.
—Core Melt and Reactor Coolant System Failure.	—Fission Product Behavior and Chemical Form.
	—Natural Circulation in the Reactor Coolant System.
—Reactor Containment Safety.	—Core Melt Progression and Hydrogen Generation.
	—Steam Explosion.
	—Core/Concrete Interactions.
	—Direct Containment Heating.
	—Integrated Codes and Applications.
	—Hydrogen Transport and Combustion.
—Reactor Accident Risk Analysis.	—Severe Accident Management.
	—Risk model development.
	—Risk Uncertainty Methodology.
	—Risk Rebaseline Analyses.
	—Risk-Based Management Methodology.
—Severe Accident Program Implementation.	—Severe Accident Policy Implementation.
	—Regulatory Application of New Source Terms.
—Radiation Protection and Health Effects.	—Reduce Uncertainty in Health Risk Estimates.
	—Health Physics Technology Improvements.
	—Dose reduction.
—Generic and Unresolved Safety Issues.	—Engineering Issues.
	—Reactor System Issues.
	—Human Factors Issues.
	—Severe Accident Issues.
	—Management of Safety Issue Resolution.
—Developing and Improving Regulations.	—Regulation Development or Modification.
	—Independent Review and Control of Rulemaking.
	—Regulatory Analysis of Regulation.
	—Rules for License Renewal.
	—Safety Guide Implementation.
—Performance Indicators	—Manage Performance Indicator Program.
—Diagnostic Evaluations	—Conduct Diagnostic Evaluations of Licensee Performance.
—Incident Investigation	—Management Incident Investigation Program.
—NRC Incident Response.	—Emergency Response Data System.
	—Develop and Maintain Response Center Equipment, Procedures and Analytical Tools.
	—Program Coordination and Development.
	—Operations Officers.
—Technical Training Center.	—PWR/BWR Technology Training.
—Operational Data Analysis.	—Analysis of Operational Experience.
	—Analysis of Operational Trends and Patterns.
—Operational Data Collection and Dissemination.	—Collect, Screen and Feed Back Operational Data.
	—Operational and Reliability Data Systems.
—Section Supervision	—Section Supervision.

Each of these activities is related to providing services to operating nuclear power plants. NRC's efforts in each of these areas contribute to the licensees' continued safe operation of their facilities and therefore are of benefit to them. A broader description of these programs is contained in the NRC's annual budget submission to Congress. See NUREG–1100, Volume 4, "Budget Estimates Fiscal Year 1989" (February 1988).[1] While these activities also provide benefits to the public, because they benefit our licensees, these are not "independent public benefits" as that term is used in user fee case law. Accordingly, it is legally permissible to charge licensees for these services.

Paragraph (c) is being revised to reflect that the basis for each annual fee will be the budgeted obligations for activities (regulatory services) applicable to each nuclear power reactor as one of a type or class of reactors, e.g., boiling water reactors or pressurized water reactors. Using this approach, the Commission will, each year, establish the budgeted obligations (including overhead costs) for each activity on a per reactor unit basis, and establish the total costs for those regulatory services provided to each reactor licensed to operate. NRC labor costs attributable to these activities will be determined using the hourly rates established on the basis of an analysis of direct and indirect (overhead as defined herein) staffing costs attributable to the regulatory services provided.

Paragraphs (d) and (e) of the current rule are being deleted as superfluous to the proposed approach to annual fees.

Supplemental Analysis on Annual Fee Determination Under § 171.15

Under current legislation, the NRC is to collect and deposit to the General Fund of the Treasury, an amount to approximate but not be less than 45 percent of its budget. In fiscal year 1989 the President's budget for the NRC is $420.0 million. Thus, in FY 1989 the NRC should collect at least $189 million. In FY 1989, it is estimated that approximately $50 million will be collected from specific licensees under Part 170, and $15 million from the

[1] Copies of NUREG–1100, Vol. 4 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC.

Department of Energy High-Level Waste Fund. Thus, the remaining funds, at least $124 million ($189 million less $65 million), will have to be collected under Part 171. A multiplier will be used such that the amount to be collected will be equal to Part 170 collections, plus High-Level Waste Fund collections, plus Part 171 potential collections multiplied by a factor "M," which in FY 1989, will probably be less than one. Thus "M" equals

$$\frac{124}{148}$$

or .84 of the budget base.

For FY 1989, the budgeted obligations by direct program are: (1) Salaries and Benefits, $184.0 million; (2) Administrative Support, $70.0 million; (3) Travel, $12.0 million, and (4) Program Support, $154.0 million. In FY 1989, 1603.4 FTEs are considered to be in direct support of NRC programs applicable to fees (See Table I). About 337 FTEs are utilized in efforts associated with Part 171, with the remainder being utilized in efforts associated with Part 170, or to be recovered from the DOE Nuclear Waste Fund or other efforts. Of the total 3,180 FTEs, 1,577 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of the 3,180 FTEs, a total of 291 FTEs and the resulting $23.9 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

TABLE I.—ALLOCATION OF DIRECT FTES BY OFFICE

Office	Number of direct FTEs [1]
NRR/SP	968.0
Research	155.0
NMSS	307.2
AEOD	93.0
ASLAP	5.2
ASLBP	17.0
ACRS	25.0
OGC	33.0
	1603.4

[1] Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All such direct FTEs are identified by office.

2. NRC plans, budgets, and controls on the following four major categories (see Table II):

a. Salaries and Benefits.

b. Administrative Support.

c. Travel.

d. Program Support.

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Although this method differs from previous methods for recovery of costs, it is equally as accurate because it allocates all "in-house" resource requirements over the universe of direct FTEs (those staff members who would be billed to licensees based upon work performed either directly for a specific licensee or a specific group of licensees).

Using this method which was described in the proposed rule and the FY 1989 budget, and excluding budgeted Program Support obligations, the remaining $242 million allocated uniformly to the direct FTEs (1603.4) results in a calculation of $150.9 thousand per FTE for FY 1989 (an hourly rate of $86).

TABLE II.—FY 1989 BUDGET BY MAJOR CATEGORY

[$ In Millions]

Salaries and benefits	$184
Administrative support	70
Travel	12
Total nonprogram support obligations	266
Program support	154
Total budget	420

The Direct FTE Productive Hourly Rate ($86/hour rounded down) is calculated by dividing the annual nonprogram support costs ($266 million) less the amount applicable to exempted functions ($23.9 million) by the product of the direct FTE (1,603.4 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OBM Circular A-76, "Performance of Commercial Activities."

Because Part 171 is designed to collect fees for NRC efforts of a generic or multi-license nature concerning licensees with power reactor operating licenses, the most feasible method to accomplish this is to develop fees based on NRC budgeted obligations for each NRC generic or multi-licensee program concerning plants with operating licenses. Additionally, because many of the research programs expend effort for specific types of reactors (i.e., Westinghouse, CE, B&W, and GE), containment types (i.e., Mark I, II, III, etc.), or plants in a specific geographic location (e.g., reactors east of the Rockies), these parameters were also used in refining NRC cost by reactor/operating license. Table III presents a summary of Part 171 fees, by reactor category, using the FY 1989 budget for Program Support costs and FTEs.

As can be seen from Table III, a reactor which is a B&W reactor, east of the Rockies would have a fee ($1,592) imposed which is higher than the fee ($1,121) imposed on a GE Mark I reactor west of the Rockies. This example also represents the normal range of fees to be charged under Part 171 of $1,121 thousand to $1,592 thousand. Table IV provides a detailed presentation of the budgeted obligations by budget program element and activity and shows how the annual fees were determined for the various types of reactors. Table V is a specific listing of the annual fee to be assessed for each reactor in FY 1989.

Table III.—With Minor Adjustments for Plants West of Rockies or Westinghouse Plants With Ice Condensers the Following Apply to Plant/Containment

[Fees in millions]

Type	No.	Budget base X.84	Fee	Total collection
Part 171 Fees By Reactor Category—Summary				
GE Mark I	(24)	$1.349	$1.133	$27.19
GE Mark II	(7)	1.443	1.212	8.48

TABLE III.—WITH MINOR ADJUSTMENTS FOR PLANTS WEST OF ROCKIES OR WESTINGHOUSE PLANTS WITH ICE CONDENSERS THE FOLLOWING APPLY TO PLANT/CONTAINMENT—Continued

[Fees in millions]

Type	No.	Budget base X.84	Fee	Total collection
GE Mark III	(4)	1.373	1.153	4.61
B&W	(8)	1.896	1.592	12.74
CE	(15)	1.391	1.168	17.52
Westinghouse	(48)	1.352	1.135	54.48
	106			125.0

Fee Basis by Vendor/Containment Type-Summary ($000)

All GE Mark I's	[1] (24)	$1,219	(All).
		98	(All BWR).
		18	(Mark I).
		14	(East of Rockies).
		1,349	
All GE Mark II's	[1] (7)	1,219	(All).
		98	(All BWRs).
		70	(Mark II).
		42	(Mark II/III).
		14	(East of Rockies).
		1,443	
All Mark III's	[1] (4)	1,219	(All).
		98	(All BWR).
		42	(Mark II/III).
		14	(East of Rockies).
		1,373	
All B&Ws	[1] (8)	1,219	(All).
		112	(All PWR).
		7	(All PWR-LDC).
		544	(All B&W).
		14	(East of Rockies).
		1,896	
All CE's	[1] (15)	1,219	(All).
		112	(All PWR).
		7	(All PWR-LDC).
		39	(All CE).
		14	(East of Rockies).
		1,391	
All Westinghouse	[1] (48)	1,219	(All).
		112	(All PWR).
		[2] 7	(All PWR-LDC).
		14	(East of Rockies).
		1,352	

Fee Basis by Category—Summary ($000)

All Plants	(106)	$1,219
All PWRs		112
Plus PWRs with LDC		7
Plus All B&Ws or		544
All CEs		39
All BWRs		98
Plus All Mark I's		18
Plus All Mark II's		70
Plus All Mark II's & III's		42
All Plants East of Rockies (SEISMIC)		14

[1] All except plants west of Rockies which pay $14,000 less.
[2] 8 Westinghouse plants with ice condenser are not charged this $7,000 fee.

TABLE IV.—FEE BASIS FOR ALL REACTORS—DETAIL ($000)

			PTS$		FTE$
Generic (All Reactors) (106):					
NRR/SP			$4,092		$19,949
AEOD			9,255		13,355
RES (All)			29,251		8,149
RES (PWRs & BWRs)			36,212		5,915
RES SEISMIC (All)			2,603		438
			81,413		47,806
Total				$129,219	
Total	=	$129,219		1,219	Per Reactor
Number Reactors	=	106			

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FEE BASIS FOR ADDITIONAL
CHARGES BY NUCLEAR STEAM SUPPLY SYSTEM
VENDOR AND CONTAINMENT TYPE - DETAIL

PRESSURIZED WATER REACTORS				PTS$ ($000)		FTE$ ($000)
NSSS, ALL PWRs (71)				$6,200		$1,720
TOTAL - PWRs	=				$7,920	
TOTAL	=	$7,920 / 71	=	$111.55		Per Reactor
NSSS (ALL LARGE DRY CONTAINMENT [LDC] PWRs) (63)				$335		$105
TOTAL PWR LDCs	=				$ 440	
TOTAL PWR LDCs / NUMBER OF REACTORS	= / =	$ 440 / 63	=	$6.98		Per Reactor
NSSS LDC B&W ONLY (8)		$3,975			$ 377	
TOTAL LDC - B&Ws					$4,352	
TOTAL LDC - B&Ws / NUMBER OF REACTORS	= / =	$4,352 / 8	=	$544.00		Per Reactor
NSSS, LDC - CE ONLY (15)				$475		$105
TOTAL LDC - CEs					$ 580	
TOTAL LDC - CEs	=	$ 580 / 15	=	$ 38.67		Per Reactor
BOILING WATER REACTORS						
NSSS, ALL BWRs (35)				$3,048		$377
TOTAL - BWRs	=				$3,425	
TOTAL BWRs / NUMBER OF REACTORS	= / =	3,425 / 35		$97.86		Per Reactor

		PTS$ ($000)		FTE$ ($000)
NSSS, BWRs (Mark I) (24)		$ 400		$30
TOTAL MARK I			$ 430	
TOTAL MARK Is = / NUMBER OF REACTORS =	$430 / 24 =	$17.92		Per Reactor
NSSS, BWRs (MARK II) (7)		$400		$ 90
TOTAL MARK II			$490	
TOTAL MARK IIs = / NUMBER OF REACTORS =	= $ 490 / 7 =	$70.00		Per Reactor
NSSS, BWRs (TOTAL MARK II/MARK III) (7/4)		$325		$135
TOTAL MARK II/MARK III S			$460	
TOTAL MARK II/MARK IIIs = / NUMBER OF REACTORS	$460 / 11 =	$41.82		Per Reactor
SEISMIC WORK - ALL PLANTS	$2,603			$438
TOTAL SEISMIC - ALL PLANTS			$3,041	
TOTAL SEISMIC ALL PLANTS = / NUMBER OF REACTORS =	$3,041 / 106 =		$28.69	Per Reactor
SEISMIC WORK (APPLICABLE PLANTS EAST OF ROCKIES)			$1,220	$151
TOTAL EAST OF ROCKIES			$1,371	
TOTAL EAST OF ROCKIES = / NUMBER OF PLANTS =	$1,371 / 95 =		$14.43	Per Reactor

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	FY 1989	
	Program support $	FTE
Part 171 Work by NRR		
Generic Effort—All Plants		
1. Reactor Performance Evaluation:		
a. Generic Communications	$0	10.5
b. Engineering/Safety Assessments	387	6.4
2. Reactor Maintenance and Surveillance	175	2.2
3. Licensee Performance Evaluation Quality Assurance Program	0	4.5
4. License and Examine Reactor Operators:		
a. Program Development and Assessment/Regional Oversight	0	8.1
5. Region-Based Inspections:		
a. Lab and Technical Support	670	10.6
b. Regional Assessment	0	0
6. Specialized Inspections, Vendor Inspections	815	15.1
7. Section Supervision	0	37.3
8. Regulatory Improvements:		
a. Technical Specifications	345	11.9
b. Safety Goal Implementation	0	.6
c. Generic Issues/Rules/Reg. Guides/Policy	150	11.4
9. Licensee Reactor Accident Management Evaluation:		
a. Emergency Procedures	1,115	5.2
b. Regional Assistance Committees	0	2.0
10. Safeguards Licensing and Inspection Regulatory Effectiveness Reviews	435	6.4
Total Part 171	$4,092	132.2

FTE=132.2X$150.9	$19,949
PTS	4,092
Total—NRR—(All Plants)=	$24,041

	FY 1989	
	Program support $	FTE
Part 171 Work by AEOD		
Generic Effort—All Plants		
1. Diagnostic Evaluations	$0	2.0
2. Incident Investigation	50	2.5
3. NRC Incident Response	2,635	27.0
4. Technical Training Center	2,650	22.0
5. Operational Data Analysis	2,020	25.0
6. Performance Indicators	150	4.0
7. Operational Data Collection and Dissemination	1,750	6.0
Total Part 171 Work by AEOD	$9,255	88.5

FTE=88.5X$150.9=	$13,355
PTS	9,255
Total-AEOD=(All Plants)=	$22,610

	PTS $ ($000)	FTE
Part 171 Work by Research		
A. Generic Efforts—All Plants		
Aging of Reactor Components Aging Research	6,246	6.7
Reactor Equipment Qualifications—Equipment Qualification Methods	400	.3
Component Response to Earthquakes	2,460	2.6
Validation of Seismic Analysis	1,200	1.0
Seismic Design Margin Methods	350	.7
Prevent Reactor Core Damage	200	.3
● Other Experimental Programs		
● Modeling	50	0
Human Performance—		
● Human Factors Research	3,020	3.8
● Human Error Data Collections and Analysis	936	1.2
Reliability of Reactor System—Performance Indicators	800	1.5
Plant & System Risk & Reliability	1,411	2.4
Dependent Failure Analysis	225	.2

	PTS $ ($000)	FTE
Individual Plant Exams	1,490	1.1
Reactor Containment Structural Integrity	2,970	2.3
Regulatory Application of New Source Terms	25	1.0
Radiation Protection of Health Effects—Reduce Uncertainty in Health Risk Estimates	835	1.8
Health Physics Technology Improvements	415	1.5
Dose Reduction	825	1.5
Generic and Unresolved Safety Issues	790	6.2
Reactor System Issues	150	1.2
Human Factors Issues	1,000	1.3
Severe Accident Issues	370	1.0
Management of Safety Issues Resolution	300	6.5
Regulation Development and Modification	350	2.9
Regulatory Analysis of Regulations	1,044	3.0
Rule for License Renewal	1,190	1.0
Safety Goal Implementation	200	1.0
Generic Efforts—All Reactors—Total =	$29,251	54.0
B. Generic Efforts—All Plants Except HTGR		
Integrity of Reactor Component—Reactor Vessel & Piping Integrity—Pressure Vessel Safety	8,195	2.6
Piping Integrity	1,385	.5
Inspection Procedures and Techniques	1,280	.9
Chemical Effects	2,050	4.0
Aging of Reactor Components—Aging Research	950	1.1
Reactor Equipment Qualification—Standards Development	455	.4
Prevent Reactor Core Damage—Modeling	450	.4
Reactor Applications—Containment/Balance of Plant	460	1.0
Technical Support Center	1,050	1.2
NPA/Database/Simulator	400	.8
Accident Management—Vessel Accident Management	1,050	1.5
In-Vessel Accident Management	1,400	1.5
External Events Safety Margins	325	.4
Core Melt Progression and H2 Generation	3,820	1.8
Natural Circulation in the RCS	690	1.0
Steam Explosions	185	0
Fission Product Behavior and Chemical Form	990	.8
Reactor Containment Safety—Core Concrete Interaction	1,750	.8
Hydrogen Transport and Combustion	650	1.0
Integrated Codes and Applications	2,762	2.1
Reactor Accident Risk Analysis—Assessment of Plant Risks	300	.5
Risk Model Development, QA and Maintenance	2,025	3.0
Risk Model Applications	2,690	2.0
Severe Accident Policy Implementation	200	.6
Regulatory Application of New Source Term	125	5.0
Generic and Unresolved Safety Issues—Engineering Issues	75	.6
Reactor System Issues	500	3.7
Total (PWRs & BWRs)	$36,212	39.2
C. Seismic—All Plants		
Seismic and Fire Protection—Earth Sciences	2,270	1.8
Reactor Accident Risk Analysis—Assessment of Plant Risks	273	.5
Resolve Safety Issues and Developing Regulations—Engineering Issues	60	.6
Total $3,041k	2,603	2.9
D. Seismic—Plants East of Rockies		
Seismic and Fire Protection—Earth Sciences	1,220	1.0
E. Seismic—Plants West of Rockies		
total = $0	0	0
F. Nuclear Steam Supply System		
(PWR only)		
Integrity of Reactor Component:		
Piping Integrity	100	0
Inspection Procedures and Techniques	170	.1
Prevent Reactor Core Damage—PWR Large Break LOCA Testing	1,000	.9
PWR Small Break LOCA Testing	300	.4
Modeling	1,700	1.5
Core Melt Progression and H2 Generation	300	.2
Fission Product Behavior and Chemical Form	300	.2
Direct Containment Heating	1,620	1.0
Resolving Safety Issues and Developing Regulations—Engineering Issues	235	2.4
Reactor System Issues	475	4.7
Total NSSS—PWR Only	$6,200	11.4
G. NSSS—All Large Dry Containments—(PWRs Only)		
Severe Accident Implementation—Severe Accident Policy Implementation	225	.6
Resolving Safety Issues and Developing Regulations—Reactor	110	.1
System Issues	335	.7

	PTS $ ($000)	FTE
H. NSSS PWR LDC—(Westinghouse only)	0	0
I. NSSS LDC (B&W Only)		
Prevent Reactor Core Damage—Plant Performance—B&W Testing	3,500	1.8
Reactor Accident Risk Analysis—Assessment of Plant Risks	475	.7
	475	2.5
J. NSSS CCE—Large Dry Containments		
Reactor Accident Risk Analysis—assessment Plant Risks	475	.7
K. NSSS—(BWR Only)		
Integrity of Reactor Component Piping Integrity	1,080	.5
Prevent Reactor Core Damage—Modeling	800	.7
Reactor Containment Safety—Integrated Codes and Applications	1,128	.9
Resolve Safety Issues	40	.4
	$3,048	2.5
L. GE—Mark I		
Reactor Containment Safety—Core/Concrete Interactions	400	.2
M. GE—Mark II		
Reactor Accident Risk Analysis—Assessment of Plant Risks	400	.6
N. GE—Mark II & III		
Severe Accident Implementation—Severe Accident Policy Implementation	325	.9

The costs to NRC for these programs should be paid for on a prorata basis, by all plants included in the specified categories. By adding the program support costs to the NRC staff cost for each category of effort and prorating these costs over the population (plants) of that category, a fee is established which requires those licensees who require the greatest expenditure of NRC resources to pay the largest annual fee.

TABLE V.—ANNUAL FEES FOR OPERATING POWER REACTORS, FY 1989

	Containment type	Annual fee
Westinghouse reactors:		
1. Beaver Valley 1.	PWR—Large dry containment.	$1,135,000
2. Beaver Valley 2.	do	1,135,000
3. Braidwood 1	do	1,135,000
4. Braidwood 2	do	1,135,000
5. Byron 1	do	1,135,000
6. Byron 2	do	1,135,000
7. Callaway 1	do	1,135,000
8. Diablo Canyon 1.	do	1,124,000
9. Diablo Canyon 2.	do	1,124,000
10. Farley 1	do	1,135,000
11. Farley 2	do	1,135,000
12. Ginna	do	1,135,000
13. Haddam Neck.	do	1,135,000
14. Harris 1	do	1,135,000
15. Indian Point 2.	do	1,135,000
16. Indian Point 3.	do	1,135,000
17. Kewaunee	do	1,135,000
18. Millstone 3	do	1,135,000
19. North Anna 1.	do	1,135,000
20. North Anna 2.	do	1,135,000
21. Point Beach 1.	do	1,135,000

TABLE V.—ANNUAL FEES FOR OPERATING POWER REACTORS, FY 1989—Continued

	Containment type	Annual fee
22. Point Beach 2.	do	1,135,000
23. Prairie Island 1.	do	1,135,000
24. Prairie Island 2.	do	1,135,000
25. Robinson 2	do	1,135,000
26. Salem 1	do	1,135,000
27. Salem 2	do	1,135,000
28. San Onofre 1.	do	1,124,000
29. Seabrook 1	do	1,135,000
30. South Texas 1.	do	1,135,000
31. Summer 1	do	1,135,000
32. Surry 1	do	1,135,000
33. Surry 2	do	1,135,000
34. Trojan	do	1,124,000
35. Turkey Point 3.	do	1,135,000
36. Turkey Point 4.	do	1,135,000
37. Vogtle 1	do	1,135,000
38. Wolf Creek 1.	do	1,135,000
39. Zion 1	do	1,135,000
40. Zion 2	do	1,135,000
41. Catawba 1	PWR—Ice condenser.	1,130,000
42. Catawba 2	do	1,130,000
43. Cook 1	do	1,130,000
44. Cook 2	do	1,130,000
45. McGuire 1	do	1,130,000
46. McGuire 2	do	1,130,000
47. Sequoyah 1	do	1,130,000
48. Sequoyah 2	do	1,130,000
Combustion engineering reactors:		
1. Arkansas 2	PWR—Large dry containment.	1,168,000
2. Calvert Cliffs 1.	do	1,168,000
3. Calvert Cliffs 2.	do	1,168,000
4. Ft. Calhoun 1	do	1,168,000
5. Maine Yankee.	do	1,168,000

TABLE V.—ANNUAL FEES FOR OPERATING POWER REACTORS, FY 1989—Continued

	Containment type	Annual fee
6. Millstone 2	do	1,168,000
7. Palisades	do	1,168,000
8. Palo Verde 1	do	1,157,000
9. Palo Verde 2	do	1,157,000
10. Palo Verde 3.	do	1,157,000
11. San Onofre 2.	do	1,157,000
12. San Onofre 3.	do	1,157,000
13. St. Lucie 1	do	1,168,000
14. St. Lucie 2	do	1,168,000
15. Waterford 3	do	1,168,000
Babcock & Wilcox reactors:		
1. Arkansas 1	PWR—Large dry containment.	1,592,000
2. Crystal River 3.	do	1,592,000
3. Davis Besse 1.	do	1,592,000
4. Oconee 1	do	1,592,000
5. Oconee 2	do	1,592,000
6. Oconee 3	do	1,592,000
7. Rancho Seco 1.	do	1,581,000
8. Three Mile Island 1.	do	1,592,000
General Electric plants:		
1. Browns Ferry 1.	Mark I	1,133,000
2. Browns Ferry 2.	do	1,133,000
3. Browns Ferry 3.	do	1,133,000
4. Brunswick 1	do	1,133,000
5. Brunswick 2	do	1,133,000
6. Clinton 1	Mark III	1,153,000
7. Cooper	Mark I	1,133,000
8. Dresden 2	do	1,133,000
9. Dresden 3	do	1,133,000
10. Duane Arnold.	do	1,133,000
11. Fermi 2	do	1,133,000
12. Fitzpatrick	do	1,133,000

TABLE V.—ANNUAL FEES FOR OPERATING POWER REACTORS, FY 1989—Continued

	Containment type	Annual fee
13. Grand Gulf 1.	Mark III	1,153,000
14. Hatch 1	Mark I	1,133,000
15. Hatch 2	do	1,133,000
16. Hope Creek 1.	do	1,133,000
17. LaSalle 1	Mark II	1,212,000
18. LaSalle 2	Mark II	1,212,000
19. Limerick 1	do	1,212,000
20. Millstone 1	Mark I	1,133,000
21. Monticello	do	1,133,000
22. Nine Mile Point 1.	do	1,133,000
23. Nine Mile Point 2.	Mark II	1,212,000
24. Oyster Creek.	Mark I	1,133,000
25. Peach Bottom 2.	do	1,133,000
26. Peach Bottom 3.	do	1,133,000
27. Perry 1	Mark III	1,153,000
28. Pilgrim 1	Mark I	1,133,000
29. Quad Cities 1.	do	1,133,000
30. Quad Cities 2.	do	1,133,000
31. River Bend 1.	Mark III	1,153,000
32. Susquehanna 1.	Mark II	1,212,000
33. Susquehanna 2.	do	1,212,000
34. Vermont Yankee.	Mark I	1,133,000
35. Washington Nuclear 2.	Mark II	1,200,000
Other Reactors: [1]		
1. Three Mile Island 2.	B&W—PWR—Dry containment.	1,592,000
2. Shoreham	GE—Mark II	1,212,000
3. Big Rock Point.	GE—Dry containment.	1,118,000
4. Yankee Rowe	Westinghouse—PWR—Dry containment.	1,135,000
5. Ft. St. Vrain	High temperature gas cooled.	822,000

[1] These licensed reactors have not been included in the fee base since historically they have been granted either full or partial exemptions from the annual fees. The fees shown for these reactors are those fees for the particular type of reactor, no adjustments have been made based on size or particular circumstance of the reactor. Nonetheless, unless full waivers are granted, these licensees will pay at least a portion of the amount specified above.

Section 171.21 Refunds.

This section is being eliminated. Under current legislation, at least 45 percent should be collected. No refunds will be provided, although the fees will be calculated in such a manner as to not greatly exceed the 45 percent floor imposed by the legislation.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessement has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

Section 7601 of COBRA required the NRC, by rule, to establish an annual charge for regulatory services provided to its applicants and licensees, that when added to other amounts collected, equaled up to 33 percent of Commission costs in providing those services. Section 5601 of the Omnibus Budget Reconciliation Act of 1987 requires that the NRC, for the fiscal years 1988 and 1989, increase the moneys collected pursuant to section 7601 and other authority to at least 45 percent of the Commission's costs. For FY 1988, the NRC issued an interim rule which raised the collection of annual fees to be at least 45 percent of its budget and accordingly raised the annual fee for operating power reactors. For FY 1989 the NRC is revising its fee schedules in 10 CFR Part 170 to remove the fee ceilings on certain categories, to revise its professional hourly rate to reflect inflationary and other increases since FY 1981, to revise the ceiling of 33 percent contained in 10 CFR Part 171 to a target which approximates but will be at least 45 percent, and to include the collection of moneys from the High Level Waste Fund administered by the Department of Energy.

This final rule will not have significant impacts on state and local governments and geographical regions; on health, safety, and the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. In the notice of proposed rulemaking published on June 27, 1988 (53 FR 24085), the NRC invited any licensee who considered itself to be a small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact to notify the Commission by providing responses to four general questions. The proposed rule was mailed to approximately 10,000 licensees under 10 CFR Parts 30 through 35, 39, 40, 50, 60, 61 and 70 through 73. About 9,000 of the licensees could be considered small entities, particularly in the area of materials licensing under 10 CFR Parts 30 through 35 and 39. Of the 32 letters of comments received, only twelve were from licensees in the materials category and interest area. Of the twelve, only one licensee addressed the four questions on the impact as a small entity. This commenter was concerned that the removal of ceilings for topical reports, dry storage systems, and transport packages would have a much greater impact on that company than it would on a larger company and place an unfair competitive burden on small entities. It is readily recognized that this final rule will cause some licensees to pay more fees for topical report reviews and other services. However, the financial impact is related to the services provided by the NRC. The size of the licensee is not a factor in the costs imposed. Based upon the number of comments received on the proposed rule and on analysis of these comments, the NRC believes that this rule will not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for it because the final rule does not impose any new, more stringent safety requirements on Part 50 licensees.

List of Subjects

10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Nuclear power plants and reactors, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.12, paragraphs (b) through (g) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each. Fees for applications for materials licenses not subject to full cost recovery must accompany the application when it is filed.

(c) *Amendment fees and other required approvals.* Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission, until the review is completed. Each bill will identify the applications and costs related to each. Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(d) *Renewal fees.* Fees for applications for renewals that are subject to full cost of the review are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each. Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(e) *Approval fees.* (1) Applications for transportation casks, packages, and shipping container approvals, spent fuel storage facility design approvals, and construction approvals for plutonium fuel processing and fabrication plants must be accompanied by an application fee of $150.

(2) There is no application fee for standardized design approvals. The review fees for facility reference standardized design approvals and certifications will be paid by the holder of the design approval or certification in five (5) installments based on payment of 20 percent of the application and approval/certification fee (see footnote 4 to § 170.21) as each of the first five units of the approved/certified design is referenced in an application(s) filed by a utility or utilities. If the design(s) is not referenced or if all costs are not recovered within 5 years after the preliminary design approval (PDA) or the final design approval (FDA), the vendor applicant will pay the costs, or remainder of those costs, at that time. If the design is certified, the five-year deferral period is extended to ten years from the certification with the same proviso that 20 percent of the costs will be payable each time the design is referenced.

(3) Fees for other applications that are subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each. Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed.

(f) *Special project fees.* Fees for applications for special projects such as topical reports, are based on full cost of the reviews and are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each. All applications filed pursuant to § 170.31 must be accompanied by the $150 application fee.

(g) *Inspection fees.* Fees for all routine and non-routine inspections will be assessed on a per inspection basis, and will be billed quarterly if they are based on full cost recovery. Inspection fees for small materials programs are billed upon completion of the inspection. Inspection fees are payable upon notification by the Commission. Inspection costs include preparation time, time on site and documentation time and any associated contractual service costs but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required approvals and inspections under §§ 170.21, 170.31 and 170.32 will be calculated based upon the full costs for the review using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published in the **Federal Register** for each fiscal year if the rate increases or decreases. The professional staff rate for the NRC for FY 89 is $86 per hour.

4. Section 170.21 is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Applicants for construction permits, manufacturing licenses, operating licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
A. Nuclear Power Reactors	
Application for Construction Permit	$125,000.
Construction Permit, Operating License.	Full cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals.	Full cost.
Inspections [3]	Full cost.
B. Standard Reference Design Review [4]	
Preliminary Design Approvals, Final Design Approvals, Certification.	Full cost.
Amendment, Renewal, Other Approvals.	Full cost.
C. Test Facility/Research Reactor/Critical Facility	
Application for Construction Permit	$5,000.
Construction Permit, Operating License.	Full cost.

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals.	Full cost.
Inspections [3]	Full cost.
D. Manufacturing License	
Application	$125,000.
Preliminary Design Approval, Final Design Approval.	Full cost.
Amendment, Renewal, Other Approvals.	Full cost.
Inspections [3]	Full cost.
E. Uranium Enrichment Plant	
Application for Construction Permit	$125,000.
Construction Permit, Operating License.	Full cost.
Amendment, Renewal, Other Approvals.	Full cost.
Inspections [3]	Full cost.
F. Advanced Reactors	
Application for Construction Permit	$125,000.
Construction Permit, Operating License.	Full cost.
Amendment, Renewal, Other Approvals.	Full cost.
Inspections [3]	Full cost
G. Other Production and Utilization Facility	
Application for Construction Permit	$125,000.
Construction Permit, Operating License.	Full cost.
Amendment, Renewal, Other Approvals.	Full cost.
Inspections [3]	Full cost.
H. Production or Utilization Facility Permanently Closed Down	
Inspections [3]	Full cost.
I. Part 55 Reviews	
Requalification and Replacement Examinations for Reactor Operators.	Full cost.
J. Special Projects	
Approvals	Full cost.

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5), and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] All charges will be based on expenditures for professional staff time and appropriate contractual support services. However, in no event will the charges be less than the application fee or, where no application fee is specified, will charges be less than $150. For those applications currently in file, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the costs incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. If such rate increases or decreases in a given fiscal year, the new rate will be published in the **Federal Register.** In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of the design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the five year deferral period is extended to 10 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. Applications for amendments to PDAs, FDAs and certifications are subject to full costs and will be billed upon completion of the review.

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety, and safeguards inspections, where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. *Special nuclear material:*	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses and to authorize decommissioning, decontamination, reclamation, or site restoration activities as well as licenses authorizing possession only:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Application	$150.
License, Renewal, Amendment.	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Application	$150.
License, Renewal, Amendment.	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems: [4]	
Application—New license	$230.
Renewal	$120.
Amendment	$60.
Inspections:	
Routine	$210.
Nonroutine	$640.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$350.
Renewal	$350.
Amendment	$120.
Inspections:	
Routine	$320.
Nonroutine	$370.
2. *Source material:*	
A. Licenses for posssion and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Application	$150.
License, Renewal, Amendment.	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):	
Application—New license	$60.
Renewal	$60.
Amendment	$60.
Inspections:	
Routine	$130.
Nonroutine	$160.
C. All other source material licenses:	
Application—New license	$350.
Renewal	$230.
Amendment	$120.
Inspections:	
Routine	$370.
Nonroutine	$690.
3. *By product material:*	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application—New license	$1,200.
Renewal	$700.
Amendment	$120.
Inspections:	
Routine	$950.
Nonroutine	$1,000.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application—New license	$460.
Renewal	$460.
Amendment	$120.
Inspections:	
Routine	$480.
Nonroutine	$900.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New License	$1,400.
Renewal	$1,400.
Amendment	$230.
Inspections:	
Routine	$640.
Nonroutine	$850.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$700.
Renewal	$700.
Amendment	$120.
Inspections:	
Routine	$370.
Nonroutine	$530.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$230.
Renewal	$170.
Amendment	$120.
Inspections:	
Routine	$210.
Nonroutine	$320.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$580.
Renewal	$350.
Amendment	$230.
Inspections:	
Routine	$270.
Nonroutine	$580.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$2,300.
Renewal	$930.
Amendment	$230.
Inspections:	
Routine	$480.
Nonroutine	$640.
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$580.
Renewal	$230.
Amendment	$120.
Inspections:	
Routine	$320.
Nonroutine	$320.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$290.
Renewal	$230.
Amendment	$60.
Inspections:	
Routine	$210.
Nonroutine	$320.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,200.
Renewal	$700.
Amendment	$230.
Inspections:	
Routine	$320.
Nonroutine	$320.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter:	
Application—New license	$290.
Renewal	$230.
Amendment	$60.
Inspections:	
Routine	$320.
Nonroutine	$320.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,200.
Renewal	$700.
Amendment	$120.
Inspections:	
Routine	$420.
Nonroutine	$530.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$700.
Renewal	$460.
Amendment	$120.
Inspections:	
Routine	$370.
Nonroutine	$420.
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services:	
Application—New license	$930.
Renewal	$930.
Amendment	$120.
Inspections:	
Routine	$320.
Nonroutine	$320.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New License	$700.
Renewal	$700.
Amendment	$230.
Inspections: [5]	
Routine	$530.
Nonroutine	$1,200.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$230.
Renewal	$120.
Amendment	$60.
Inspections:	
Routine	$530.
Nonroutine	$530.
4. *Waste disposal:*	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:	
Application	$150.
License, renewal, amendment.	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New License	$1,400.
Renewal	$930.
Amendment	$350.
Inspections:	
Routine	$1,000.
Nonroutine	$740.
C. Lienses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$930.
Renewal	$460.
Amendment	$120.
Inspections:	
Routine	$740.
Nonroutine	$950.
5. *Well logging:*	
A. Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$700.
Renewal	$700.
Amendment	$170.
Inspections:	
Routine	$370.
Nonroutine	$370.
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:	
Application	$150.
License, renewal, amendment.	Full cost.
Inspections:	
Routine	$320.
Nonroutine	$480.
6. *Nuclear laundries:*	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$700.
Renewal	$700.
Amendment	$170.
Inspections:	
Routine	$530.
Nonroutine	$850.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
7. *Human use of byproduct, source, or special nuclear material:*	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$580.
Renewal	$350.
Amendment	$230.
Inspections:	
Routine	$530.
Nonroutine	$850.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,200.
Renewal	$700.
Amendment	$120.
Inspections:	
Routine	$740.
Nonroutine	$800.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$580.
Renewal	$580.
Amendment	$120.
Inspections:	
Routine	$480.
Nonroutine	$690.
8. *Civil defense:*	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$290.
Renewal	$230.
Amendment	$60.
Inspections:	
Routine	$320.
Nonroutine	$320.
9. *Device, product or sealed source safety evaluation:*	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$1,600.
Amendment—each device	$580.
Inspections	None.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$800.
Amendment—each device	$290.
Inspections	None.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$350.
Amendment—each source	$120.
Inspections	None.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$175.
Amendment—each source	$60.
Inspections	None.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Application	$150.
Approval, Renewal, Amendment.	Full cost.
Inspections	None.
B. Evaluation of Part 71 quality assurance programs:	
Application	$150.
Approval, Renewal, Amendment.	Full cost.
Inspections	None.
11. Review of standardized spent fuel facilities:	
Application	$150.
Approval, Amendment, Renewal	Full cost.
Inspections	None.
12. Special projects:	
Application	$150.
Approval	Full cost.
Inspections	None.

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new material licenses and approvals of those applications filed in support of expired licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval fees*—For new licenses and approvals issued in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11 and 12, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, and 11 must be accompanied by an application fee of $150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) *Amendment fees*—Applications for amendments must be accompanied by the prescribed amendment fees. An application for an amendment to a license or approval classified in more than one category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11, and 12 must be accompanied by an application fee of $150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fees.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any applicable contractual support service costs incurred will be added. See Footnote 5 for other inspection notes. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rate established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than the application fee.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the applicable application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

6. Section 170.32 is revised to read as follows:

§ 170.32 Schedule of fees for health and safety, and safeguards inspections for materials licenses.

Materials licensees shall pay inspection fees as set forth in § 170.31.

PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

7. The authority citation for Part 171 is revised to read as follows:

Authority: Section 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330-275 (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222, (42 U.S.C. 2201(w)); sec. 201, 82 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 171.5, the following definitions "Budgeted obligations" and "Overhead costs" are added:

§ 171.5 Definitions.

* * * * *

"Budgeted obligations" means the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal year in providing regulatory services to licensees. For this purpose budgeted obligations include, but are not limited to, amounts of orders to be placed, contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

* * * * *

"Overhead costs" means (1) the Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) Travel Costs; (3) direct overhead, e.g., supervision, program support staff, etc.; and (4) indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory

services provided to the licensees and, therefore, within the meaning of section 7601, COBRA.

* * * * *

9. In § 171.15 paragraphs (d) and (e) are removed and paragraph (c) is revised to read as follows:

§ 171.15 Annual fee; Power reactor operating licenses.

* * * * *

(c) If the basis for the annual fee is greater than 45 percent of the NRC budget, less the sum of moneys estimated to be collected from the High Level Waste (HLW) fund administered by the Department of Energy and the total estimated fees chargeable under Part 170 of this chapter, then the maximum annual fee for each nuclear power reactor that is licensed to operate shall be calculated as follows:

(NRC FY Budget × .45) minus Sum of HLW moneys and estimated Part 170 fees equals fees to be collected under Part 171.

Part 171 fees to be collected on a schedule based on the total from categories shown in the following table:

PART 171 FEES BY REACTOR CATEGORY—SUMMARY: WITH MINOR ADJUSTMENTS FOR PLANTS WEST OF ROCKIES OR WESTINGHOUSE PLANTS WITH ICE CONDENSERS THE FOLLOWING APPLY TO PLANT/CONTAINMENT:

[Fees In Millions]

Type	Number	Budget base×.84	Fee	Total collected
GE Mark I	(24)	$1.349	$1.133	$27.19
GE Mark II	(7)	1.443	1.212	8.48
GE Mark III	(4)	1.373	1.153	4.61
B&W	(8)	1.896	1.592	12.74
CE	(15)	1.391	1.168	17.52
Westinghouse	(48)	1.352	1.135	54.48
	106			$125.02

§ 171.21 [Removed]

10. Part 171 is amended by removing § 171.21.

Dated at Rockville, Maryland this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 88-29767 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0224]

Electronic Fund Transfers; Technical Amendment to Regulation E

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is making a technical amendment to Regulation E (Electronic Fund Transfers), to reflect properly an amendment that was incorrectly incorporated into the Code of Federal Regulations.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-2412 or 202-452-3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

SUPPLEMENTARY INFORMATION: On August 8, 1979, the Board published an amendment to the provisions of Regulation E that govern notice to financial institutions of unauthorized transfers (44 FR 46432). It involved the deletion of one sentence and its replacement with another sentence. Inadvertently, the amendment was not incorporated correctly into the Code of Federal Regulations for the year 1980 and years thereafter. Accordingly, the Board is republishing 12 CFR 205.6(c) to correct the text of this provision in the CFR. Because this action merely corrects an improperly codified provision, the Board finds that advance notice, public comment and a delay in the effective date are unnecessary.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

For the reasons set forth in this notice, 12 CFR Part 205 is amended as follows:

PART 205—[AMENDED]

1. The authority citation for 12 CFR Part 205 continues to read as follows:

Authority: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Section 205.6(c) is revised in its entirety to read as follows:

§ 205.6 Liability of consumer for unauthorized transfers.

* * * * *

(c) *Notice to financial institution.* For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive the information. Notice may be given to the financial institution, at the consumer's option, in person, by telephone, or in writing. Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the financial institution. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

* * * * *

Board of Governors of the Federal Reserve System, December 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29929 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 88-1357]

Indemnification of Directors, Officers and Employees of the Federal Home Loan Bank System

Date: December 19, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amended 12 CFR 522.72, its regulation governing the indemnification of directors, officers, and employees of the Federal Home Loan Bank Banks ("FHLBanks" or "Banks"). The amendments clarify the scope of the indemnification rule and modify certain procedures under which personnel serving the Federal Home Loan Bank System ("Bank System") can recover legal expenses, costs, and judgment liabilities incurred as a consequence of service to the Bank System.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew Gilbert, Attorney, (202) 377-6441, Office of General Counsel; or

William Carey, (202) 377-6656, Director, Bank Liaison Division, and Patrick G. Berbakos, Director (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board is amending its indemnification rule, 12 CFR 522.72, to clarify the scope of the regulation and to modify certain procedures under which directors, officers, and employees of the Federal Home Loan Bank System may obtain indemnification of legal expenses, costs, and judgment liabilities incurred as a consequence of service rendered by such persons to the Bank System. The amendment clarifies that indemnification is available not only to the directors, officers, and employees of each individual FHLBank, but also to personnel of certain offices within the Bank System that jointly serve and are jointly financed by the entire System; namely, the Office of Regulatory Activities, the Office of Finance, and the Office of Education. The amendment also provides for indemnification relating to services performed on behalf of the Financing Corporation ("FICO") by employees of a FHLBank or joint Bank System office. Furthermore, the amendment modifies certain procedures under which indemnification is provided in particular cases, including, among other revisions discussed below, the provision for the advance payment of legal expenses and attorney fees.

First, the Board is amending § 522.72 to clarify that indemnification coverage shall extend to all directors, officers, and employees of the joint offices within the Bank System, as well as employees of each individual FHLBank. A new paragraph (a)(1)(v) defines a new term "Bank System Office" to include the Office of Regulatory Activities, the Office of Finance, and the Office of Education, while a new paragraph (d) extends indemnification coverage to the personnel of these Bank System Offices. Moreover, a new paragraph (g) clarifies that personnel of either a Bank or a Bank System Office who also perform services on behalf of the FICO shall be indemnified in connection with such services on the same basis under the amended regulation as they are covered by their Bank or Bank System Office for any of their other official duties and activities.[1]

This issue of coverage for personnel of Bank System Offices has been of concern to the Board for some time. In fact, most recently, as part of the many steps taken in recapitalizing the FSLIC fund, the Board adopted a special resolution, Board Res. No. 88-312, dated May 11, 1988, authorizing the Banks to enter into an agreement among themselves and with the Financing Corporation to provide an indemnification agreement for certain persons serving FICO. The Board believes that the provision of reasonable indemnification to personnel of the Bank System Offices, as well as Bank employees, is necessary to the continued high performance of these crucial Bank System functions. Absent reasonable indemnification protections, the exposure to vexatious litigation presenting the risk of significant personal loss would make it difficult for the Bank System to attract and retain qualified personnel for numerous key positions.

Therefore, new paragraph (d) in amended § 522.72 will provide indemnification for personnel of Bank System Offices on the same basis on which Bank personnel are covered under paragraph (c); that is, payment of judgment amount and reasonable expenses (including attorney fees) will be provided in all cases where there has been a favorable judgment on the merits as well as in any other case where the applicant "was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the Bank System Office or the Board or the Federal Home Loan Bank System." This standard for such cases of so-called permissive indemnification is identical to that applied for Bank personnel under paragraph (c), except that slight procedural modifications have been incorporated into new paragraph (d) which reflect the fact of employment by a joint office instead of a single Bank.

In particular, whereas applications of Bank personnel for permissive indemnification are granted by a majority of the Bank's board of directors, subject to veto by the Federal Home Loan Bank Board, the necessary finding under the same standard in new paragraph (d) will be made in the first instance by the Board. This difference reflects the fact that the indemnification is being paid by a Bank System Office and for purposes serving the consolidated Bank System at large (as opposed to the exclusive interests of any individual Bank). *See* 12 CFR 522.80-82, 522.90 (1988). However, recognizing that the individual Banks may wish to take an interest in any particular application for indemnification of a joint office employee, the Board is providing a procedure under paragraph (d) for Board receipt and consideration of any comments and advice of the Banks on any specific matter. Moreoever, the rule allows that any application before the Board may be delegated for consideration by the Board's designee. For example, the Board contemplates that such designee will consist, as appropriate in any particular case, of a committee organized from Principal Supervisory Agents from the Banks as well as senior personnel from the Board, such as the Board's General Counsel. The Board believes that the new rule implements a logical and efficient procedure for the provision of indemnification protection of personnel serving these Bank System Offices.

In connection with the extension of coverage to personnel of the Bank System Offices, the Board is adding a clarifying statement at the end of former paragraph (f) (new paragraph (h)) regarding the exclusivity of the indemnification provisions in § 522.72. This statement affirms the continued effectiveness of any indemnification agreements that are made pursuant to, and in accordance with, any duly delegated authority of the Board authorizing such indemnification agreements.[2] These agreements typically are complementary to, and not inconsistent with, the provisions of § 522.72. The administration of those arrangements in particular cases, consistent with the regulatory provisions, is expressly left by the Board to be worked out among the authorized parties to such agreements. It should of course be understood that no double coverage is intended in any particular case and that any specific justified cost item can be recovered only once, without regard to the procedural mechanism through which that cost item ultimately is reimbursed.

In addition, the Board is adopting procedural clarifications and modifications to the existing provisions for indemnification of Bank personnel. These amendments arise from Board consideration of issues raised in a proposal published last year. *See* 52 FR 12425 (April 16, 1987). In the context of that proposal, some Banks had

[1] Although the FICO cannot have paid employees, the officers and employees of the FHLBanks and the Office of Finance can be called upon to act on behalf of FICO as part of their ongoing responsibilities to the Bank System. *See* 12 U.S.C. 1441(b).

[2] An example of such specific indemnification agreements is the joint contract of the Banks (referenced above) which covers certain FICO personnel.

expressed concern that unnecessary delay and uncertainty may result from the requirement that the Banks give 60-days notice to the Board to allow the Board to exercise its power to veto a Bank's grant of permissive indemnification. Some Banks had suggested that this provision be eliminated to order to avoid any possible prejudice to the Banks' ability to obtain director and officer liability insurance, as well as the ability to attract the most qualified personnel. In response to these comments, the Board has decided to shorten to 30 days the prior 60-day notice to the Board for exercise of its authority to review a grant of permissive indemnification by a Bank to its directors, officers, and employees. Moreover, language has been added to the rule to clarify the Board's commitment to apply in any decisionmaking the standard for permissive indemnification that is stated in the regulation. This should dispel any past misunderstanding that the Board could arbitrarily veto a Bank's grant of indemnification.

Furthermore, at the request of the Banks, a procedure has been added to regulation whereby the Banks can seek reconsideration of an adverse decision by the Board that vetos a Bank's grant of indemnification. As a final procedural clarification, the new rule expressly states that a disinterested majority of a quorum of a Bank's directors is necessary for any duly adopted resolution granting indemnification.[3] If no such disinterested majority can exist, then the determination to indemnify under paragraph (c) will be made by independent counsel appointed by the Bank, selected in consultation with the Board's General Counsel. The Board believes that these modifications, based upon internal review and experience in these areas, will adequately address any concerns over the prior rule's potential for unnecessary delay and uncertainty.[4]

The Board is also amending the provision regarding the payment of reasonable expenses and costs as they are incurred in advance of any final resolution of the legal action. Old § 522.72(e) had authorized a majority of a Bank's directors to pay such expenses in connection with an action concluding that the person "ultimately may become entitled to indemnification" under the regulation, subject to any conditions that were deemed warranted (such as a requirement that payments be reimbursed should the indemnitee ultimately turn out not to be entitled to payment under the rule). The amended provision (which now appears in paragraph (f)) clarifies that such expenses are to be paid as they are incurred. The amendment also strengthens these protections by providing for essentially automatic reimbursement of such advance expenses as they are incurred where the applicant certifies and supports his right to payment as one who ultimately may become entitled to indemnification under the regulation.

However, in order to protect the Bank System against unreasonable or fraudulent claims, such advance payments would not commence until 30 days following notice to the Bank (or in the case of a Bank System Office, the Board). At any time following notice, the Bank (or the Board) can prevent any advanced payments under new paragraph (f) if it finds that the applicant is not entitled to them under the regulation. Again, any reasonable conditions may be attached to such payments in the particular case, including a reimbursement requirement.[5] The Board concurs with the Banks' recommendation that this provision is necessary in order to protect Bank System personnel against the ongoing depletion of their own resources even though they might finally obtain an indemnification payment at the ultimate conclusion of the case. The Board recognizes that the risk of personal financial exposure can be enormous even in defending against the preliminary stages of a legal action.

Finally, since these amendments solely affect the internal operations of the Federal Home Loan Bank System, the Board finds that a notice and comment procedure is not necessary under the Administrative Procedures Act. Moreover, the Board finds that good cause exists for suspension of the usual thirty-day delayed effective date since these amendments do not result in any additional burdens on third parties, but simply clarify existing provisions or confer additional benefits. *See* 5 U.S.C. 553.

List of Subjects in 12 CFR Part 522

Conflicts of interest, Federal home loan banks.

Accordingly, the Board hereby amends Part 522, Subchapter B, Chapter V of Title 12, Code of Federal Regulations as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Section 522.72 is revised to read as follows:

§ 522.72 Indemnification.

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action.* Any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* Includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final Judgment.* A judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement.* Includes entry of a judgment by consent or confession or plea of guilty or nolo contendere.

(v) *Bank System Office.* Means the following offices within the Federal Home Loan Bank System: the Office of Regulatory Activities, the Office of Finance, and the Office of Education.

(2) References in this section to any individual or other person, including any Bank or Bank System Office, shall include any legal representatives,

[3] This clarification is consistent with the general modern trend in corporate law.

[4] The Board is also amending the provision allowing the purchase of indemnification insurance by deleting the old prohibition against the purchase of coverage for losses from "willful or criminal misconduct." New paragraph (e) allows the Banks and Bank System Offices to purchase insurance to the extent permitted by applicable state law. The old prohibition was an unnecessary statement of the limitations already imposed by law and sound business judgment.

[5] Of course, sound business procedure would generally dictate that a written agreement be obtained from any indemnified party for repayment of all reimbursed expenses that the person is not ultimately entitled to receive. Funds disbursed under paragraph (f) would be reimbursed to the Bank or the Bank System Office after it is determined that the employee was not entitled to these payments under the regulation. Although an affirmative or negative finding may be adopted by the Bank or Board at any time following an application for advance payments of expenses, paragraph (f)(3) requires in every case in which advance payments have been made that a finding as to entitlement be made following completion and termination of the action giving rise to the payments.

successors, assigns, executors and administrators thereof. The provisions of this section shall apply to any application for indemnification of Bank or Bank System Office personnel that is pending on, or filed after the effective date of this section, without regard to whether the application for indemnification concerns actions taken prior to the effective date of this section.

(b) *General.* Subject to paragraph (c) of this section, a Bank shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the Bank; and subject to paragraph (d) of this section, a Bank System Office shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of that Bank System Office, for:

(1) Any amount for which that person becomes liable under a judgment or settlement in such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he attains a favorable judgment in such enforcement action.

(c) *Requirements for indemnification of a director, officer, or employee of a Bank.* (1) Indemnification shall be made to such person under paragraph (b) of this section only if:

(i) Final judgment on the merits is in his favor; or

(ii) In case of: (A) Settlement, (B) judgment against him, or (C) final judgment in his favor, other than on the merits, if a majority of a quorum of disinterested directors of the Bank duly adopts a resolution determining that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interest of the Bank or its members or the Federal Home Loan Bank System.

(2) *Provided, however,* that no indemnification shall be made unless the Bank gives the Board at least 30 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the Secretary to the Board, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the Bank in writing, within such notice period of its objection thereto, based upon the Board's reasonable determination that indemnification is not warranted under the standards set forth in this section. As part of its notification to the Bank, the Board will provide a written statement detailing the reasons for its objections, and, if the Bank believes there are any material misstatements of law or fact, the Bank may, within ten days from receipt of notice from the Board, request the Board to reconsider its objection. The Board will review the request for reconsideration within ten days of receipt of such request.

(3) Any director of the Bank having a personal interest in the application for indemnification shall be disqualified from voting on the resolution required under this section. In the event that the necessary resolution cannot be duly adopted by a majority of a quorum of the Bank's disinterested directors, then the determination to indemnify under this section shall be made by independent legal counsel pursuant to the standard set forth in paragraph (c)(1) of this section.

(d) *Requirements for indemnification of a director, officer, or employee of a Bank System Office.* (1) Indemnification shall be made to such person under paragraph (b) of this section only if:

(i) Final judgment on the merits is in his favor; or

(ii) In case of: (A) Settlement, (B) final judgment against him, or (C) final judgment in his favor, other than on the merits, if the Board or its designee determines that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the Bank System Office or the Board or the Federal Home Loan Bank System.

(2) A person covered by this paragraph against whom a judicial or administrative proceeding is threatened or initiated shall give notice as soon as practicable to the Board, the Bank System Office, and each of the Banks. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court, as well as a certification and supporting statement as to the person's belief that he is entitled to indemnification under this section. Within 30 days from receipt of such notice, the Board or its designee shall make a determination under the standards set forth in this section after giving due consideration to any comment or advice received from any of the Banks.

(e) *Insurance.* To the extent permitted under applicable law of the state in which its principal office is located, a Bank and a Bank System Office may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts committed in their capacity as directors, officers or employees.

(f) *Advance Payment of Expenses.* (1) Payments of reasonable costs and expenses (including reasonable attorney fees) shall be paid by the appropriate Bank or Bank System Office as they are incurred in defending against any action, and in advance of any settlement or resolution of the action, beginning 30 days from the date of receipt by the Bank and its General Counsel (or, in the case of a Bank System Office matter, the Board and its General Counsel) of any person's written application for indemnification, including a certification and supporting statement of that person's belief that he ultimately may become entitled to indemnification under this section; *provided, however,* that no such advance payment of incurred costs and expenses shall be made, or continued to be made, if a disinterested majority of a quorum of the Bank's directors (or, in the case of a Bank System Office matter, the Board or its designee) reasonably concludes that the director, officer, or employee ultimately would not likely become entitled to indemnification under this section. In the case of such a finding, advanced payments to which the director, officer, or employee is not entitled under this paragraph shall be reimbursed to the Bank or Bank System Office.

(2) Nothing in this paragraph shall prevent the directors of a Bank (or, in the case of a Bank System Office matter, the Board or its designee) from imposing such contractual conditions on the advance payment of costs and expenses as they deem warranted to protect the interests of a Bank or Bank System Office.

(3) In any action in which advance payments have been made under this paragraph, and following termination of the action, whether by final judgment, settlement, or otherwise, the Bank (or, in the case of a Bank System Office matter, the Board or its designee) shall make a finding under this paragraph as to whether or not reimbursement should be made of the advance payments. Nothing

in this paragraph shall prevent the due adoption of a resolution at any time prior to the termination of the action as to whether advance payment of expenses should or should not be made under this paragraph.

(g) *Indemnification Relating to Services Performed on Behalf of the Financing Corporation.* For the purposes of paragraph (b) of this section, if an action is brought or threatened against a director, officer, or employee of either a Bank or a Bank System Office because of that person's service to or on behalf of the Financing Corporation ("FICO"), as defined in Part 592 of this Chapter, then the action shall be deemed to be brought or threatened because that person is or was a director, officer, or employee of the Bank or Bank System Office then employing that person at the time the service to FICO was performed, and indemnification may accordingly be sought under the appropriate provisions of this section.

(h) *Exclusiveness of provisions.* No Bank or Bank System Office shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (e) of this section other than in accordance with this section; except that indemnification may be paid in accordance with any indemnification commitment that has been, or is hereafter made by a Bank(s) or Bank System Office pursuant to and in accordance with duly delegated authority from the Board authorizing any such indemnification commitment.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-29978 Filed 12-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-0635]

Home Mortgage Disclosure; Technical Amendment to Regulation C

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On August 19, 1988, the Board published a revised Regulation C (Home Mortgage Disclosure) (53 FR 31683). The Board is now republishing the reporting forms and instructions (contained in Appendix A of the regulation) to incorporate minor technical revisions. These revisions clarify the forms and instructions but do not modify any reporting requirements.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Noto or Linda Vespereny, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-2412 or 202-452-3667; for the hearing impaired *only,* contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

SUPPLEMENTARY INFORMATION: Appendix A of the Board's Regulation C (Home Mortgage Disclosure) (12 CFR Part 203) contains the reporting forms and instructions that are to be used by financial institutions in filing their reports of mortgage loan data under the Home Mortgage Disclosure Act. On August 19, 1988, the Board published a revised Regulation C (53 FR 31683). Among other things, the revisions simplified and clarified the text of the regulation and the reporting forms and instructions.

The Board is now republishing Appendix A of the regulation to incorporate technical changes; no substantive changes are involved. The revisions to the reporting forms involve a minor word change in part of the title to the HMDA-1 form and changed wording of the census-tract column, for greater clarity. Changes to the instructions reflect the deletion of duplicated material and conform the language used in the different forms. A list of the federal supervisory agencies to which HMDA statements must be submitted has been added for the convenience of reporting institutions.

Because this action involves only minor technical changes to the text of the reporting forms and instructions, the Board finds that advance notice and public comment on the revisions is unnecessary. Similarly, because institutions must use the revised forms to report loan data in March of 1989, the revisions are effective December 30, 1988.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in this notice, 12 CFR 203 is amended as follows:

PART 203—[AMENDED]

1. The authority citation for 12 CFR 203 continues to read as follows:

Authority: 12 U.S.C. 2801-2810.

2. Appendix A to 12 CFR 203 is revised in its entirety to read as follows:

Appendix A—Forms and Instructions

Billing Code 6210-01-M

MORTGAGE LOAN DISCLOSURE STATEMENT FORM HMDA-1

Public reporting burden for this collection of information is estimated to vary from 2 to 50 hours per response, with an average of 30 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Instructions to Commercial Banks, Savings Banks, Savings and Loan Associations, Credit Unions and Other Depository Institutions

A. WHO MUST USE THIS FORM

1. A commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank) or credit union must complete this HMDA-1 form to disclose loan data for a given calendar year if on the preceding December 31 the institution:

   a. had assets of more than $10 million, and

   b. had a home or a branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

   Example: If on December 31, 1987, your home office was located in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

2. However, your institution need not complete a disclosure statement—even though it meets the tests for asset size and location—if it makes *no* first-lien mortgage loans on 1-to-4 family dwellings in the calendar year for which the data are compiled.

3. Any majority-owned subsidiary is deemed to be part of the parent institution. Consequently, you should consolidate into your disclosure statement loan data relating to originations and purchases by all of your institution's majority-owned subsidiaries (including a majority-owned service corporation, in the case of a savings and loan association). To comply with the requirements described under section G (Geographic Itemization) below, itemize loan data for MSAs or PMSAs where the *parent institution* has a home or branch offices.

   Example: If you have home and branch offices in New York City, and your subsidiary's loan offices are in Philadelphia, itemize data by census tract in Section 1 only for the New York PMSA. Report loan data on loans relating to property located anywhere outside the New York PMSA—including loans in Philadelphia—as an aggregate sum in Section 2 (Loans on property not located in MSAs/PMSAs where institution has home or branch offices).

B. WHO MUST USE OTHER FORMS

1. Mortgage banking subsidiaries of bank holding companies, mortgage banking subsidiaries of savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans (other than service corporations that are majority-owned by a single savings and loan association) must use the HMDA-2 form instead of the HMDA-1.

2. Institutions that have been exempted by the Federal Reserve Board from complying with federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. FORMAT

1. You must use the format of the HMDA-1 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA/PMSA number at the top of each page. Enter the totals for the MSA/PMSA on the final page; do not give subtotals on earlier pages. Report the Section 2 data (Loans on property not located in MSAs/PMSAs) on the final page. If your report itemizes data for more than one MSA/PMSA, report the Section 2 data only once for Part A and once for Part B—not with each MSA/PMSA.

D. WHEN AND WHERE STATEMENT IS DUE

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled. A list of the agencies appears at the end of these instructions.

2. The completed disclosure statement must be signed by an officer of your institution (both Part A and Part B, on the final page of each) certifying to the accuracy of the data and indicating whether the statement includes data of a majority-owned subsidiary. (See paragraph 3 of section A above.)

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs/PMSAs, at one branch office in each of these MSAs/PMSAs.

E. DATA TO BE SHOWN

1. **Originations and purchases.** Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. (Certain refinancings are to be included; for example, see paragraph 3 of the instructions for column A, under section H below.) Report the data on loan originations on Part A of the form and the data on loan purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. **Number and total dollar amount.** Show the number of loans and the total dollar amount of loans for each category on the

statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loans. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loans at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. **Rounding.** Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. DATA TO BE EXCLUDED

Do not report the following types of loans:

1. loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property if the proceeds are to be used for financing education, a vacation, or business operations);

2. loans made or purchased in a fiduciary capacity (for example, by your trust department);

3. loans on unimproved land;

4. refinancing of a loan that you originated, if the refinancing involves no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. construction loans and other temporary financing;

6. purchase of an interest in a pool of mortgage loans such as mortgage participation certificates; or

7. purchases solely of the right to service loans.

G. GEOGRAPHIC ITEMIZATION (breakdown of loan data for each MSA or PMSA by census tract or county and listing of loan data in the outside-MSA/PMSA category).

1. **MSA/PMSA.** You must compile loan data geographically for each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside MSAs/PMSAs.) Start a new page for each MSA or PMSA, if you itemize data for more than one MSA/PMSA. Use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. **Census tract or county.** For loans on property located within one of these MSAs/PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county *instead* of census tract when the property:

   a. is located in an area that is not divided into census tracts on the U. S. Census Bureau's census tract outline maps (see item 3 below); or

   b. is located in a county with a population of 30,000 or less.

   To determine population, use the Census Bureau's PC80-1-A population series even if the population has increased above 30,000 since 1980.

3. **Census tract maps.** To determine census tract numbers, consult the Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80-2 series for the 1980 census, or equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series of equivalent data even if more current maps or data are available.

4. **Compilation.** Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. **Duplicate census tract numbers.** There are duplicate census tract numbers in certain MSAs/PMSAs. In such cases, you must indicate the county (by name or number) in addition to the tract number. Your supervisory agency will provide a list of the MSAs/PMSAs with duplicate census tract numbers.

6. **Outside-MSA/PMSA.** For loans on property located outside the MSAs/PMSAs in which you have a home or branch office (or outside any MSA/PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize these loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. TYPE-OF-LOAN ITEMIZATION (Breakdown of each geographic grouping into loan categories—Columns A-E).

Column A: FHA, FmHA, and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FHA, FmHA, or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges, or the original loan was made by another lender.

4. Include any nonoccupant FHA, FmHA, or VA loans in this column as well as in Column E.

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FHA, FmHA, and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loans are secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges, or if the original loan was made by another lender.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

   a. the borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

   b. are recorded on your books as home improvement loans.

2. Include both secured and unsecured loans.

3. At your option, you may include home equity lines of credit in Column C; include the portion of the line of credit that the borrower indicates will be used for home improvement purposes, at the time the account is opened. Report only for the year the line is established.

4. You may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units in Column D; report such loans in Columns A, B, or C.

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall in the "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under Section 2 (Loans on property not located in MSAs/PMSAs) in either Part A (Originations) or Part B (Purchases).

Federal Supervisory Agencies

Disclosure statements should be sent to your federal supervisory agency office as specified below. Any questions may also be directed to your agency.

National Banks

Comptroller of the Currency regional office serving the district in which the national bank is located.

State Member Banks

Federal Reserve Bank serving the district in which the state member bank is located.

Nonmember Insured Banks (except for Federal Savings Banks)

Federal Deposit Insurance Corporation Regional Director for the region in which the bank is located.

Savings Institutions Insured by FSLIC and Members of the FHLB System (except for State Savings Banks insured by FDIC)

Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Credit Unions

National Credit Union Administration
Office of Examination and Insurance
1776 G Street, N.W.
Washington, D.C. 20456

All Other Financial Institutions

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY COMMERCIAL BANKS AND OTHER DEPOSITORY INSTITUTIONS

OMB No. 7100-0090 Approval expires June 1990.
This report is required by law (12 USC 2801-2810 and 12 CFR 203).

Control number (agency use only)

Part A—Originations Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order) (For county with population of 30,000 or less, or not assigned census tracts, list county name or number instead)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement) D		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C E	
	Home Purchase Loans				Home Improvement Loans C					
	FHA, FmHA, and VA A		Conventional B							
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.
The report includes ☐ does not include ☐ loan data for majority-owned subsidiaries.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY COMMERCIAL BANKS AND OTHER DEPOSITORY INSTITUTIONS

Control number (agency use only)

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Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order) (For county with population of 30,000 or less, or not assigned census tracts, list county name or number instead)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.
The report includes ☐ does not include ☐ loan data for majority-owned subsidiaries.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (Include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT FORM HMDA-2

Public reporting burden for this collection of information is estimated to vary from 30 to 100 hours per response, with an average of 60 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503.

Instructions to Mortgage Banking Subsidiaries of Holding Companies and to Certain Savings and Loan Service Corporations

A. WHO MUST USE THIS FORM

1. A mortgage banking subsidiary of a bank holding company, a mortgage banking subsidiary of a savings and loan holding company, or a savings and loan service corporation that originates or purchases mortgage loans (other than a service corporation that is majority-owned by a single savings and loan association) must complete this HMDA-2 form to disclose loan data for the current calendar year if on the preceding December 31 the subsidiary or service corporation:

   a. had assets of more than $10 million, and

   b. had a home or branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

   Example: If on December 31, 1987, your home office was in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

2. For purposes of loan disclosure requirements (including geographic itemization under section G below), a branch office means any office of your institution (not of an affiliate) that takes applications from the public.

B. WHO MUST USE OTHER FORMS

1. Commercial banks, savings banks, savings and loan associations, building and loan associations, homestead associations (including cooperative banks) and credit unions must use the HMDA-1 form, instead of the HMDA-2.

2. A service corporation that is majority-owned by a single savings and loan association is deemed to be part of the parent institution, and its loan data will be reported on a consolidated basis with the parent's data on the HMDA-1.

3. Institutions that have been exempted by the Federal Reserve Board from complying with the federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. FORMAT

1. You must use the format of the HMDA-2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA/PMSA number at the top of each page. Enter the totals for the MSA/PMSA on the final page; do not give subtotals on earlier pages. Report the Section 2 data (Loans on property not located in MSAs/PMSAs) on the final page. If your report itemizes data for more than one MSA/PMSA, report the Section 2 data only once for Part A and once for Part B—not with each MSA/PMSA.

D. WHEN AND WHERE STATEMENT IS DUE

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled. A list of the agencies appears at the end of these instructions.

2. The completed disclosure statement must be signed by an officer of your institution (both Part A and Part B on the final page of each), certifying to the accuracy of the data.

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs/PMSAs, at one branch office in each of these MSAs/PMSAs.

E. DATA TO BE SHOWN

1. **Originations and purchases.** Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. (Certain refinancings are to be included; for example, see paragraph 3 of the instructions for column A, under Section H below.) Report the data on loan originations on Part A of the form and the data on purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. **Number and total dollar amount.** Show both the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loans. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loans at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. **Rounding.** Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. DATA TO BE EXCLUDED

Do not report the following types of loans:

1. loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for

example, do not report a loan secured by residential real property if the proceeds are to be used for financing education, a vacation, or business operations);

2. loans made or purchased in a fiduciary capacity;

3. loans on unimproved land;

4. refinancing of a loan that you originated, if the refinancing involves no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. construction loans and other temporary financing;

6. purchase of an interest in a pool of mortgage loans such as mortgage participation certificates;

7. purchases solely of the right to service loans; or

8. FHA home purchase and home improvement loans (at your option, you may record FHA Loans on form HMDA-2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans").

G. GEOGRAPHIC ITEMIZATION (breakdown of loan data for each MSA/PMSA by census tract or county, and listing of loan data *for the outside-MSA/PMSA category*).

1. **MSA/PMSA.** You must compile loan data geographically for each MSA/PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside such MSAs/PMSAs.) Start a new page for each MSA/PMSA if you itemize data for more than one MSA/PMSA. Use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. **Census tract or county.** For loans on property that is located within one of these MSAs/PMSAs, itemize the data by the *census tract in which the property is located, except* that you must itemize the data by county *instead* of census tract when the property

   a. is located in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 3 below); or

   b. is located in a county with a population of 30,000 or less.

   To determine population, use the Census Bureau's PC80-1-A population series even if the population has increased above 30,000 since 1980.

3. **Census tract maps.** To determine census tract numbers, consult the Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census *Bureau's PHC80-2 series for the 1980 census, or equivalent* census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series or equivalent data even if more current maps or data are available.

4. **Compilation.** Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. **Duplicate census tract numbers.** There are duplicate census tract numbers in certain MSAs/PMSAs. In such cases, you must indicate the county (by name or number) in addition to the tract number. Your supervisory agency will provide a list of the MSAs/PMSAs with duplicate census tract numbers.

6. **Outside-MSA/PMSA.** For loans on property located outside the MSAs/PMSAs in which you have a home or branch office (or outside any MSA/PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize the loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. TYPE-OF-LOAN ITEMIZATION (breakdown of each geographic grouping into loan categories — Columns A-E).

Column A: FmHA and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FmHA or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges, or if the original loan was made by another lender.

4. Include any nonoccupant loans in this column as well as in Column E.

5. Do not include FHA loans in Column A. At your option, you *may record* FHA loans on form HMDA-2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FmHA and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loans are secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs *or unpaid finance charges, or if the original loan was made* by another lender.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

   a. the borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

   b. are recorded on your books as home improvement loans.

2. Include both secured and unsecured loans.

3. At your option, you may include home equity lines of credit in Column C; include the portion of the line of credit that the borrower indicates will be used for home improvement purposes, at the time the account is opened. Report only for the year in which the line is established.

4. You may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

6. Do not report FHA loans in Column C. At your option, you may report FHA loans on form HMDA-2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D all loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units; report such loans in Columns A, B, or C.

3. Do not report FHA loans in Column D. At your option, you may report FHA loans on form HMDA-2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall in the "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under Section 2 (Loans on property not located in MSAs/PMSAs). In either Part A (Originations) or Part B (Purchases).

Federal Supervisory Agencies

Disclosure statements should be sent to your federal supervisory agency office as specified below. Any questions may also be directed to your agency.

Mortgage Banking Subsidiaries of Bank Holding Companies

Federal Reserve Bank serving the district in which the mortgage banking subsidiary is located.

Mortgage Banking Subsidiaries of Savings and Loan Holding Companies and Savings and Loan Service Corporations

Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

OMB No. 7100-0090 Approval expires June 1990.
This report is required by law (12 USC 2801-2810 and 12 CFR 203).

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part A—Originations Report for loans made in 19____

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1_____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order) (For county with population of 30,000 or less or not assigned census tracts, list county name or number instead)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL_____										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order) (For county with population of 30,000 or less, or not assigned census tracts, list county name or number instead)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A.		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS

FORM HMDA-2A

This collection of information is not required. Mortgage banking subsidiaries of holding companies and certain savings and loan associations may record their FHA loans on this form if they wish to make that data available to the public. Public reporting burden for this collection of information is estimated to vary from 10 to 50 hours per response, with an average of 20 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503.

Instructions to Mortgage Banking Subsidiaries of Holding Companies and to Certain Savings and Loan Service Corporations

A. WHO MAY USE THIS FORM

If you are the mortgage banking subsidiary of a bank holding company or of a saving and loan holding company, or if you are a savings and loan service corporation that files the HMDA-2 form, you are required to exclude data on FHA home improvement and FHA home purchase loans from your form HMDA-2. At your option, however, you may record FHA loans on form HMDA-2A and make the form available to the public along with your HMDA-2 disclosure statement.

B. DATA TO BE SHOWN

1. *For loans that you originate, see the instructions that are* provided for the HMDA-2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 1 and FHA home improvement loans in Column 2. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

2. For loans that you purchase, see the instructions that are provided for the HMDA-2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 3 and FHA home improvement loans in Column 4. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

OMB No. 7100-0090 Approval expires June 1990.
This report authorized by law (12 USC 2801-2810 and 12 CFR 203).

MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS, FORM HMDA-2A

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Record of FHA loans made in 19___

Institution

Name

Address

Name of Parent Company

Enforcement agency for this institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order) (For county with population of 30,000 or less, or not assigned census tracts, list county name or number instead)	FHA Loans Originated				FHA Loans Purchased			
	Home Purchase Loans 1		Home Improvement Loans 2		Home Purchase Loans 3		Home Improvement Loans 4	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL _____								

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

Billing Code 6210-01-C

Board of Governors of the Federal Reserve System, December 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29977 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-20-AD; Amdt. 39-6096]

Airworthiness Directive; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 88-21-01, Amendment 39-6040, applicable to Mitsubishi Model MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, by providing specific functional ground tests for verification of several means of disconnecting the Sperry SPZ-500 autopilot and associated trim. This amendment, applicable to those MU-2B airplanes equipped with any manual electric pitch trim system and/or any autopilot other than Bendix, requires: (a) The standardization of the operation, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) verification that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) a "one time" autopilot/manual electric pitch trim switch location and operational check on all MU-2B Series airplanes except those which have complied with AD 88-13-01, effective July 11, 1988. This amendment continues this process of preventing pilot confusion by providing uniformity in the method of autopilot/manual electric pitch trim disconnection in all Mitsubishi MU-2B Series airplanes. Compliance with this AD will preclude pilot confusion and resultant possible loss of the airplane.

DATES:

Effective Date: January 28, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, or Mitsubishi Kit—Sperry SPZ-200AP Disengagement Drawing, 035A-985006, no revision, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7279. The information may be examined at the Rules Docket, Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For Mitsubishi Aircraft International, Inc. (MAI) Type Certificate (TC) A10SW series airplanes manufactured in the U.S.: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419. For Mitsubishi Heavy Industries, Inc. (MHI) TC A2PC series airplanes manufactured in Japan: Herbert Peters, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-130L, FAA, 3229 East Spring Street, Long Beach, California 90806-2425; Telephone (213) 988-5353.

SUPPLEMENTARY INFORMATION: Final Rule AD 88-21-01 (Docket No. 88-CE-20-AD, Amendment 39-6040), issued in response to an NTSB recommendation that the FAA conduct an investigation of the Bendix M-4 Series autopilot systems as installed on the MU-2B Series airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified, was published in the **Federal Register** on September 29, 1988 (53 FR 379961). The result of this investigation, with cooperation between MHI, MAI, Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. A pilot's familiarity with the autopilot disconnect/interrupt procedures in one MU-2B Model airplane does not guarantee the same familiarity with another MU-2B Model airplane even if owned by the same operator. This situation could lead to pilot confusion and affect his ability to safely ioperate an MU-2B Series airplane. To eliminate this possible confusion, Bendix/King has issued Certification Bulletin No. CB10, KPN 006-0712-00, no revision, and MHI has issued Kit—Sperry SPZ-200AP Disengagement Drawing 035A-985006, no revision, providing one combination autopilot/electric pitch trim disconnect swith configuration. This disconnect switch is a red bi-level momentary push-button device with a partial depression which disconnects the autopilot. Continued further depression of the switch will disarm or interrupt the electric pitch trim system. This switch is located below and outboard of the electric pitch trim switch on the outboard horn of the control yoke.

To verify that all MU-2B Series airplanes equipped with King or Sperry systems or any other autopilot/manual electric pitch trim systems are uniform in configuration and function, a "one time" visual check and functional ground test of the autopilot/manual electric pitch trim is also required, except on those MU-2B Series airplanes which have complied with AD 88-13-01, effective July 11, 1988. This visual check will verify that the disconnect switch is red in color and that this switch is located on the outboard horn of the control yoke, and further verifies that the autopilot circuit breaker is properly labeled.

Subsequently, the FAA became aware of nuances in the Sperry SPZ-500 autopilot installation on MU-2B Series airplanes, which prevent strict compliance with AD 88-21-01 as published. Therefore, AD 88-21-01, applicable to Mitsubishi Model MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes is being revised to clarify the required actions for a Sperry SPZ-500 Autopilot and the associated trim "One Time" visual configuration check and the system functional ground test for verification of several means of autopilot/trim disconnection. Although the Sperry SPZ-500 autopilot was not a subject of the National Transportation Safety Board Recommendations A-86-132 through A-86-134, this autopilot was included in the "One Time Check" to assure standardization of the configuration, function, and disconnect/interrupt procedures similar to all other autopilot/trim systems installed in any MU-2B Series airplanes.

The Sperry SPZ-500 autopilot and trim functions, by design, may be disconnected as follows: (1) By depressing the single "Red" push button autopilot disengage/trim interrupt switch located on the outboard horn of the control yoke which disengages the autopilot and stops both trim functions (manual electric and autopilot trim); (2) By pulling the autopilot circuit breaker; (3) By positioning the airplane master electric power switch to "OFF"; and (4) By depressing the "GA" go-around switch on the left power lever.

Therefore, the FAA is revising AD 88-21-01 to specifically clarify the required actions for a Sperry SPZ-500 autopilot and the associated trim visual

configuration check and the system functional ground test.

This amendment revises the AD by clarifying that paragraph (b)(2)(i)(C) of the AD is not applicable to the Sperry SPZ-500 trim system and also by revising paragraph (b)(2)(ii)(B)(II) of the AD to show the appropriate autopilot disconnect procedures for the Sperry SPZ-500. This revision to the AD continues the original intent of assuring standardization of disconnect/interrupt switch color, function and location on control wheel, and the autopilot-electric/manual pitch trim disconnect/interrupt procedures on all MU-2B Series airplanes. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedure of Order 12291 with respect to this rule since the rule must be issued immediately to prevent an unnecessary burden on some operators which could be created by including the Sperry SPZ-500 autopilot in the original AD.

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

It has been further determined that this document is not a significant regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-21-01, Amendment 39-6040, to read as follows:

Mitsubishi: Applies to Model MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers, with or without the SA suffix) airplanes certificated in any category, equipped with any manual electric pitch trim system and/or any autopilot other than Bendix.

Note 1: The serial number of airplanes assembled in the United States by Mitsubishi Aircraft Industries (MAI) under Type Certificate (TC) A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Inc. (MHI) under TC A2PC have no suffix.

Compliance: Within the next 200 flight hours or five (5) calendar months, whichever occurs first, unless already accomplished per the original version of this AD.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect/interrupt switch location and function, accomplish the following:

(a) Modify the control yoke in the affected model airplanes as follows:

(1) For MU-2B-35 Model airplanes equipped with a King KFC 300 Automatic Flight Control System (AFCS) and a Sperry Manual/Electric Pitch Trim System, in accordance with Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, no revision, or

(2) For MU-2B-36 Model airplanes equipped with a Sperry SPZ-200 AFCS and a MAI Manual/Electric Pitch Trim System, in accordance with MHI Kit—Sperry SPZ-200AP Disengagement Drawing, 035A-985006, no revision.

(b) Prior to returning the airplane to service, accomplish a visual configuration check and a system functional ground test on all MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, except those airplanes which have complied with AD 88-13-01, dated June 8, 1988, as follows:

(1) Visually verify that:

(i) The autopilot disconnect and trim disconnect/interrupt functions are combined on one button mounted on the outboard control wheel grip, and is so oriented that it is easily activated by the pilot/copilot.

(ii) The autopilot disconnect and trim disconnect/interrupt button is properly and legibly labeled to indicate functions.

(iii) The button is red in color.

(iv) There are not other red buttons nearby that could be mistaken for the autopilot disconnect.

(v) The autopilot circuit breaker is properly labeled.

(2) Perform an operational check of the autopilot disconnect and trim disconnect/interrupt button to conform its correct functioning by disconnecting/interrupting the autopilot and the trim systems, as follows:

(i) With the manual electric pitch trim system armed, press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed, the manual pitch trim wheel stops moving when:

(A) The disconnect/interrupt switch is fully depressed;

(B) The master electric power switch is positioned to "OFF";

(C) The radio master switch is positioned to "OFF" (if installed and so configured); (not applicable to MU-2B airplane equipped with Sperry SPZ-500 autopilots);

(D) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

Note 2: It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations of paragraph (b)(2)(i).

(ii) With the autopilot system engaged, verify:

(A) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(B) That, while overpowering the autopilot, the mannual pitch trim wheel stops moving and the autopilot disconnects when each of the following operations is performed:

(I) The disconnect/interrupt switch is depressed;

(II) The autopilot master switch or the radio master switch or the engage/disengage switch on the autopilot controller (as appropriate), is positioned to "OFF" (On some MU-2B airplanes not equipped with an autopilot master switch beside the controller, the radio master switch must be used to disconnect the system in lieu of the autopilot master switch.); On MU-2B airplanes equipped with Sperry SPZ-500 autopilot.

(aa) The master electric power switch is positioned to "OFF";

(bb) The "GA" go around switch on the left power lever is depressed;

(III) The autopilot circuit breaker is pulled.

Note 3: It is very important that the manual pitch trim wheel stops moving after each of these operations.

(3) If the result of any one of the above visual verifications or operational checks are not as specified, prior to further flight, contact the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4400, for disposition of the discrepancy.

(c) In addition to the maintenance record entry required by FAR 91.173, enter a statement showing successful completion of paragraph (b) of this AD listing the autopilot and/or manual electric trim system installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-7279; or may examine the documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 88-21-01, Amendment 39-6040.

This amendment becomes effective on January 28, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-29896 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ASW-62; Amdt. 39-6052]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 355E, AS 355F, and AS 355F1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires installation of an automatic reignition system for the Allison 250C-20F engine on Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 355E, AS 355F, and AS 355F1 helicopters. The AD is needed to prevent engine flameout (power loss) due to engine inlet icing associated with flight into certain ambient atmospheric conditions. Engine flameout could result in a subsequent emergency landing which could be hazardous.

EFFECTIVE DATE: January 28, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005.

A copy of the service information is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Southwest Region, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive requiring installation of an autorelight system on SNIAS Model AS 355E, AS 355F, and AS 355F1 helicopters was published in the **Federal Register** on April 8, 1988 (53 FR 11675).

The proposal was prompted by Priority Letter AD 86-24-02, issued on November 21, 1986, which originally required, in part, instrument panel placard operating limitations to advise the flightcrew to avoid operating conditions where visible atmospheric moisture ingestion into the engines could result in ice formations which cause engine flameout. This priority letter was subsequently published as a final rule in the **Federal Register** on December 11, 1987 (52 FR 46985). The final rule recognizes the eligibility of the Aerospatiale-developed automatic engine reignition system, included in the proposal, as an equivalent means of compliance and, accordingly, omits helicopters so configured by serial number limitation in the applicability statement.

Certain other continuous ignition systems have been approved as equivalent means of compliance with AD 86-24-02. These approvals are accepted as equivalent means of compliance with this AD.

The SNIAS Model AS 355E, AS 355F, and AS 355F1 helicopters not equipped with automatic or FAA-approved continuous engine reignition systems are susceptible to moisture-induced engine flameout which could result in a hazardous emergency landing. Since this condition is likely to exist or develop on other helicopters of the same design, this AD requires installation of an automatic engine reignition system per SNIAS modification AMS 350A07-1823, AMS 350A07-1856, AMS 350A07-1905, AMS 350A07-1910, or AMS 350A07-1920 in conjunction with corresponding SNIAS Service Bulletins No. 01.18 and No. 80.02 along with the incorporation of the associated flight manual changes on SNIAS Model AS 355E, AS 355F, and AS 355F1 helicopters, as listed in the applicability section of this AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

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

The FAA has determined that this regulation only involves 155 rotorcraft which are estimated to be operated by a total of 100 operators. Certain operators may already be in compliance with the AD by previously incorporating the SNIAS autoignition system or by installing a specifically approved continuous ignition equivalent method of compliance. It is estimated that the remaining operators will incur a total cost of only $1,376 per aircraft. Therefore, I certify this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all SNIAS Model AS 355E, AS 355F, and AS 355F1 helicopters (serial numbers before 5362) fitted with debris guards, Part Numbers (P/N) 355A58-0519-0201 and 355A58-0519-0391, certificated in any category, except those helicopters previously equipped with this identical modification. (Docket No. 87-ASW-62)

Compliance is required within the next 200 hours' time in service, unless already accomplished.

To prevent engine failure (flameout) resulting from ingestion of atmospheric moisture in engine inlets, accomplish the following:

(a) Install an engine automatic relight system in accordance with SNIAS Service Bulletin AS 355 No. 80.02, Revision 2, approved July 8, 1987 (SB No. 80.02 corresponds to SNIAS Modification AMS 350A07-1823, IFR-VFR versions; AMS 350A07-1856, IFR versions; AMS 350A07-1905, IFR-VFR versions; AMS 350A07-1910, IFR-VFR versions; AMS 350A07-1920, IFR-VFR versions). Installation of the SNIAS relighting kit requires exclusive utilization of Champion or Auburn igniter P/N 6877518 or Champion igniter P/N 23006266 and limits the service life of each newly installed igniter to 1,200 hours' time in service. Any of the required Champion or Auburn igniters already installed and having 1,000 or more hours' time in service must be replaced with new Champion or Auburn P/N 6877518 igniters or Champion P/N 23006266 igniters. NOTE: SNIAS Service Bulletin AS 355 No. 01.18, Revision 2, approved October 5, 1987, also pertains to this engine automatic relight system installation.

(b) Incorporate into the applicable RFM the basic flight manual revisions and instrument flight rules (IFR) flight manual supplements (if IFR equipped), or later FAA-approved flight manual revisions, as follows:

(1) For the Model AS 355E, basic rotorcraft flight manual, Revision 4, Code Date 87-10.

(2) For the Model AS 355F, basic rotorcraft flight manual, Revision 3, Code Date 87-10 and IFR rotorcraft flight manual supplement 11.4, Revision 3, Code Date 87-12.

(3) For the Model AS 355F1, basic rotorcraft flight manual, Revision 2, Code Date 87-10, and IFR rotorcraft flight manual supplement 11.4, Revision 1, Code Date 87-12.

(c) To insure that the limited service life of the igniters defined in paragraph (a) above is properly identified and adhered to, the following updates (or future revisions thereto) must be incorporated in the Master Servicing Recommendations—Chapter 5-99 (Airworthiness Limitations):

(1) AS 355E, Revision 15, Page 21.

(2) AS 355F, Revision 15, Page 23.

(3) AS 355F1, Revision 15, Page 23.

(d) Upon accomplishing the requirements of paragraphs (a), (b) and (c) above, the placard required by paragraph (a) of AD 86-24-02 may be removed.

(e) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Rotorcraft Standards, ASW-110, FAA, Fort Worth, Texas 76193-0110.

(f) Continuous ignition systems previously found to be equivalent methods of compliance with priority letter AD 86-24-02, dated November 21, 1986; or with Amdt. 39-5796 (52 FR 46985; December 11, 1987) effective January 27, 1988, are approved as equivalent methods of compliance to this AD.

The procedure shall be done in accordance with SNIAS Service Bulletin AS 355 No. 80.02, Revision 2, approved July 8, 1987. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the **Federal Register**, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective January 28, 1989.

Issued in Fort Worth, Texas, on November 23, 1988.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

FR Doc. 88-29895 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-31; Amdt. 39-6082]

Airworthiness Directives; General Electric (GE) CF6-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a rework and inspection program for certain high pressure turbine (HPT) stage 2 disks installed in CF6-50 series turbofan engines. This AD is needed to prevent rupture of the disk, and possible uncontained engine failure.

DATES: Effective—December 29, 1988

Compliance Schedule—As required in the body of the AD.

Comments for inclusion in the docket must be received on or before January 29, 1989.

Incorporation by Reference—Approved by the Director of the **Federal Register** as of December 29, 1988.

ADDRESSES: Comments on this amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 88-ANE-31, 12 New England Executive Park, Burlington, Massachusetts 01803.

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-31".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletin (SB) may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215.

A copy of the SB is contained in Rules Docket No. 88-ANE-31, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has determined that certain HPT stage 2 disks installed in GE CF6-50 model engines may have an under minimum radius and/or tool mark(s) in the forward embossment inner diameter (ID) fillet. Three disks from a suspect group have been found to be cracked in the forward embossment area. Analysis shows that an under minimum radius and/or tool mark(s) in this area can increase stresses beyond material capability. This situation could lead to disk rupture and a possible uncontained engine failure. The AD requires affected disks to be reworked to remove an undersize radius and/or tool mark condition from the forward embossment ID fillet, and also defines an interim inspection which allows continued use of a disk until such time as the disk is reworked. The interim inspection allows only a limited period of operation before rework is required.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this

amendment effective in less than 30 days

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested presons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD, and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-31". The postcard will be date/time stamped and returned to the commenter.

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

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to Section 39.13 the following new airworthiness directive (AD):

General Electric: Applies to General Electric (GE CF6-50 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of high pressure turbine (HPT) stage 2 disks, Part Numbers (P/N) 9045M35P15, 9045M35P17, and 9045M35P18, Serial Numbers MTU00001 through MTU00973 inclusive, except the following serial numbers (listed in alphanumeric order): MTU00541, MTU00562, MTU00563, MTU00634, MTU00646, MTU00652, MTU00654, MTU00668, MTU00671, MTU00672, MTU00675, MTU00756, MTU00777, MTU00778, MTU00782, MTU00783, MTU00808, MTU00820, MTU00827, MTU00829, MTU00846, MTU00847, MTU00849, MTU00857, MTU00875, MTU00877, MTU00881, MTU00884, MTU00885, MTU00887, MTU00888, MTU00893, MTU00896, MTU00899, MTU00905, MTU00906, MTU00908, MTU00909, MTU00910, MTU00911, MTU00912, MTU00914, MTU00916, MTU00917, MTU00918, MTU00919, MTU00920, MTU00921, MTU00933, MTU00935, MTU00953, MTU00959, MTU00960, MTU00961, accomplish either (a) or (b) below:

(a) Rework the forward embossment in accordance with GE Service Bulletin (SB) 72-947, dated August 17, 1988, at the next HPT module exposure, not to exceed 3,800 cycles since last installation in an engine. However, for disks which have accumulated 3,500 or more cycles since last installation in an engine on the effective date of this AD, comply with the provisions of this paragraph at the next HPT module exposure, or within the next 300 cycles from the effective date of this AD, whichever occurs first.

(b)(1) Perform double fluorescent penetrant inspection (FPI) in accordance with GE SB 72-947, dated August 17, 1988, at the next HPT module exposure, not to exceed 3,800 cycles since last installation in an engine. However, for disks which have accumulated 3,500 or more cycles since last installation in an engine on the effective date of this AD, comply with the provisions of this paragraph at the next HPT module exposure, or within the next 300 cycles from the effective date of this AD, whichever occurs first.

(2) Rework the forward embossment in accordance with the above noted SB, at or prior to accumulating 2,500 cycles since passing the double FPI noted in this paragraph.

Note: HPT module exposure is defined as any removal of the HPT rotor and HPT stage 2 nozzle assembly from the engine core (high pressure compressor and compressor rear frame).

(c) In complying with either paragraph (a) or (b) above, do not exceed already published life limits.

(d) Disks found cracked while complying with either paragraph (a) or (b) above, are not eligible for either rework, or reinstallation or operation in an engine.

(e) Upon request, an equivalent means of compliance with the requirements of the AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance schedules specified in this AD.

GE SB 72-947, dated August 17, 1988, identified and described in this document is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the engine manufacturer's SB may obtain copies upon request to General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This document may also be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88-ANE-31, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The amendment becomes effective on December 29, 1988.

Issued in Burlington, Massachusetts, on November 16, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-29893 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 221

[Docket 45705; Amdt. 221-67]

RIN 2105-AB38

Posting of Tariffs; Contract of Carriage

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule will allow airlines to make tariff information available in an electronic medium rather than in a paper medium. Currently, airlines are required to post their entire tariffs for passenger and cargo foreign air transportation in hard copy at each ticket sales location. Carriers will now be able to provide more useful information to consumers using summaries, computer terminals, and printed copies of tariff information.

DATE: This regulation is effective January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-2414.

SUPPLEMENTARY INFORMATION:

Background

An airline ticket or airwaybill specifies the essential features of the contract of carriage between an airline and the consumer. However, due to size restrictions, it is impractical to include in these documents all the legally enforceable terms and conditions which govern the relationship between these parties. As examples, tickets do not usually indicate the details of the limitations on an airline's liability for loss or damage of goods, the deadlines for filing of claims against the airline, or the rights of passengers with respect to schedule changes and aircraft substitutions.

The Department, as did the Civil Aeronautics Board (CAB) before it, maintains the view that all terms of any contract for air transportation should be routinely available to the consumer. The CAB had found a solution to the ticket size problem in the fact that all contract terms, including fares, rates, other charges, and rules applying to air transportation, had to be filed with it in formal tariffs. Thus, through the early 1980's, Federal regulations required that the airlines (1) make copies of these tariffs available for inspection at all airline sales locations, and (2) post, in a conspicuous place at such sites, a notice which advised the public that the tariffs were so available.

Effective January 1, 1983, the Airline Deregulation Act of 1978 (ADA) eliminated domestic tariff requirements. With formal tariffs no longer available for posting, the CAB recognized that a workable means had to be found to ensure that the public was adequately informed of applicable contract terms for domestic carriage through the ticketing process.

The CAB adopted a new regulatory approach regarding domestic air transportation, embodied in 14 CFR Part 253 (47 FR 52128, November 19, 1982).[1] In general, Part 253 provides that a domestic airline ticket may incorporate contract terms by reference, *i.e.*, without stating their full text, provided that the ticket so notifies the passenger. It further requires the carrier to make available for inspection at its airport and other ticket offices the full text of all incorporated terms and conditions (fare and non-fare). However, the medium by which the carrier must make this information available is left to the carrier's discretion. Carriers must also provide a copy of any term or condition, free of charge, by mail or other delivery service, to any person requesting it.

Part 253 has worked well. Not only has it accomplished the transition from a tariff to a non-tariff environment, but perhaps even more important, it has enabled the industry to mesh its consumer information obligations with the efficiencies of an electronic age. Under Part 253, the airlines furnish information on fares and on rules subject to frequent change through the use of electronic transmissions to display terminals at their sales locations. This process also allows airlines to provide consumers with printed copies of this information upon request. Only those rules subject to infrequent changes are maintained in printed form. However, Part 253 provided no relief from the posting requirements associated with international tariffs.

This gain in efficiency has been achieved at no apparent loss in availability of information to the public. During the five years that Part 253 has been in effect, we have received an average of just four complaints a year concerning information on domestic contracts of carriage. Given the total number of enplaned passengers in domestic air transportation for this period, this translates to only one complaint to us per 88.5 million enplaned passengers.[2]

By the Notice of Proposed Rulemaking issued July 20, 1988 (53 FR 27351) (NPRM), we announced a proposal designed to permit carriers filing international tariffs an alternative to the paper tariff-posting requirements. Our proposal would authorize them to use advanced computer technology to make their cargo and passenger tariff information available to the public through an electronic medium. We fully discussed the reasons for our proposal in the NPRM. See 53 FR at 27352. We said, in essence, that the proposal recognizes current industry business practices, as well as the need to revise governmental requirements that impose unnecessary costs on airlines and, ultimately, the consumer. *Id.* In approach, the proposed rule is, for the most part, similar to the notice scheme currently in effect for domestic air transportation, *i.e.*, 14 CFR Part 253. The NPRM notes the few areas of divergence, *Id.* at 27353 and 27354.

Comments

We received comments on our proposal from the Air Transport Association of America (ATA), American Airlines, Inc. (American), Eastern Air Lines, Inc. (Eastern), and The Flying Tiger Line Inc. (Flying Tiger).

All of the commenters support the adoption of the proposed rule. ATA, Eastern, and American simply state and explain their support. Flying Tiger, after stating its support, goes on to offer several technical drafting suggestions designed to remedy what it regards as inconsistent or misleading provisions.

Discussion and Disposition of Comments

We shall finalize our proposed rule with one minor change noted below. We agree with ATA that the new Section 221.177 "would provide carriers with an efficient alternative to the current cumbersome posting requirement and promises to inform consumers concisely of the key provisions of their foreign air transportation provisions of contract."

[1] Since the ADA did not relieve airlines of the duty to file international tariffs, there was no impetus to alter the regulatory requirements on the posting of international tariffs.

[2] Source: Domestic Monthly Air Carrier Traffic Statistics and consumer complaint records of the Civil Aeronautics Board and the Department of Transportation.

Regarding the inconsistencies that Flying Tiger perceives with the rule, we believe that some clarification should serve to alleviate the carrier's concerns. Flying Tiger is concerned that the rule puts a greater dissemination burden at sales locations staffed by agents, *i.e.*, cargo or retail travel agents, than at sales locations staffed by a carrier's own employees, and that the agent-staffed locations are not in a position to meet the greater burden. In fact, while both a carrier's own employees and the carrier's agents must provide direct notice of certain specified terms, and while both must also be able to obtain for the consumer a concise and immediate explanation of certain specified "key" terms, the rule does not require that they do so in identical ways.

Our rule provides that agents are only required to have sufficient information available for the consumer to obtain copies of the tariffs or incorporated terms from the underlying carrier. With regard to furnishing the explanation of "key" terms by an agent at a sales location we said that "This requirement may be met in any manner that the carriers and their agents and ticket outlets consider practical and reasonable." 53 FR 27353. For example, we indicated that this could consist of a telephone number, where informed carrier personnel will give immediate answers to agents' questions, for the agents to then relay to consumers. *Id.* In the NPRM, we said expressly that "we propose to give the same increased posting flexibility to the airlines for cargo services as we are proposing for passenger services." *Id.* Against this background, and taking into account this flexibility, we believe that cargo carrier agents should be able to meet the terms of the new rule without suffering the burdens to which Flying Tiger alludes.

Flying Tiger also requests that the term "Ticket Office" be redesignated as either "Carrier Sales Office" or "Sales Office" since the term "Ticket Office" is misleading when applied to cargo carriers. We will adopt the suggestion by changing our terminology to "Ticket/Cargo Sales Office" in all those places in the rule where the term "Ticket Office" had appeared.

Executive Order 12291, Regulatory Flexibility Act, Paperwork Reduction Act, and Federalism Assessment

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies and substantial industry interests.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. Few, if any, air carriers or foreign air carriers would be considered small entities. In any event, since the rule simply presents an alternative, rather than mandates a change, the ability of such entities to engage in operations essentially will be unaffected by the regulation. This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Pub. L. 96–511, this rule should lessen substantially the paperwork burden on the airlines. Carriers will no longer be required to post the paper tariff at all of their offices and stations. This means that the hundreds, even thousands, of pages of tariff revisions that carriers are now required to circulate worldwide, could be largely eliminated.

In 1987, the international airlines filed with the Department 241,230 tariff pages applicable to international air transportation. Of this total 219,503 applied to passenger service and 21,727 applied to cargo service. Each of these tariff pages was required to be posted at each carrier sales location worldwide. Taking into consideration only the passenger sales locations in the 48 contiguous states of the United States and District of Columbia, we estimate that this necessitated the printing and distribution of approximately 535 million tariff pages. To arrive at our estimate, we checked our tariff files and the January, 1988 *Official Airline Guide (Worldwide Edition)* to determine the cities in the 48 contiguous states with airports at which international journeys might originate or terminate. Our analysis indicated that there are 364 airports for which international tariff posting would be required. Based on the number of airlines serving these airports, this calculated out to 1,787 airport sales locations. To this total we added 654 of the ticket offices in 24 selected international gateways. The other ticket offices were determined from the latest telephone directories available in the Department's library. Combining the airport and other ticket locations, we arrived at a total of 2,441 airline sales locations. We multiplied this figure by the total number of applicable passenger tariff pages, 219,503, to reach the final figure of 535 million pages. Addition of cargo service pages, which are somewhat more difficult to compute, would bring the final figure higher still.

We solicited comments on our assumptions and estimates. None were received. Therefore we assume that our assumptions and estimates are reasonable ones. Accordingly, if the carriers had been able to use this alternative tariff posting method in 1987, they could have reduced by 90% or 482 million the number of passenger tariff pages that had to be printed and distributed just within the 48 contiguous states of the United States and the District of Columbia for tariff posting purposes.[3]

Economic Analysis

We believe the rule will have a beneficial impact on the industry and the public, while imposing few new costs. In addition, we expect the rule to achieve substantial cost savings for the industry and ultimately for the consumer.

The public, for its part, under our final rule will have ready access to the basic information it needs through carried-prepared brochures or booklets containing many incorporated tariff terms, and that all other tariff information will be made available by the carrier to consumers through either electronic or other mediums. With respect to tariff information stored electronically, consumers will be able to view such information on a computer display screen at carrier sales locations and obtain printed copies from the computer display screen upon request, if feasible. Consumers will also be able to obtain information on certain "key terms" from cargo and retail travel agents. This is not required under our current posting requirements.

[3] Our Regulatory Evaluation, which is included in this docket, indicates that about 90% of the tariff information is currently available in the electronic medium. See *Preliminary Electronic Tariff ADP Requirements Study*, March 1987, at 2–26.

Our final rule should enable the public to be better informed and able to make wiser economic choices. Due to simple practicalities, the tariff information available on the computer promises to be more up to date and readily available than the information currently being provided under the paper-based system.

In our NPRM we estimated that the carriers spent approximately $7,500 per sales location in direct labor costs just to maintain the current tariffs. The estimated cost of $7,500 was determined as follows. We drew an analogy between the work performed by the Department's senior tariff filing clerk and the same type of work, *i.e.*, filing current tariff pages, that would have to be performed by an airline employee at each airline sales location. We determined that our tariff filing clerk spent one-third of his/her time performing this function. The direct labor costs for this senior tariff filing clerk is approximately $22,500 annually.

We then applied these estimates of time and cost to each airline sales location with the assumption there is a correlation between the Department's costs and the airline's costs. See also, *Bulletin 2241, Industry Wage Survey: Certificated Air Carriers, June 1984,* issued by the U.S. Department of Labor, Bureau of Labor Statistics (August 1985), Table 6, Page 9.

We solicited comments on our estimated costs. None were received. Accordingly, we assume that our estimates are reasonable ones. Therefore, based on our estimates the carriers should be able to achieve a cost saving of approximately 18.3 million dollars annually just within the 48 contiguous states of the United States and the District of Columbia if they choose to use this alternative posting rule.

We have also prepared and placed in Docket 45705 a comprehensive Regulatory Evaluation Analysis. (A copy may be obtained by contacting Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone: (202) 366-2414)).

We also take this opportunity to remind the carriers that should they opt to use the alternative posting rule we are adopting here, it will not relieve them from their statutory obligation to file and observe their tariffs file with the Department. This rule merely responds to the need to give the carriers greater flexibility in the marketplace to disseminate their tariff information to the public in a more meaningful and timely fashion.

The electronic posting of tariffs by carriers under this rule is strictly optional. The paper posting system remains available to those carriers still wishing to use it.

List of Subjects in 14 CFR 221

Air fares and rates; Explosives; Freight; Handicapped; Contracts; Claims; Consumer Protection; Travel.

This rule is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth herein, the Department of Transportation amends 14 CFR 221 as follows:

PART 221—TARIFFS

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482.

2. Section 221.4 is amended by adding the following definitions in alphabetical order:

§ 221.4 Definitions.

* * * * *

"Consignee" means the person whose name appears on the airwaybill as the party to whom the shipment is to be delivered by the carrier.

"Contract of carriage" means those fares, rates, rules, and other provisions applicable to the foreign air transportation of passengers, baggage, or property, as defined in the Federal Aviation Act.

* * * * *

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

* * * * *

"Shipper" means the person whose name appears on the air-waybill as the party contracting with, or a person who contacts a carrier, a cargo sales office or agent of a carrier for the purpose of contracting with the carrier for carriage of a shipment.

* * * * *

"Ticket/Cargo Sales Office" means a station, office, or other location where tickets are sold, or airwaybills or other similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

* * * * *

3. Section 221.170 is added to read as follows:

§ 221.170 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.171, 221.172, 221.173, 221.174, 221.175, and 221.176 or

(b) Sections 221.175, 221.176 and 221.177 of this subpart.

§ 221.173 [Amended]

4. Section 221.173 is amended by deleting the phrase "including canceled tariffs" from paragraph two of the Notice reading "PUBLIC INSPECTION OF TARIFFS".

5. Section 221.174 is revised to read as follows:

§ 221.74 Notification to the passenger of status of fare, rule, charge or practice.

A carrier or ticket agent shall print, stamp upon, or affix to every purchased passenger ticket a notice stating that the terms and conditions of the contract of carriage including the price of the ticket are subject to adjustment prior to the commencement of transportation, except that such notice is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage, including the price of the ticket, are not subject to any future adjustment during the validity of the ticket, or the ticket is sold for transportation commencing on the same day.

6. A new § 221.177 is added to read as follows:

§ 221.177 Alternative notice of tariff terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, airwaybill, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger, shipper, or consignee as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket/cargo sales office of the carrier: *Provided,* That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket/cargo sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated by law to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which the incorporated contract terms are obtained is maintained and kept available for public inspection at _____. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger, shipper or consignee a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket/cargo sales office of the carrier. In addition, all other locations where the carrier's tickets or airwaybills may be issued shall have available at all times, free of charge, information sufficient to enable the passenger, shipper or consignee to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket, airwaybill or other written instrument given to the passenger, shipper, or consignee, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate by law terms and conditions filed in public tariffs with U.S. authorities; passengers, shippers and consignees may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket/cargo sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket/cargo sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (v) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (v) of this section from any location where the carrier's tickets are sold, and a shipper or consignee may obtain the same information at any location where an airwaybill or any similar document may be issued:

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.175), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers, shippers, or consignees must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rights of the carrier to change the terms of the contract. (Rights to change the price, however, are governed by paragraph (d) of this section).

(iv) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(v) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(3) The salient features of any applicable terms that restrict refunds of the transportation price, impose monetary penalties on passengers, shippers or consignees, or permit a carrier to raise the price, are also being provided on or with the ticket.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger, shipper, or consignee can obtain from any location where its tickets are sold, or airwaybills or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger, shipper or consignee must receive conspicuous written notice, on or with the ticket, airwaybill, or other similar document, of the salient features of any terms that (1) restrict refunds of the price of the transportation, (2) impose monetary penalties on passengers, shippers, or consignees, or (3) permit a carrier to raise the price: *Provided,* That the notice specified in paragraph (d)(3) of this section is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage, including the price of the ticket, are not subject to any future adjustment during the validity of the ticket, or the ticket is sold for transportation commencing on the same day.

§ 221.240 [Amended]

7. Section 221.240(a)(4) is amended by changing that part of the *Letter of tariff transmittal* which now reads:

Sufficient copies of the above-named publication for posting in accordance with Subpart N of your Economic Regulations, have been sent to each carrier participating in the above publication.

To read:

Sufficient copies of the above-named publication have been sent to each carrier participating in the above-named publication for posting purposes in accordance with Subpart N of your Economic Regulations, where required.

Issued in Washington, DC on December 22, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-29970 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 80998-8243]

Limit on Duty-Free Insular Watches in Calendar Year 1989

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for establishing a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Departments to establish the shares of this limited quantity which may be entered from the three insular possessions of the U.S. and the Northern Mariana Islands (NMI). This action maintains during 1989 the existing limit and territorial shares while changing the set aside for new entrant invitations in the Virgin Islands and Guam to 200,000 units each. We have done this by amending 15 CFR 303.14(d)(2) and (3).

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: We published these revisions in proposed form on October 11, 1988 (53 FR 39612) and invited comments. We received no comments.

Accordingly, the Departments are establishing for calendar year 1989 a

total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,700,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,700,000

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by Section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

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

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

For reasons set forth above, we amend Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note)

§ 303.14 [Amended]

2. Section 303.14 is amended by changing "500,000 to 200,000" in § 303.14(d) (2) and (3).

Timothy N. Bergan,

Deputy Assistant Secretary for Import Administration.

David Heggestad,

Acting Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88–29909 Filed 12–28–88; 8:45 am]

BILLING CODES 4310-93-M and 3510-DS-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3243]

Eugene M. Addison, M.D., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, certain physicians in Huntsville, Texas from engaging in anticompetitive activities to prevent or impair the operation of health maintenance organizations (HMOs).

DATE: Complaint and Order issued November 15, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Raymond L. Randall, FTC/S–3115, Washington, DC 20580. (202) 326–2768.

SUPPLEMENTARY INFORMATION: On Tuesday, September 6, 1988, there was published in the **Federal Register**, 53 FR 34307, a proposed consent agreement with analysis In the Matter of Eugene M. Addision, M.D. et al./Huntsville Physicians, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission ordered the issuance of a complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Boycotting Seller-Suppliers: § 13.302 Boycotting sellers-suppliers. Subpart—Coercing And Intimidating: § 13.345 Competitors. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Physicians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 88–29939 Filed 12–28–88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. C-3242]

Iowa Chapter of the American Physical Therapy Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Iowa Chapter of the American Physical Therapy Association (ICAPTA), a professional association representing physical therapists in Iowa, from restricting any physical therapist from accepting or continuing employment

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

with any physician, or from declaring such employment illegal or unethical.

DATE: Complaint and Order issued November 4, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Erika R. Wodinsky, FTC, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Tuesday, August 30, 1988, there was published in the **Federal Register**, 53 FR 33144, a proposed consent agreement with analysis In the Matter of Iowa Chapter of the American Physical Therapy Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.345 Competitors; § 13.367 Members. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.390 To control employment practice; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Physical therapists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 88-29938 Filed 12-28-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580

16 CFR Part 13

[Dkt. 9126]

National Tea Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1980 order with National Tea Co. (45 FR 53455) so that the company is no longer required to get the Commission's approval before acquiring grocery stores in certain geographic areas. Since the company exited the Minneapolis/St. Paul area in 1983, the Commission determined that public interest considerations warranted setting the order aside.

DATES: Consent Order issued July 23, 1980. Set Aside Order issued September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore or Joseph Eckhaus, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of National Tea Company, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 45 FR 53455, are deleted.

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

Order Reopening and Setting Aside Order Issued on July 23, 1980

On May 27, 1988, National Tea Company ("National") filed a "Petition To Reopen And Set Aside Consent Order" ("Petition"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51 (1986). The Petition asked the Commission to reopen the proceeding in Docket No. 9126 and set aside the consent order issued by the Commission on July 23, 1980 ("the order"). National's Petition was placed on the public record for thirty days, pursuant to section 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from National's acquisition of Applebaums' Food Markets, Inc., in February 1979. 96 F.T.C. 42 (1980). According to the complaint, the relevant line of commerce in which to assess the acquisition was sales by retail grocery stores; the relevant geographic market was the Metropolitan Minneapolis/St. Paul, Minnesota area ("Twin Cities"). The order, which was issued by the Commission on July 23, 1980, prohibits National, for a ten year period ending on July 28, 1990, from acquiring without the prior approval of the Commission, five or more retail grocery stores in seven designated states, or within 500 miles of any National warehouse, or 300 miles of any National retail grocery store. 96 F.T.C. at 49.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Therefore, the Commission has invited respondents to show in petitions to reopen how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing National's Petition, the Commission has concluded that it is in the public interest to reopen the proceeding and set aside the order in Docket No. 9126. Although National remains in the retail grocery store business, it has been out of the Twin

Cities market for five years. National has shown that the prior approval requirements of the order impose substantial compliance costs on National and put it at a disadvantage with respect to its competitors who are not under similar restraints. These costs were foreseeable at the time National agreed to the order and would not provide a sufficient basis to justify termination of the order if it were serving a procompetitive purpose. However, in light of National's exit from the Twin Cities market, any need for the order in the Twin Cities market that was the focus of the Commission's complaint is outweighed by the costs of the prior approval provision.

The Commission has also concluded that it is in the public interest to set aside the prior approval requirements of the order with respect to any other geographic areas designated in the order. The allegations of the complaint relate primarily to the Twin Cities market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, *It Is Ordered* that this matter be, and it hereby is reopened and that the Commission's order issued on July 23, 1980, shall be set aside as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-29941 Filed 12-28-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. 9209]

North American Philips Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order prohibits, among other things, the North American Philips Corp., Norelco's parent company, from misrepresenting the performance of the Clean Water Machine or any other product that treats water, and from also misrepresenting any test or study of its products. The order requires respondent to have substantiation for any performance claims it makes for any electric-powered consumer appliance, including hair dryers, makeup mirrors, coffee makers, and razors.

DATES: Complaint issued August 3, 1987. Final Order issued October 24, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Joel C. Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: In the Matter of North American Philips Corporation, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows): Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170-16 Cleansing, purifying; § 13.170-70 Preventive or protective; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1730 Results; § 13.1740 Scentific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly Or Deceptively, To Make Material Disclosure: § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Water cleaners, Water filters, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

Final Order

The Administrative Law Judge filed his Initial Decision in this matter on August 29, 1988, finding that the respondent engaged in unfair and deceptive acts or practices in or affecting commerce in violation of section 5(a) of the Federal Trade Commission Act, 5 U.S.C. 45. An appropriate Order to remedy the violations was appended to the Initial Decision.

Service of the Initial Decision was completed on September 22, 1988. Neither respondent nor complaint counsel filed an appeal.

The Commission having determined that this matter should not be placed on its docket for review, and that the Initial Decision and the Order therein shall become effective as provided in § 3.51(a) of the Commission's Rules of Practice, 16 CFR 3.51(a),

It is ordered that the Initial Decision and the Order therein shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-29940 Filed 12-28-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, etc. are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket Nos. 82G-0207, 86P-0506, and 87P-0199]

Rapeseed Oil; Revision of Common or Usual Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its regulations (21 CFR 184.1555(c)) to recognize "canola oil" as the alternate common or usual name of low erucic acid rapeseed oil. This action responds to a citizen petition submitted by the Canola Council of Canada (CCC) requesting approval of the alternate name. This action renders moot a request for an advisory opinion submitted by the Canadian government. In addition, FDA is denying a citizen petition from the American Soybean Association (ASA) that objected to use of the term "canola oil."

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Kennon M. Smith, Center for Food Safety and Applied Nutrition (HFF-302), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 16, 1988 (53 FR 36067), FDA proposed to adopt "canola oil" as an alternate common or usual name for low erucic acid rapeseed oil. The proposal was issued in response to a citizen petition submitted by CCC and a request for an advisory opinion from Agriculture Canada. At that time, FDA tentatively concluded that a petition submitted by ASA that opposed the use of the term "canola oil" on any food labels should be denied.

II. Discussion of Comments

All comments received by the agency supported the proposed action as favorable to industry and consumers alike. Most notable among the comments in support of the agency's proposal was that submitted by ASA, which stated that because the erucic acid specification for canola oil was officially lowered to 2 percent by Canada, ASA has no objection to the proposed rule.

III. Conclusion

The agency received no comments opposed to its proposed rule. Thus, the agency concludes that, for the reasons set forth in its proposal, it is appropriate to adopt "canola oil" as an alternate common or usual name for low erucic acid rapeseed oil. The agency also concludes that there has been sufficient exposure to the term "canola oil" to allow the American consumer to recognize and understand the term. FDA believes that the term "canola oil" is acceptable and favorable to both industry and the consumer and, therefore, should be allowed to be used interchangeably with the term "low erucic acid rapeseed oil." The agency also believes that consistency in nomenclature will promote free trade in products containing this ingredient between the neighboring markets of Canada and the United States.

Agriculture Canada's request for advisory opinion is, in effect, rendered moot by this action and, therefore, will be deemed to have been withdrawn.

Finally, because ASA supports this action, its citizen petition is hereby denied.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not result in the production or distribution of any substance and, thus, will not result in the introduction of any substance into the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

In accordance with Executive Order 12291, FDA has analyzed the economic effects of this final rule and has determined that it will not be a major rule under the order. In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. FDA has not received any additional information that would cause the agency to alter these determinations.

List of Subjects in 21 CFR Part 184

Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

2. Section 184.1555 is amended by revising the first sentence in paragraph (c)(1) to read as follows:

§ 184.1555 Rapeseed Oil.

* * * * *

(c) *Low erucic acid rapeseed oil.* (1) Low erucic acid rapeseed oil, also known as canola oil, is the fully refined, bleached, and deodorized edible oil obtained from certain varieties of *Brassica Napus* or *B. Campestris* of the family *Cruciferae.* * * *

* * * * *

Dated: December 23, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29888 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 544

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Merck Sharp & Dohme Research Laboratories to Veterinary Service, Inc.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1415.

SUPPLEMENTARY INFORMATION: Veterinary Service, Inc., 416 North Jefferson St., P.O. Box 2467, Modesto, CA 95354, has informed FDA that it is now the sponsor of NADA 65-252 (Vetstrep 25 percent—Streptomycin sulfate oral solution, veterinary) formerly held by Merck Sharp & Dohme Research Laboratories. Merck Sharp & Dohme Research Laboratories has informed FDA of the change of sponsor. The agency is amending 21 CFR 510.600(c) (1) and (2) and 21 CFR 544.170b(c) (2) to reflect the change in sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, animal drugs, labeling, reporting and recordkeeping requirements.

21 CFR Part 544

Animal drugs, antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 544 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Veterinary Service, Inc.," and in paragraph (c)(2) by numerically adding an entry in the table for "033008" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Veterinary Service, Inc., 416 North Jefferson St., P.O. Box 2467, Modesto, CA 95354	033008
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
033008....	Veterinary Service, Inc., 416 North Jefferson St., P.O. Box 2467, Modesto, CA 95354.
* * * * *	

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR Part 544 continues to read as follows:

Authority: Secs. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

§ 544.170b [Amended]

4. Section 544.170b *Streptomycin hydrochloride/streptomycin sulfate oral solution* is amended in paragraph (c)(2) by removing "[Reserved]" and replacing it with "See 033008 in § 510.600(c) of this chapter."

Dated: December 19, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–29889 Filed 12–28–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 1010

[Docket No. 86N-0211]

Performance Standards for Electronic Products: General; Variances From Performance Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making minor clarifying changes in its variance regulations. FDA is also discontinuing its procedure of publishing in the **Federal Register** notices of the availability of approved variances from performance standards for electronic products. FDA believes there is minimal public interest in the variance procedure, as evidenced by the fact that no one has ever responded to published notices of availability of approved variances. Issuance of this final rule will help conserve FDA's resources.

EFFECTIVE DATE: This final rule will become effective January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Arlene Underdonk, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA announced the agency's plan for conducting a systematic review of its rules and asked the public to comment on those FDA regulations that are perceived to be the most burdensome. The purpose of the review was to identify regulations that impose unnecessary burdens on the public generally or on specific segments of the public such as small business and, for such regulations, to explore alternative measures for protecting the public health. Subsequently, as a result of the assessment of public comments received in response to FDA's notice and of other available information, the agency published a notice in the **Federal Register** of July 2, 1982 (47 FR 29004), that identified the rules initially selected for highest priority review. The July 2, 1982, notice also advised that FDA intended to select other rules for review.

Although the July 2, 1982, notice did not identify the regulation concerning the procedure used to grant variances from performance standards for electronic products, FDA's experience in implementing the regulation since 1974 indicated a need for its review. Therefore, FDA conducted a comprehensive review of this regulation in light of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and FDA's experience in implementing the regulation for the past 14 years.

On June 2, 1988 (53 FR 20137), FDA proposed to revise its variance regulations. Based upon review of correspondence and applications for variances received from manufacturers of electronic products, FDA proposed to make minor clarifying changes to help applicants more readily understand FDA's requirements and thus to expend fewer resources in the submission of applications. Also, the agency proposed to remove the requirement in the variance procedure (21 CFR 1010.4(c)(2)) that a notice of availability of the approved variance be published in the **Federal Register**. The agency believes that publication of the notice of approval is not necessary because there is a lack of public interest in the variance procedure as evidenced by a complete absence of responses to published notices of availability of approved variances.

Interested persons were given until August 1, 1988, to submit comments, but no comments were received. Accordingly, FDA is adopting the amendments as proposed.

FDA will continue to maintain the administrative record of each variance action, which record will include the applications for variances and for any amendments and extensions of variances as well as all correspondence on the applications. The administrative record will be on file at FDA's Dockets Management Branch, and all nonconfidential documents in it will be available under the Freedom of Information Act (5 U.S.C. 552). Removing the requirement for announcement of the approval of a variance in the **Federal Register** will not speed up approval of a variance, because approval of a variance takes place before FDA's publication of a notice of availability of a variance. Issuance of this final rule will, however, help conserve FDA's resources by eliminating unnecessary **Federal Register** documents.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Order.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic projects, Exports, Radiation protection.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act, and under authority delegated to the Commissioner of Food and Drugs, Part 1010 is amended as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

1. The authority citation for 21 CFR Part 1010 is revised to read as follows:

Authority: Sec. 358, 82 Stat. 1177; 42 U.S.C. 263f; 21 CFR 5.10.

2. Section 1010.4 is amended by revising paragraph (a), by removing paragraph (c)(2), and by redesignating paragraphs (c) (3) and (4) as paragraphs

(c) (2) and (3), respectively, to read as follows:

§ 1010.4 Variances.

(a) *Criteria for variances.* (1) Upon application by a manufacturer (including an assembler), the Director, Center for Devices and Radiological Health, Food and Drug Administration, may grant a variance from one or more provisions of any performance standard under Subchapter J of this chapter for an electronic product subject to such standard when the Director determines that granting such a variance is in keeping with the purposes of the Radiation Control for Health and Safety Act of 1968, and:

(i) The scope of the requested variance is so limited in its applicability as not to justify an amendment to the standard, or

(ii) There is not sufficient time for the promulgation of an amendment to the standard.

(2) The issuance of the variance shall be based upon a determination that:

(i) The product utilizes an alternate means for providing radiation safety or protection equal to or greater than that provided by products meeting all requirements of the applicable standard, or

(ii) The product performs a function or is intended for a purpose which could not be performed or accomplished if required to meet the applicable standards, and suitable means for assuring radiation safety or protection are provided, or

(iii) One or more requirements of the applicable standard are not appropriate, and suitable means for assuring radiation safety or protection are provided.

* * * * *

Dated: December 8, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29887 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation under section 8477(e)(1)(E) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act). That section provides that any fiduciary with respect to the Thrift Savings Fund [1] who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for any act or omission of such fiduciary except in specified circumstances. Section 8477(e)(1)(E) specifically contemplates the issuance of regulations by the Department of Labor. This regulation describes the procedures which a fiduciary with respect to the Thrift Savings Fund must follow in order to allocate fiduciary responsibility to another fiduciary.

DATE: This regulation is effective December 29, 1988. The final regulation will apply to transactions occurring on or after December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Shelby J. Hoover, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-9590; or Debra Silver, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-8671.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This document contains a final regulation under section 8477(e)(1)(E) of FERSA.[2] That section provides that any fiduciary with respect to the Thrift Savings Fund who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for an act or omission of such fiduciary except in specified circumstances. This regulation supersedes the interim regulations promulgated by the Executive Director of the Federal Retirement Thrift Investment Board which appear at Title 5, Code of Federal Regulations, Chapter IV, Section 1660.1-1660.5 (52 FR 38221, October 15, 1987).

On July 22, 1988, the Department of Labor (the Department) published for notice and comment a proposed regulation outlining procedures for fiduciary allocation under FERSA section 8477(e)(1)(E). The Department received comments only from the Executive Director of the Federal Retirement Thrift Investment Board concerning this proposal. The following discussion summarizes the proposed regulation and the issues raised by that commentator, and explains the Department's reasons for adopting the final regulation.

Discussion

A. General Considerations

Subchapter III of FERSA provides for the creation of a retirement savings plan for federal employees to be known as the Thrift Savings Plan. As provided at section 8437 of FERSA, the plan is to be funded by the Thrift Savings Fund (Fund). The Fund consists of all employee and government contributions, increased by the total net earnings of the Fund or reduced by the total net losses of the Fund, and reduced by the total amount of payments made from the Fund.

Under the system of plan management prescribed at Subchapter VII of the Act, the authority and responsibility for the management and administration of the Fund is apportioned between the Federal Retirement Thrift Investment Board (the Board) and its Executive Director. Section 8472 of the Act charges the Board with broad responsibility to establish policies for the investment and management of the Thrift Savings Fund and the administration of Subchapter III of FERSA. Section 8474 assigns the Executive Director the responsibility to implement the policies established by the Board and to invest and manage the Fund assets in accordance with those policies and the provisions of the Act.

Pursuant to section 8474 (b)(5) and (c)(1) of the Act, the Executive Director is also granted authority to prescribe

[1] The Thrift Savings Fund is established and defined at 5 U.S.C. 8437.

[2] Section 8401 through 8479 of Title 5, United States Code (U.S.C.) were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the U.S.C. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the above reference to "section 8477(e)(1)(E) of FERSA" is to Title 5 U.S.C. 8477(e)(1)(E).

such regulations as may be necessary for the administration of the Fund. However, these statutory provisions expressly prohibit the Executive Director from prescribing any regulations relating to fiduciary responsibilities with respect to the Fund. Instead, at section 8477 of the Act, that regulatory authority is assigned to the Secretary of Labor. At section 8477(e)(1)(E), the Secretary is directed to prescribe, in regulations, procedures by which fiduciary responsibilities may be allocated among fiduciaries, including investment managers. An exception to the limitation on the Executive Director's rulemaking authority, however, was included at section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99-556). That section authorizes the Board to establish interim procedures concerning the allocation of fiduciary responsibilities. The Executive Director published such procedures in the **Federal Register** at 52 FR 38221 on October 15, 1987. According to the Act, those procedures are to be effective only with respect to transactions which occur prior to the effective date of the final regulations prescribed by the Secretary of Labor under subparagraph (E) of section 8477(e)(1) of the Act; moreover, the authority to make allocations using the interim procedures must expire no later than December 31, 1988.

B. The Final Regulation

In summary, the proposal was divided into seven sections which basically describe the fiduciary duties which may be allocated, and to whom, the procedures for allocating those duties, the procedures for revoking such allocations, and the effect of an allocation made pursuant to these procedures. Only two areas of concern were raised by the commentator, and they are discussed in the following first two subsections.

1. Allocation Among Board Members

The Act initially vests all fiduciary responsibility for the Thrift Savings Fund with either the members of the Board or the Executive Director. Sections 2584.8477(e)-2 and 3 of the proposal provided a procedure by which the Board members could allocate among themselves those responsibilities which had been charged to them collectively as members of the Board. This would permit the Board to adopt, if it chose, an arrangement whereby a collective fiduciary responsibility could be assigned to and discharged by one or a subgroup of the members, provided such allocation would not violate an express policy of the Board or constitute an invalid delegation according to the Act or any other law. See § 2584.8477(e)-2(d) of the proposal.

In this regard, the Executive Director of the Federal Retirement Thrift Investment Board submitted a comment stating the conclusion that an allocation of fiduciary responsibilities among Board members would be an invalid delegation under the provisions of FERSA. In support of this conclusion, the Executive Director cited 5 U.S.C. 8476(b)(1), which requires the Board to perform its functions and exercise its powers on a majority vote of a quorum of the Board, and 5 U.S.C. 8474(c)(8) and 8472. Section 8474(c)(8) of FERSA specifically provides for the Executive Director to delegate his functions while section 8472, which delineates the powers and responsibilities of the Board, contains no express authority to delegate.

The Department proposed these allocation procedures pursuant to the authority provided in 5 U.S.C. 8477(e)(1)(E), which contains no limitation concerning permissible delegations. This procedural regulation is not intended to define what constitutes a permissible delegation. Thus, the Department has determined to adopt the procedures as proposed, retaining the procedural flexibility for allocations among Board members, if such allocation would not result in an invalid or impermissible delegation as described in § 2584.8477(e)-2(d) of the regulation. The Department notes in this regard that while nothing in these procedures restricts the ability of a Fund fiduciary to assign any task or function to another person, such Fund fiduciary will continue to bear fiduciary responsibility for the acts and omissions of such other persons unless such responsibility of such other person has been allocated pursuant to these procedures. Also, in those instances where the delegation by a Fund fiduciary of a particular task or function would violate an express Board policy or a provision of law, that Fund fiduciary may not allocate the fiduciary responsibility for such task or function to another so as to relieve himself of his related fiduciary liability.

2. Allocation of the Responsibilities of the Executive Director

In addition to the allocation procedure for Board members described above, section 2584.84777(e)-2 of the proposal provided a procedure by which the Executive Director could allocate certain fiduciary responsibilities in connection with the management and investment of the assets of the Thrift Savings Fund. With respect to assets held in the Fixed Income Investment Fund (F Fund), it was proposed that such allocations be made only to a qualified professional asset manager or managers (QPAMs). The proposal incorporated by reference the definition of "qualified professional asset manager or manager" which appears at section 8438(a)(7) of the Act. With respect to assets held in the Government Securities Investment Fund or the Common Stock Index Investment Fund,[3] it was proposed that such allocation may be made only to an investment manager. The proposal incorporated the definition of "investment manager" which appears at section 3(38) of the Employee Retirement Income Security Act of 1974 (ERISA). No other allocations, whether by a Board member, the Executive Director, or any other person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund, were authorized. Thus, as proposed, an investment manager to whom fiduciary responsibility had been allocated could not in turn allocate any part of that responsibility to a second investment manager. However, allocation to the second investment manager could be achieved by action of the Executive Director, who, under the proposed regulation, was provided the authority to revoke an allocation and then reallocate that fiduciary responsibility to another fiduciary.

In this regard, the Executive Director of the Board expressed concern that section 8477(e)-2(b) of the proposal, which provided that the Executive Director could allocate authority and responsibility for investment and management of the F Fund only to a QPAM, is more restrictive than 5 U.S.C. 8438(b)(1). Section 8438(b)(1) of FERSA requires that the selection of assets to be held by the Fixed Income Investment Fund (other than certificates of deposit and insurance contracts) be made by a qualified professional asset manager. The commentator argued that if the Executive Director so desired, he should have the ability to separate the investment selection function from other aspects of asset management and allocate such aspects of fiduciary asset management.

It is the opinion of the Department that the authority to select includes the actual selection as well as the decision to retain or sell any assets previously

[3] Section 8438(b) provides that the Board is to establish three funds within the Thrift Savings Fund into which sums available for investment are to be invested. They are the Government Securities Investment Fund, the Fixed Income Investment Fund and the Common Stock Index Investment Fund.

selected. Thus, the Department proposed that, with respect to this fund, all allocations of management and investment authority must be made to QPAMs. After due consideration of the commentator's concerns, the Department is not convinced that there are any fiduciary asset management functions not encompassed by the statutory selection requirement which should be allocated to someone other than a QPAM. Thus, the Department adopts § 2584.8477(e)-2 of the regulation as proposed.

3. Procedures for Allocation

Section 2584.8477(e)-3 of the proposal imposed specific procedural requirements to assure that, as to any allocation: (1) Both the allocating fiduciary and the receiving fiduciary are expressly and clearly informed of the fact of any allocation and the pertinent terms thereof; and (2) the participants and the beneficiaries of the Thrift Savings Funds are informed of the identity of any person or persons to whom fiduciary responsibility has been allocated, and the nature of that responsibility. Also, the proposal required that any allocation made by the Board must be authorized by majority vote of the Board.

In order to avoid confusion, the Department has made an amendment to the language of § 2584.8477(e)-3(a)(1) and section 2584.8477(e)-4(c)(1) clarifying that any allocation made by the Board or revocation of such allocation must be authorized by the concurring vote of a majority of the total membership of the Board. If such a vote is taken and authorization is given, the Chairman of the Board will evidence such authorization by signing on behalf of the Board the written authorization which, in turn, must be acknowledged in writing by the receiving Board member or members.

As in the proposal, the final regulation states that all allocations, whether by the Board or the Executive Director, must identify in writing the responsibilities to be allocated and must be signed by both the allocating and the receiving fiduciaries. The signature of the receiving fiduciary represents his acknowledgement that, in accepting the allocated responsibilities, he becomes a fiduciary with respect to the Fund as to those responsibilities. The final regulation also requires that all allocations must be communicated in a written form to the participants and beneficiaries of the Fund.

4. Revocation and Termination of Allocations

To assure that the Board and the Executive Director may retain the necessary control over the management of the Fund which is consistent with their responsibilities under the Act, section 2584.8477(e)-4 of the proposal set forth procedures for expeditious revocations and terminations of allocations. Thus, the proposed regulation required that any allocation of fiduciary responsibility must be revocable at will by the allocating fiduciary. The proposal did not mandate a minimum notice period in order that a revocation may be effected quickly where circumstances reasonably require prompt action. In all cases, a revocation must set forth in writing the responsibilities which are the subject of the revocation and must be signed by the revoking fiduciary (in the case of the Board, by its Chairman).

As proposed, the termination of an allocation by a person to whom responsibility has been allocated must follow similar procedures. In addition to setting forth the pertinent facts in writing, a termination must be acknowledged in writing by the fiduciary to whom the subject duties are being restored.

The proposed regulation assigned to the Executive Director the responsibility to communicate to the Fund participants and beneficiaries the occurrence of any revocation or termination. This communication must include information which identifies the fiduciaries who are to assume the responsibilities which were the subject of the revocation or termination.

The Department received no comments on this section and, thus, adopts it as proposed, modified, as previously described, only to the extent necessary to clarify the voting requirement of a revocation of a Board function.

5. Effect of Allocation

In general, section 2584.8477(e)-5 of the proposal stated that where fiduciary responsibility has been allocated to another person pursuant to these procedures, the allocating fiduciary will be relieved of any fiduciary liability for any act of that person. However, the proposed regulation incorporated the provisions on fiduciary liability which are set forth at section 8477(e)(1)(E) of the Act so that an allocating fiduciary would retain liability for an allocated responsibility where he or she has violated the prudence standard set forth at section 8477(b)[4] of the Act with respect to: (a) the allocation or the continuation of the allocation; or (b) the implementation of the procedures set forth in the final version of this regulation. The duty to monitor the performance of a person to whom fiduciary responsibility has been allocated, which is implicit in the duty to discontinue any allocation where prudence so dictates, was explicitly imposed by the proposal, and the allocating fiduciary must prudently monitor.

FERSA section 8477(e)(1)(E) also imposes liability on an allocating fiduciary where such fiduciary would otherwise be liable under FERSA section 8477(e)(1)(D). FERSA section 8477(e)(1)(D) imposes joint and several liability upon a fiduciary with respect to the Fund who: (1) Participates knowingly in, or knowingly attempts to conceal, conduct which the fiduciary knows to be a breach of fiduciary duty by another Fund fiduciary; (2) by failing to comply with the prudence standard of FERSA seciton 8477(b) in the performance of his fiduciary duties, enables another Fund fiduciary to commit a breach; or (3) has knowledge of a breach by another Fund fiduciary and fails to make reasonable efforts to remedy that breach. Thus, the proposal provided that an allocating fiduciary would retain the co-fiduciary liability described in section 8477(c)(1)(D) of the Act. The Department adopts section 2584.8477(e)-5 as proposed.

6. Effective Date

Pursuant to § 2584.8477(e)-7 of the proposal, the regulation would be effective thirty days after publication in final form. Fiduciary liability for transactions occurring after that date would be determined by reference to this regulation regardless of whether any associated allocation may have been made before or after this effective date. As stated in the preamble to the proposal, liability for transactions occurring before the effective date of this regulation would continue to be governed by the interim regulation which appears at title 5, CFR, Chapter

[4] Section 8477(b)(1) of the Act provides in relevant part: "(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of participants and beneficiaries and—

* * * (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives * * *."

IV, Sections 1660.1 through 1660.5. Thus, the Department stated its intent to recognize as valid, until the effective date of the Department's allocation regulation, any allocation made both in accordance with the requirements of the interim regulation (5 CFR 1660.1–1660.5) and during the statutorily defined effective period of that interim procedural regulation.[5] In order to better effectuate this expressed intent, the Department has amended the last sentence of § 2584.8477(e)–7. The Department has also amended § 2584.8477(e)–7 in general to make the procedure effective upon the date of publication. The Department believes the immediate effective date meets the requirements of 5 U.S.C. 553(d) because: this procedure relieves a restriction on the ability to allocate fiduciary responsibility under FERSA; by publishing this procedure for notice and comment the Department put all interested persons on notice of the contents of this regulation and it received comments only from the Executive Director of the Board which were addressed earlier; and to delay unnecessarily the effective date of this regulation beyond the effective period of the interim procedures would only serve to create unnecessary administrative disruptions of the ability to allocate fiduciary responsibility under FERSA.

Executive Order 12291 Statement. The Department has determined that this final regulation is not a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The action will impose no additional costs on the Thrift Savings Fund.

Regulatory Flexibility Act Statement. The Department has determined that this regulation would have no significant economic impact on small entities. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that the implementation of this regulation would pose no additional costs to the Thrift Savings Fund. The only burden attributable to this regulation is the burden of written communication of an allocation by the Board or Executive Director to plan participants and beneficiaries, which may be incorporated in other disclosure documents already required under current law. The regulation does not otherwise affect any small entities.

Paperwork Reduction Act Statement. Sections 2584.8477(e)–3(a)(4), 3(b)(3) and 4(e) of the final regulation contain paperwork requirements. Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the Office of Management and Budget has assigned this regulation control number 1210–0071.

Statutory Authority. The final regulation set forth herein is issued pursuant to section 8477(e)(1)(E) (Pub. L. 99–335, 100 Stat. 585, 5 U.S.C. 8477(e)(1)(E)) of the Act and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2584

Employee benefit plans, Fiduciary, Government employees, Retirement, Pensions.

In view of the foregoing the Department amends Chapter XXV of Title 29 as follows:

By adding in the appropriate place, the following new Part 2584 to Subchapter J:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

Sec.
2584.8477(e)–1 General.
2584.8477(e)–2 Allocation of fiduciary duties.
2584.8477(e)–3 Procedures for allocation.
2584.8477(e)–4 Revocation and termination of allocation.
2584.8477(e)–5 Effect of allocation.
2584.8477(e)–6 Definitions.
2584.8477(e)–7 Effective date.

Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

§ 2584.8477(e)–1 General.

5 U.S.C. 8477(e)(1)(E) provides that any fiduciary with respect to the Thrift Savings Fund of the Federal Employees Retirement System who allocates a fiduciary responsibility to another person pursuant to procedures prescribed by the Secretary of Labor shall not be liable for an act or omission of such person except in specified circumstances. This Part sets forth the procedures which have been prescribed by the Secretary of Labor for the allocation of fiduciary responsibilities.

§ 2584.8477(e)–2 Allocation of Fiduciary Duties.

(a) The fiduciary duties of the Board as set forth at 5 U.S.C. 8472 may not be allocated to any person other than a member or members of the Board.

(b) The Executive Director may allocate authority and responsibility for the investment and management of the Fixed Income Investment Fund to a qualified professional asset manager(s).

(c) The Executive Director may allocate authority and responsibility for the investment and management of the Government Securities Investment Fund and the Common Stock Index Investment to an investment manager(s).

(d) Notwithstanding any other provision of this part, no allocation may be made which would constitute:

(1) A violation of an express policy of the Board; or

(2) An invalid delegation according to the Act or any other law.

(e) Except as provided in this part, no person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund may allocate such responsibility to another person.

§ 2584.8477(e)–3 Procedures for Allocation.

(a) Any allocation made by the Board must—

(1) Be authorized by the concurring vote of a majority of the total membership of the Board;

(2) Be made in writing, signed by the Chairman of the Board and acknowledged in writing by the receiving Board member or members;

(3) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(4) Be communicated in an appropriate written form to the Executive Director, the participants and the beneficiaries of the Thrift Savings Fund.

(b) Any allocation made by the Executive Director must—

(1) Be made in writing, signed by the Executive Director and acknowledged in writing by the receiving fiduciary;

(2) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(3) Be communicated in an appropriate written form to the

[5] Neither this statement nor the corresponding operative language of the regulation should be read as relieving the allocating fiduciary of responsibility ascribed to him pursuant to FERSA sections 8477 (b), (e)(1)(D), or (e)(1)(E) with regard to the continuation of any such allocation.

participants and beneficiaries of the Thrift Savings Fund.

§ 2584.8477(e)-4 Revocation and termination of allocation.

(a) Any allocation made pursuant to this part must be revocable at will by the allocating fiduciary, subject only to notice which is reasonable under the circumstances.

(b) Any revocation by the allocating fiduciary or termination of an allocation by the fiduciary to whom duties have been allocated must set forth in writing the duties and responsibilities as to which the revocation or termination is effective, either in the body of the document or by reference to another document existing at the time of the revocation or termination.

(c) Any revocation of an allocation must—

(1) In the case of an allocation which was made by the Board, be authorized by the concurring vote of a majority of the total membership of the Board and be signed by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the Executive Director.

(d) Any termination of an allocation, to be effective, must—

(1) In the case of an allocation which was made by the Board, be signed by the terminating fiduciary and acknowledged in writing by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the terminating fiduciary and acknowledged in writing by the Executive Director.

(e) Any revocation or termination of an allocation must be communicated by the Executive Director in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund in a manner which identifies the person(s) assuming the responsibilities which were the subject of the revocation or termination.

§ 2584.8477(e)-5 Effect of allocation.

Where fiduciary responsibility has been allocated to another person or persons pursuant to the procedures contained in this part, the allocating fiduciary shall not be liable for any act or omission of such person or persons unless:

(a) The allocating fiduciary has violated 5 U.S.C. 8477(b) with respect to—

(1) The allocation or the continuation of the allocation,

(2) The implementation of these procedures, or

(3) The duty to monitor the performance of such person or persons in a reasonable manner during the life of the allocation, or

(b) The allocating fiduciary would otherwise be liable in accordance with 5 U.S.C. 8477(e)(1)(D).

§ 2584.8477(e)-6 Definitions.

As used in this Part:

(a) "Act" means the Federal Employees' Retirement System Act of 1986, 5 U.S.C. § 8401 *et seq* (Supp. IV 1986);

(b) "Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472;

(c) "Common Stock Index Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(C);

(d) "Executive Director" means the executive director of the Federal Retirement Thrift Investment Board as appointed pursuant to 5 U.S.C. 8474;

(e) "Fiduciary duty" and "fiduciary responsibility" mean any duty or responsibility which involves the exercise of discretionary authority or discretionary control over—

(1) The management or disposition of the assets of the Thrift Savings Fund, or

(2) The administration of the Thrift Savings Fund.

(f) "Fixed Income Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(B);

(g) "Government Securities Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(A);

(h) "Investment manager" means any fiduciary who—

(1) Has the power to manage, acquire or dispose of any asset of the plan,

(2) Is (i) registered as an investment adviser under the Investment Advisers Act of 1940, (ii) a bank, as defined in that Act, or (iii) an insurance company qualified to perform services described in paragraph (h)(1) of this section under the laws of more than one state, and

(3) Has acknowledged in writing that he or she is a fiduciary with respect to the Thrift Savings Fund;

(i) "Qualified professional asset manager" has the meaning which is prescribed at 5 U.S.C. 8438(a)(7).

(j) "Thrift Savings Fund" means the fund established under 5 U.S.C. 8437.

§ 2584.8477(e)-7 Effective Date.

This section is effective December 29, 1988, and liability for any transaction which occurs on or after this date will be governed by this section only. In accordance with section 114(a) of Pub. L. 99-556, the interim regulations promulgated by the Board appearing at Title 5, CFR, Chapter VI, § § 1660.1 through 1660.5 will no longer be effective as of December 29, 1988.

Liability for transactions which occur before the effective date of this regulation, however, will continue to be governed by allocations made both during the statutorily defined effective period of the previously cited interim regulations and pursuant to the requirements of those regulations.

Signed at Washington, DC this 23rd day of December, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 88-29955 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-29-M

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29 CFR Part 2585

Final Interim Rule Relating to the Prohibited Transaction Exemption Procedures Under the Federal Employee's Retirement System Act

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interim final regulation.

SUMMARY: This document contains a final interim regulation that describes the procedures for filing and processing applications for exemptions from the prohibited transaction provisions of The Federal Employees' Retirement System Act of 1986 (FERSA). The Secretary of Labor is authorized to grant exemptions from these restrictions and to establish a procedure to process such exemptions. For applications for exemptions filed under FERSA, this interim final regulation adopts the procedures currently followed by applicants for exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code).

DATES: *Effective Date:* This regulation is effective December 29, 1988. The interim regulation would be effective with respect to all applications for exemptions filed with the Department under 5 U.S.C. 8477(c)(3) at any time after December 29, 1988.

Applications for exemptions filed before that date would be governed by ERISA Procedure 75-1.

Expiration Date: This Interim Final Rule shall expire on the effective date of the revised Prohibited Transaction Procedure Regulation, published in proposed form for comment on June 28, 1988. See 53 FR 24422. The Department will publish a document removing these interim regulations when it adopts final

regulations based on the published proposal at 53 FR 24422 (June 28, 1988).

FOR FURTHER INFORMATION CONTACT: Linda N. Winter, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523-9596, or Miriam Freund, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523-8194.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 35 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This is the same hour burden approved and applicable to previous ERISA exemption application procedures, which are herein being adopted for FERSA purposes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Sections 8477(c)(2) of FERSA [1] prohibits a fiduciary with respect to the Thrift Savings Fund from (1) dealing with any assets of the Thrift Savings Fund in his own interest or for his own account; (2) acting in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or (3) receiving any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund. These restrictions are derived from the provisions of section 406(b) of ERISA. Section 8477(c)(3) of FERSA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of FERSA Section 8477(c)(2). The Secretary of Labor also has authority under 408(a) of ERISA to grant fiduciaries administrative exemptions for identical activities prohibited by ERISA section 406(b). Pursuant to this authority under ERISA, the Secretary issued (jointly with the Secretary of the Treasury) an exemption application procedure on April 28, 1975. (ERISA Proc. 75-1, 40 FR 18471, also issued as Rev. Proc. 75-26, 1975-1 G.B. 722). Under section 111 of the FERSA Technical Corrections Act of 1986 (Pub. L. 99-556, October 27, 1986), the Department's existing exemption procedures are made applicable to exemption applications under FERSA until the earlier of the date of publication of final regulations adopting an exemption procedure or December 31, 1988. Thus, prior to the effective date of this interim final regulation, persons applying for exemptions from FERSA prohibited transaction rules should have been following the requirements of ERISA Proc. 75-1.

On June 28, 1988, the Department proposed for comment a new exemption application procedure, to be used by applicants for exemptions under ERISA section 408(a), Code section 4975(c)(2) and FERSA section 8477(c)(3). See 53 FR 24422 (June 28, 1988). The Department is currently considering the comments received on the proposed exemption procedure. To ensure the uninterrupted processing of exemption applications under FERSA after December 31, 1988, the Department shall adopt, for applications for exemptions from transactions prohibited under FERSA section 8477(c)(2), this Interim Final Rule which contains the procedures provided in ERISA Proc. 75-1 which are set out below in full, modified only to the extent necessary to remove references or requirements not applicable to FERSA. This prohibited transaction exemption procedure consists of rules of agency procedure and practice, and is therefore exempted under the Federal Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), from the ordinary notice and comment provisions for agency rule making. This Interim Final Rule shall expire upon the effective date of the final revised exemption application procedure.

Executive Order 12291 Statement

The Department has determined that the interim regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical 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.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. As stated previously, this regulation would do little more than describe procedures that reflect practices already in place for filing and processing applications for exemptions from the prohibited transaction provisions of the Federal Employee Retirement Systems Act of 1986.

Paperwork Reduction Act

This Final Interim Regulation adopts for applications for exemptions from the prohibited transaction sections of FERSA those procedures presently used for identical applications under ERISA. Furthermore, applications for exemptions currently being processed under FERSA already follow this procedure by operation of law. Accordingly, this regulation will not increase the paperwork burden for applicants. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and has been assigned control number 1210-0070.

Statutory Authority

The interim regulation is issued pursuant to authority granted under 5 U.S.C. 8477(c)(3) and under Secretary of Labor's Order No. 1-87 (52 FR 13139 April 21, 1987).

List of Subjects in 29 CFR Part 2585

Administrative practice and procedure, Employee benefit plans, Federal Employees' Retirement System Act, Fiduciary, Government employees, Party in interest, Prohibited transactions, Pensions.

For the foregoing reasons set out in the preamble, Title 29, Chapter XXV, Part 2585 of the Code of Federal Regulations is added as follows:

1. By adding in the appropriate place the following new Part 2585 to Subchapter J:

[1] Sections 8401 through 8479 of Title 5, United States Code, (U.S.C.) were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the U.S.C. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the above reference to "section 8477(e)(1)(E) of FERSA" is to Title 5 U.S.C. 8477(e)(1)(E).

PART 25885—INTERIM PROCEDURES FOR FILING AND PROCESSING PROHIBITED TRANSACTION EXEMPTION APPLICATIONS UNDER FERSA

Sec.

2585.1. Purpose.
2585.2. Background and definitions.
2585.3. Persons who may apply for exemptions.
2585.4. Instructions to applicants.
2585.5. Conferences.
2585.6. Publication of notice in the Federal Register.
2585.7. Notification of interested persons.
2585.8. Inaccuracies, changes of fact, and documentation.
2585.9. Effect of exemptions.
2585.10. Public inspection.
2585.11. Effective date.
2585.12. Expiration date.

Authority: 5 U.S.C. 8477(c)(3); Secretary of Labor's Order No. 1–87.

§ 2585.1 Purpose.

The purpose of this interim rule is to set forth the general procedures of the Department of Labor for the processing of applications for exemption under 5 U.S.C. 8477(c)(3) until such time as the Department publishes in final the Prohibited Transaction Application Procedure proposed for comment on June 28, 1988. (53 FR 24422.) This Interim Rule is identical to Employee Retirement Income Security Act of 1974 (ERISA) Proc. 75–1, the procedure followed by the Department in processing exemption applications under ERISA and the Internal Revenue Code of 1986 (the CODE), except to the extent modification was necessary to remove references and requirements not applicable to the Federal Employees' Retirement Systems Act of 1986.

§ 2585.2 Background and definitions.

(a) Section 5 U.S.C. § 8477(c)(3) provides that the Secretary of may grant a conditional or unconditional exemption respecting any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by 5 U.S.C. 8477(c)(2).

(b) The Secretary of Labor has delegated his functions under 5 U.S.C. 8477(c)(3) to the Assistant Secretary of Labor for Pension and Welfare Benefits Administration.

(c) Unless otherwise provided in this procedure, the term "Secretary" shall mean the Assistant Secretary of Labor for Pension and Welfare Benefits Administration.

(d) The term "party in interested" includes a fiduciary.

(e) Each application considered by the Secretary will be assigned an identifying number. Such number may be referred to in lieu of the description required by § 2585.4(c)(4).

§ 2585.3 Persons who may apply for exemptions.

(a) An exemption proceeding under this procedure may be initiated by the Secretary on his own motion.

(b) An exemption proceeding under this procedure shall be initiated by the Secretary upon the application of:

(1) Any party in interest with respect to the Thrift Savings Fund who is or may be a party to the prohibited transaction or transactions for which an exemption is sought; or

(2) In the case of an application for exemption with respect to a class of fiduciaries, or class of transactions, in addition to any person described in paragraph (b)(1) of this section, an association or organization representing parties in interest who may be parties to such prohibited transaction or transactions.

(c) An application by or for a person described in § 2585.3(a) or § 2585.3(b) must be signed by the applicant or by his authorized representative. If the application is signed by a representative of the applicant, he must be:

(1) An attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Secretary a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal;

(2) A certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Secretary a written declaration that he is currently qualified as a certified public accountant and he is authorized to represent the principal;

(3) A person, other than an attorney or certified public accountant, enrolled to practice before the Internal Revenue Service, and who files with the Secretary a written declaration that he is currently enrolled (including in the declaration either his enrollment number or the expiration date of his enrollment card) and that he is authorized to represent the principal. (See Treasury Department Circular No. 230. Revised C.B. 1966–2, 1171, as amended, C.B. 1967–1.433 and C.B. 1970–2, 644, for the rules on who may practice before the Internal Revenue Service.) The requirements of this section do not apply to an individual representing his full-time employer, or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or organized group, including a labor organization.

(d) An application for exemption relating to an individual transaction will not ordinarily be considered separately if a class exemption which would encompass the individual transaction either (1) has been the subject of an exemption proceeding or (2) is under consideration by the Secretary.

§ 2585.4 Instructions to applicants.

(a) The application shall be filed with: Exemption Application [Office of Regulations and Interpretations, Division of Exemptions, Pension and Welfare Benefits Administration, Room N–5671], U.S. Department of Labor, Washington, DC 20210.

(b) An application submitted under this procedure shall contain all of the information specified in paragraph (c) of this section if such application is for an exemption other than for a class of transactions or class of fiduciaries. If the application is for a class of transactions or class of fiduciaries, the application need contain only the information required under paragraphs (4) through (10), (14), and (15) of paragraph (c) of this section. If any of the information specified in paragraph (c) of this section cannot be furnished, an explanation of why it cannot be furnished shall be provided.

(c) Information to be submitted with application for exemption:

(1) The name and type of plan or plans;

(2) The Employer Indentification Number (EIN);

(3) The estimated number of plan participants;

(4) A detailed description of the transaction and the fiduciary, or class thereof, for which an exemption is requested;

(5) The possible violation or violations of the prohibited transaction provisions for which exemptions are requested;

(6) Whether such transaction or transactions have been already entered into or are transactions which the parties intend to enter into if the exemption is granted;

(7) Whether the transaction or transactions are customary for the industry or class involved;

(8) The hardship or economic loss, if any, which would result to the person or persons on whose behalf the exemption is sought, to the plan, and to its participants and beneficiaries from denial of the application;

(9) At the option of the applicant, a draft setting forth the exemption proposed by the applicant;

(10) A statement explaining why such exemption would be:

(i) Administratively feasible;

(ii) In the interest of the plan or plans which would be affected if the exemption were granted and of their participants and beneficiaries; and

(iii) Protective of the rights of the participants and beneficiaries of the affected plan or plans;

(11) Whether, to the best knowledge of the applicant, the plan or trust has ever been found by the Secretary or by a court to have violated the provisions of 5 U.S.C. 8477 (b) or (c);

(12) Whether, to the best knowledge of the applicant, any relief under 5 U.S.C. 8477(c)(3), section 408(a) of ERISA, or section 4975(c)(2) of the Code has been requested by, or provided to, the applicant or any of the parties on behalf of whom the exemption is sought and, if so, a description of such relief (see § 2585.2(e));

(13) Whether, to the best knowledge of the applicant, the applicant or any of the parties to the transaction sought to be exempted is currently, or has been within the last 5 years, a defendant in any lawsuit concerning such person's conduct as a fiduciary, party in interest, or disqualified person with respect to any plan;

(14) With respect to the notification of interested persons in accordance with § 2585.7, the applicant shall include the following:

(i) A description of the interested persons to whom notice will be provided;

(ii) The manner by which such notice will be provided; and

(iii) The time period within which such notice will be given (see § 2585.7(c));

(15) A certification by the applicant that, to the best of the applicant's knowledge, the application is accurate and complete.

§ 2585.5 Conferences.

(a) The applicant shall indicate whether a conference is desired in the event the Secretary contemplates not granting the requested exemption. Any such conference shall be held in Washington, DC.

(b) If more than one applicant has requested an exemption with respect to the same or similar class of transactions, and the Secretary contemplates not granting the exemption, and if more than one applicant has requested a conference, such conferences will be scheduled, insofar as possible, as a joint conference with all such applicant's present.

(c) An applicant is entitled to only one conference.

(d) In any case in which a hearing is held, an applicant shall not be entitled to a conference.

§ 2585.6 Publication of notice in the Federal Register.

(a) Before granting an exemption under this procedure, the Secretary shall publish notice of the pendency of such exemption in the **Federal Register**, stating the earliest date upon which a decision may be entered.

(b) The notice shall provide that any interested person may, within the period of time specified therein, submit to the Secretary in writing any comments relating to the proposed exemption, including a statement of the nature of the person's interest in the matter.

(c) Where the exemption involves one or more transactions described in 5 U.S.C. 8477(c)(2), between the Thrift Savings Fund and a fiduciary, the notice shall also provide that any interested person may, within the period of time specified therein, request that a hearing be held, stating the reasons for requesting such a hearing and the nature of the person's interest in the matter.

§ 2585.7 Notification of interested persons.

(a) If a notice is published in the **Federal Register** in accordance with § 2585.6, the applicant shall give adequate notice to interested persons of the pendency of the exemption. If the Secretary deems the notice that the applicant proposes to give to interested persons pursuant to § 2585.4(c)(14) to be inadequate, the Secretary shall, prior to the publication of the pendency of the exemption, specify in writing to the applicant the notice that would be considered to be adequate, and shall secure the applicant's written confirmation that such notice will be provided.

(b) The notice specified in § 2585.4(c)(14) shall not be considered adequate unless:

(1) It contains a copy of the notice of pendency of such exemption published in the **Federal Register** in accordance with § 2585.6(a);

(2) It timely informs interested persons of their right to comment and of their right to request a hearing, within the period set forth in the notice of the pendency of the exemption.

(c) No exemption will be granted unless the applicant provides evidence satisfactory to the Secretary that adequate notice was timely provided to interested persons.

§ 2585.8 Inaccuracies, changes of fact, and documentation.

(a) If any material facts contained in the application or any documents or testimony adduced by the applicant in support thereof is discovered by the applicant to be inaccurate, or if any such fact substantially changes, the applicant shall promptly notify the Secretary in writing and, in the case of an inaccuracy, shall include a statement of the reasons for such inaccuracy.

(b) The Secretary may require the applicant to provide such documentation as is considered necessary to verify the statements contained in the application.

§ 2585.9 Effect of exemptions.

(a) An exemption which is granted shall be effective to the extent and under the conditions described in such exemption. Except in the case of an exemption granted with respect to a class of fiduciaries or class of transactions, an exemption may be relied upon only by the parties so exempted or the parties to the transaction so exempted.

(b) The Secretary may at any time revoke or limit an exemption. Before ordering any such revocation or limitation, the Secretary shall give the applicant and any persons who filed comments or testified at a hearing with respect to the application for exemption at least 30 days' notice of the proposed revocation or limitation, including the reasons therefor, and an opportunity to comment with respect to such revocation or limitation.

(c) Except in rare or unusual circumstances, any revocation or limitation of an exemption will not be given retroactive effect, if the party or parties covered by the exemption have relied in good faith upon the exemption, and such retroactive revocation or limitation would result in significant injury to them. Retroactive revocation or limitation may be ordered, however, with respect to one or more parties covered by the exemption where there has been a misstatement or omission of a material fact with respect to the exemption. In addition, retroactive revocation or limitation may be ordered where there has been a substantial change in a material fact with respect to the exemption and such change has not been reported as required by § 2585.8(a); but such revocation or limitation will not be made retroactive prior to the time of such substantial change of material fact.

§ 2585.10 Public inspection.

Applications for exemptions (including documents submitted in support of such applications) and all comments and records of hearings and conferences (if any) pertaining thereto

shall be open to public inspection at the Public Disclosure Room, Room N-5507, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 2585.11 Effective date.

This interim procedure is effective with respect to all applications for exemptions filed with the Department under 5 U.S.C. 8477(c)(3) at any time after December 29, 1988. Applications for exemptions filed before that date will be governed by ERISA Procedure 75-1.

§ 2585.12 Expiration date.

This Interim Regulation shall expire on the effective date of the revised Prohibited Transaction Exemption Procedure, published in proposed form on June 28, 1988, 53 FR 24422. The Department will publish a document removing these interim regulations when it adopts final regulations based on the published proposal at 53 FR 24422 (June 28, 1988).

Signed at Washington, DC, this 23rd day of December 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-30011 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Condition From the Colorado Permanent Regulatory Program Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of the condition at 30 CFR 906.11(ee) which the Secretary placed on the approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition of approval pertains to citizen suits. Colorado satisfied the condition of approval by amending its program to require a showing that a violation or order would immediately affect a legal interest of the plaintiff as a condition precedent to commencement of a citizen suit without 60 days prior notice. The amendment revises the State program to be consistent with the corresponding SMCRA requirement.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background for the Colorado program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). The remaining condition of approval is identified at 30 CFR 906.11; decisions concerning conditions of approval are discussed in detail in **Federal Register** notices published on December 16, 1982 (47 FR 56342); May 1, 1984 (49 FR 18475); November 15, 1985 (50 FR 47215); December 6, 1985 (50 FR 49924); February 5, 1986 (51 FR 4485); May 30, 1986 (51 FR 19547); July 1, 1986 (51 FR 23750); February 5, 1987 (52 FR 3632); May 7, 1987 (52 FR 17291); and September 25, 1987 (52 FR 36026).

II. Discussion of the Condition

As discussed in finding 4(h)(v) of the December 15, 1980, **Federal Register** notice conditionally approving the Colorado program (45 FR 82173), the Secretary found that Colorado must amend its program to allow plaintiffs whose legal interests would be immediately affected by a violation or order to immediately commence a lawsuit without 60 days prior notice of the regulatory authority. The Colorado Surface Coal Mining Reclamation Act at CRS 34-33-135(2) (a) and (b) required a plaintiff to show irreparable damage before being able to immediately commence a citizen suit. The State argued that the existing provision was intended for emergency situations and that, to obtain temporary relief, a plaintiff would need to show irreparable damage to obtain such relief under either the Federal or State statutes. The Secretary of the Interior did not agree.

The applicable Federal statute, Section 520(b)(2) of SMCRA, allows a citizen or operator to immediately file a citizen suit, without 60 days prior notice after written notice is provided to the regulatory authority showing that the offending violation or order constitutes an imminent threat to the plaintiff's health or safety, or would immediately affect a legal interest of the plaintiff. Therefore, under Federal statute, a complainant would obtain final relief as much as 60 days earlier if the violation would immediately affect a legal interest of the plaintiff. Whereas, under the State statute the plaintiff would be subject to a higher threshold of showing irreparable damage to a legal interest, potentially delaying the granting of a hearing and any subsequent final relief.

On February 23, 1982, Colorado submitted material (Administrative Record No. CO-197) to OSMRE intended to satisfy condition (ee) and other conditions. In the December 16, 1982, **Federal Register** notice (47 FR 56342), the Secretary indicated that review had not been completed on condition (ee), so a decision was deferred. Colorado then submitted additional information (Administrative Record No. CO-207) intended to satisfy condition (ee) on May 26, 1983. In the May 1, 1984 **Federal Register** notice (49 FR 18475), the Secretary found the Colorado provisions in the May 26, 1983, submittal still inconsistent with SMCRA.

In a letter dated May 20, 1986 (Administrative Record No. CO-290), Colorado maintained that the State statute at CRS 34-33-135(2)(b) was consistent with SMCRA and requested that OSMRE reconsider the need for condition (ee). By letter dated August 14, 1986 (Administrative Record No. CO-299), OSMRE informed Colorado that, after reviewing the issue, OSMRE found no legal basis for removing the condition.

On July 22, 1987, Colorado submitted a proposed State program amendment (Administrative Record No. CO-354) to OSMRE. The proposed State program amendment is a fully enacted State statute revision signed by the Governor on May 13, 1987. The revision is intended to satisfy condition (ee) by changing the words "irreparable damage" to "immediately affect" in CRS 34-33-135(2)(b). OSMRE announced receipt of the proposed State program amendment in the July 23, 1988, **Federal Register** (53 FR 23660). No substantive comments were received, and no public hearing was requested or held.

III. Secretary's Finding and Decision

As discussed above, Colorado revised the State statute, CRS 34-33-135(2)(b), to provide a threshold, identical to that in section 520(b)(2) of SMCRA, for allowing expedited hearings and relief for plaintiffs whose legal interests are

immediately affected by a violation or order of the regulatory authority.

The Secretary finds, in accordance with SMCRA, 30 CFR 732.13, 30 CFR 732.15, and 30 CFR 732.17, that the fully enacted statute submitted by Colorado on July 22, 1987, meets the requirements of 30 CFR 906.11(ee) and is consistent with SMCRA. Therefore, 30 CFR 906.11 is being amended to remove and reserve paragraph (ee).

IV. Public Comments

Acknowledgements were received from the following Federal agencies: Bureau of Mines, U.S. Fish and Wildlife, Bureau of Land Management, and the Environmental Protection Agency. This disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11). No other public comments were received and no hearing was requested.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

Date: December 20, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 is amended to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 906.11 [Amended]

2. Section 906.11 is amended by removing and reserving paragraph (ee).

[FR Doc. 88-29901 Filed 12-28-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58

[DoD Instruction 1438.4]

Compliance With Host Nation Human Immunodeficiency Virus (HIV) Screening Requirements for DoD Civilian Employees

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Some countries require that DoD civilian employees be screened for the Human Immunodeficiency Virus (HIV) before they may enter or continue their assignment, in the country. DoD is obligated to comply with such requirements. HIV is the virus associated with the Acquired Immune Deficiency Syndrome (AIDS). To assure the consistent observance of these requirements and the proper treatment of its employees, the Department of Defense issues this Part. It establishes a single approval authority and uniform policies and procedures. It also provides guidance for personnel administration and protection of employees' rights. This part would not apply to employees of organizations or business concerns under contract to DoD, nor dependents or family members of DoD military and civilian personnel. The policy would apply to those members of the general public who apply for and have been tentatively selected for DoD civilian employment in a host nation that requires HIV screening.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hatheway, telephone 202-695-2012.

SUPPLEMENTARY INFORMATION: The proposed rule for screening job applicant and employees for the HIV was published in the Federal Register on August 30, 1988. We received no comments from interested parties as a result of that publication. During official coordination with DoD, several comments were received to clarify application of the policy to employees who are currently assigned to a host nation that may institute HIV screening requirements. Appropriate clarification was made in the final rule.

List of Subjects in 32 CFR Part 58

Civilian employees, Foreign relations.

32 CFR is amended by adding Part 58 to read as follows:

PART 58—COMPLIANCE WITH HOST NATION HUMAN IMMUNODEFICIENCY VIRUS (HIV) SCREENING REQUIREMENTS FOR DOD CIVILIAN EMPLOYEES

Sec.
58.1 Purpose.
58.2 Applicability.
58.3 Definitions.
58.4 Policy.
58.5 Responsibilities.
58.6 Procedures.
58.7 Information requirements.

Authority: 10 U.S.C. 113 and 5 U.S.C. 301.

§ 58.1 Purpose.

This Part establishes policy and procedures for screening DoD civilian employees in compliance with host nation HIV screening requirements and for the use of screening results. It is issued under the authority contained in DoD Directive 5124.2 [1], and as directed by Secretary of Defense Memorandum dated August 4, 1988.

§ 58.2 Applicability.

This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereinafter referred to collectively as the "DoD Components").

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

§ 58.3 Definitions.

(a) *Human Immunodeficiency Virus (HIV).* The virus associated with the Acquired Immune Deficiency Syndrome (AIDS).

(b) *Host Nation.* A foreign nation to which DoD U.S. civilian employees are assigned to perform their official duties.

(c) *DoD Civilian Employees.* Current and prospective DoD U.S. civilian employees, including appropriated and nonappropriated fund personnel. It does not include members of the family of DoD civilian employees, employees of or applicants for positions with contractors performing work for the Department of Defense, or their families.

§ 58.4 Policy.

It is DoD policy to comply with host nation requirements for HIV screening of DoD civilian employees.

§ 58.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall establish policies governing HIV screening of DoD civilian employees assigned to, performing official travel in, or deployed on ships with ports of call at host nations, in coordination with the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)), and the DoD General Counsel.

(b) The *Assistant Secretary of Defense (International Security Affairs)* (ASD(ISA)) shall identify or confirm host nation HIV screening requirements for DoD civilian employees, and coordinate requests for screening with the Department of State.

(c) The *Heads of DoD Components* shall implement HIV screening policies and procedures for DoD civilian employees identified in § 58.5(a) and shall take the following actions:

(1) Report newly established host nation HIV screening requirements to the ASD(FM&P) and provide sufficient background information to support a decision.

(2) Develop and distribute policy implementing instructions.

(3) Establish procedures to notify individuals who are evaluated as HIV seropositive and provide initial counseling to them.

§ 58.6 Procedures.

(a) Requests for authority to screen DoD civilian employees for HIV shall be directed to the ASD(FM&P). Only requests that are based on host nation HIV screening requirement shall be accepted. Requests based on other concerns, such as sensitive foreign policy or medical health care issues, shall not be considered under this policy. Approvals shall be provided in writing by the ASD(FM&P). Approvals shall apply to all DoD Components that may have activities located in the host nation.

(b) Specific HIV screening requirements may apply to DoD civilian employees currently assigned to positions in the host nation, and to prospective employees. When applied to prospective employees, HIV screening shall be considered as a requirement imposed by another nation that must be met before the final decision to select the individual for a position or before approving temporary duty or detail to the host nation. Thus, the Department of Defense has made no official commitment concerning positions located in host nations with HIV screening requirements to those individuals who refuse to cooperate with the screening requirement or those who cooperate and are diagnosed as HIV seropositive.

(c) DoD civilian employees who refuse to cooperate with the screening requirement shall be treated as follows:

(1) Those who volunteered for the assignment, whether permanent or temporary in nature, shall be retained in their official position without further action and without prejudice with respect to employee benefits, career progression opportunities, or other personnel actions to which entitled under applicable law or regulation.

(2) Those who are obligated to accept assignment to the host nation under the terms of an employment agreement, regularly scheduled tour of duty, or similar, prior obligation, may be subjected to an appropriate adverse personnel action under the specific terms of the employment agreement or other authorities that may apply.

(3) Host nation screening requirements that apply to DoD civilian employees presently located in the country also must be observed. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges, to comply with the requirement.

(d) Individuals who are not employed in the host nation, who accept the screening and are evaluated as HIV seropositive will be denied the assignment on the basis that evidence of seronegativity is required by the host nation. If denied the assignment, such DoD employees shall be retained in their current positions without prejudice. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges, with respect to DoD civilian employees currently located in the host nation. In all cases, employees shall be given proper counseling and shall retain all the rights and benefits to which they are entitled including accommodations for the handicapped as provided in ASD(FM&P) Memorandum, FPM Bulletin 792–42, and 24 U.S.C. 784. Non-DoD employees should be referred to appropriate support service organizations.

(e) Some host nations may not bar entry to HIV seropositive DoD civilian employees but may require reporting of such individuals to host nation authorities. In such cases DoD civilian employees who are evaluated as HIV seropositive shall be informed of the reporting requirement. They shall be counseled and given the option of declining the assignment and being retained in their official positions without prejudice or notification to the host nation. If assignment is accepted, the requesting authority shall release the HIV seropositive result as required. Employees presently located in the host nation may also decline to have seropositive results released. In such cases, they may request and be granted early return at Government expense or other appropriate personnel action without prejudice to employee rights and privileges.

(f) A positive confirmatory test by Western blot must be accomplished on an individual if the screening test (ELISA) is positive. A civilian employee shall not be identified as HIV antibody positive unless the confirmatory test (Western blot) is positive. The clinical standards contained in ASD(HA) Memorandum shall be observed during initial and confirmatory testing.

(g) Procedures shall be established by DoD Components to protect the confidentiality of test results for all individuals, consistent with ASD(FM&P) Memorandum dated January 22, 1988 and DoD Directive 5400.11. [2]

(h) Tests shall be provided by the DoD Components at no cost to the DoD civilian employees (including applicants).

(i) DoD civilian employees infected with HIV shall be counseled in accordance with Secretary of Defense Memorandum.

§ 58.7 Information requirements.

The reporting requirement in § 58.5 is exempt from licensing in accordance

[2] See footnote 1 to § 58.1.

with subparagraph E.4.b. of DoD 7750.5-M.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1988.

[FR Doc. 88-29947 Filed 12-28-88; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 18]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Application of the Medicare Economic Index

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends 32 CFR Part 199, the regulation which governs CHAMPUS, by implementing section 8019 of the Department of Defense Appropriation Act for 1989, Pub. L. 100-463. This section limits increases in the CHAMPUS prevailing charges for physician and other authorized individual providers of medical care to the extent justified by economic changes as reflected in appropriate economic index data similar to that used under Medicare. The amended 32 CFR Part 199 will employ the Medicare Economic Index to limit the increases in prevailing charges.

EFFECTIVE DATE: February 1, 1989.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Office of Program Development, OCHAMPUS, telephone (303) 361-3587.

To obtain copies of this document, see the "**ADDRESS**" section above.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. The 32 CFR Part 199 (Dod 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

For the services of physicians and other authorized individual professional providers, the regulation provided that the allowable charge for covered care shall be the lower of: (1) The billed charge for the service; or (2) the prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period. Section 8019 of the Department of Defense Appropriation Act for Fiscal Year 1989, Pub. L. 100-462, requires that—

> None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions for section 1079(a) of title 10, United States Code, shall be available for reimbursement of any physician or other authorized individual provider of medical care in excess of the lower of: (a) The eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079(h) of title 10, United States Code; or (b) the allowable amounts in effect during fiscal year 1988 increased to the extent justified by economic changes as reflected in appropriate economic index data similar to that used pursuant to title XVIII of the Social Security Act.

Accordingly, beginning February 1, 1989, increases in the CHAMPUS prevailing charges in effect during fiscal year 1988 for physicians and other authorized individual providers will be limited based on application of the Medicare Economic Index (MEI).

On September 29, 1988, we published in the **Federal Register** (53 FR 38050) a notice to defer update of CHAMPUS prevailing charge levels for professional services originally to be effective October 1, 1988. This notice specified that the deferral of the update will last for 12 months unless CHAMPUS implements the MEI method to limit growth in prevailing charges.

Effective February 1, 1989, this final rule will implement the provisions of Pub. L. 100-463, adopting the MEI under CHAMPUS and lifting the freeze on prevailing charge levels.

II. Medicare Economic Index (MEI)

In 1972, in response to concerns about rising physician fees reimbursed under Part 8 of the Medicare program, Congress mandated that an additional fee limit be included in the calculation of "reasonable" charges. Under section 224 of the Social Security Amendments of 1972 (Pub. L. 92-603), the prevailing charge—an amount equal to the maximum reasonable charge allowed physicians for a specific procedure in a specific locality—could exceed the July 1972-June 1973 prevailing charge only by an amount reflected by an index of changes in physicians' operating expenses and earnings levels. This index is known as the Medicare Economic Index (MEI). Under Medicare, in the case of physicians' services only, annual increases in prevailing charges are provided to account for inflation, but only to the extent that there are updates in the MEI. The MEI updates have progressively increased the initial prevailing charge level that was established for the (then) fiscal year ending June 30, 1973.

The Omnibus Budget Reconciliation Act of 1987 established the MEI for 1989 at 3.0 percent for primary care services and 1.0 percent for other services. Primary care services were defined in the accompanying Conference Report to be office medical visits, home medical visits, emergency department services, and skilled nursing, intermediate care, long-term care facility, nursing home, boarding home, domiciliary or custodial care visits.

CHAMPUS will be following the Medicare procedure in this regard, subject to changes based on differences in the CHAMPUS and Medicare programs. Under CHAMPUS, the primary care MEI will be applied to all maternity care and delivery procedure codes (CPT-4 codes 59000-59899) and well-baby care (CPT-4 codes 90753-90757, 90763-90764, 54150, and 54160). This limited deviation from Medicare's procedure is based on the idea that maternity care and delivery services and well baby care services, which are of little relevance to Medicare, are analogous to the Medicare concept of primary care services.

Medicare makes a variety of adjustments to the MEI in order to accommodate various payment policies not relevant for CHAMPUS. For example, physicians who agree to accept assignment on all Medicare claims for the forthcoming year are known as participating physicians. The prevailing charge limit for nonparticipating physicians is set at a portion of that for participating physicians. Nonparticipating physicians are also subject to a limit on their actual charges. CHAMPUS does not distinguish between participating and nonparticipating physicians for payment amount purposes.

Medicare also provides incentive payments for primary care physicians in underserved rural areas, reduces payments for specified procedures, and

makes other adjustments as well. These do not apply to CHAMPUS.

III. Application of the MEI under CHAMPUS

The CHAMPUS annual base collection period covers the July 1 through June 30 period as does the Medicare period. However, the CHAMPUS fee screen year (the 12 month period beginning on the date the profiles are updated) begins on October 1 while the Medicare fee screen year starts on January 1. With the application of the MEI beginning February 1, 1989, the base collection period will remain the same. However, the CHAMPUS fee screen year will be changed from a fiscal year to a calendar year. This will provide conformity with the Medicare procedures and assurance that future year MEI amounts will be available when needed for the CHAMPUS update. It should be noted that since the MEI is being implemented effective February 1, 1989, the CHAMPUS fee screen year for calendar year 1989 will consist of only 11 months. The February 1 effective date has been chosen to provide adequate notice of the MEI implementation to the public.

Consistent with Medicare, CHAMPUS will allow accumulation of the annual MEI increases. If the actual increase in a prevailing charge is less than the indexed amount for that charge, the portion of the indexed amount not used will be carried forward as the basis for justifying increases in that charge in future years. For example, if the indexed amount for a given procedure is $100 but the actual prevailing charge calculated for that procedure is $95, the lower amount ($95) shall be used for payment during that fee screen year. The calculated indexed amount ($100) will be retained by the CHAMPUS fiscal intermediary (FI), however, and the following year, the new MEI percentage would be applied to the previous year's indexed amount ($100) even though it was not used for payment purposes. In essence, this will allow the full advantage of the MEI increases to accumulate yearly. Medicare has been doing this since inception of the MEI.

Essentially, CHAMPUS is modifying its method of annually updating prevailing charges for individual professional provider services. In addition to its present method of developing prevailing charges from all charges made by providers during a 12-month base period, CHAMPUS will determine what the prevailing charge would be using the MEI. The CHAMPUS allowable charge would then be the lowest of: (1) The billed charge for the service; (2) the prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or (3) the fiscal year 1988 prevailing charge adjusted by the MEI.

IV. Proposed Rule and Comments

On November 7, 1988, a proposed rule was published in the **Federal Register** (53 FR 44909) which offered the opportunity for public comment on the CHAMPUS application of the MEI. We received only one substantive comment, which was from a national association.

This commenter raised several concerns regarding the CHAMPUS use of the MEI. The commenter stated that such use of the MEI is inappropriate and pointed out that there are deficiencies in the calculation methodology of the MEI used by the Health Care Financing Administration (HCFA), noting that HCFA currently is studying ways to reformulate it. The commenter further noted that the MEI updates allowed by Congress over the past several years have been less than the updates that would have resulted had HCFA calculated the MEI formula, and suggested that if the MEI is to be applied under CHAMPUS, the full calculated index should be used. The commenter also noted that the Pub. L. 100–463, which this rule implements, calls for the CHAMPUS use of "appropriate economic index data similar to" the MEI; it does not explicitly require adoption of the MEI. The commenter raised concern that excessive constraints on increases in prevailing charge levels have the potential to limit access to medical care that CHAMPUS beneficiaries now enjoy.

We express our appreciation for the time the commenter took in providing the comments. First, we must point out that CHAMPUS is applying the MEI based on the statutory requirement. The intent of Pub. L. 100–463 for CHAMPUS adoption of MEI is considering the fact that CHAMPUS allowable amounts for most professional fees have continued to be higher than those established under Medicare, we believe the CHAMPUS use of the MEI, including the use of legislated MEI amounts when in effect under Medicare, is reasonable. Regarding concerns related to the MEI calculation methodology, we suggest these be provided to HCFA. With respect to the matter of beneficiary impact, we agree that beneficiary access to care is an important issue in relation to establishment of payment levels. In view of the generous allowable charge levels that will continue to exist, even with the use of a legislated MEI, we do not believe it likely that there will be an appreciable increase in physician "balance billing" to beneficiaries of any charge amounts in excess of CHAMPUS allowables. Currently, only about four percent of all dollars billed for CHAMPUS covered care is subject to balance billing. This very low rate of balance billing is a direct result of the high CHAMPUS allowable amounts. We intend to monitor carefully any change in the low levels of balance billing. Should application of the MEI cause an appreciable increase in balance billing, we would take appropriate action, within legislative authority, to assure broad beneficiary access to physicians who will not balance bill.

V. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other significant economic impacts.

The Regulatory Flexibility Act requires that each federal agency, prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

The changes set forth in this final rule, taken as a whole, would have an annual impact on the professional provider community of substantially less than $100 million. The modification in the professional provider payment mechanism is expected to result in government cost saving of about $25 million in 1989.

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, it is not a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraph (g)(1)(i) introductory text and paragraph (g)(1)(i)(A), and adding paragraph (g)(1)(i)(C) to read as follows:

§ 199.14 Provider reimbursement methods.

(g) * * *

(1) * * *

(i) The allowable charge for authorized care shall be the lowest of the amounts identified in paragraph (g)(1)(i)(A), paragraph (g)(1)(i)(B), and paragraph (g)(1)(i)(C) of this section.

(A) The billed charge for the service.

* * * * *

(C) For charges from physicians and other individual professional providers, the fiscal year 1988 prevailing charges adjusted by the Medicare Economic Index (MEI), as the MEI is applied to Medicare prevailing charge levels.

(*1*) In any year in which the Medicare program applies a different MEI to primary care services, CHAMPUS will include maternity care and delivery services and well baby care services as primary care for the purposes of applying the MEI.

(*2*) The Director, OCHAMPUS, shall issue procedural instructions to apply the MEI under CHAMPUS.

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1988.

[FR Doc. 88-29950 Filed 12-28-88; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Parts 20, 111

International Mail Manual, Interim regulations; Domestic Mail Manual, Miscellaneous Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its description of the procedures for amending the International Mail Manual, a publication incorporated by reference in the Code of Federal Regulations. The amended description adds a reference to interim regulations. The purpose of this change is to make the description reflect existing practice and to be consistent with a similar description of the procedures for amending the Domestic Mail Manual. In addition, the Postal Service is making certain minor changes and corrections in its description of the Domestic Mail Manual, a publication which is also incorporated by reference in the Code of Federal Regulations.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: Section 20.3 of title 39, Code of Federal Regulations, describes the procedures for amending the International Mail Manual. It does not, however, refer to adopting international mail regulations on an interim basis, a procedure which the Postal Service has used. See, for example, 53 FR 10007 (March 28, 1988). The description of the procedure for amending the Domestic Mail Manual specifically refers to interim rules. See 39 CFR 111.3. The Postal Service is changing § 20.3 to make it consistent with § 111.3. Minor, updating amendments are also made to §§ 20.1 and 20.2

The Postal Service is also changing § 111.3(c) to reflect the fact that, except in special circumstances, only summaries of interim or final changes to the Domestic Mail Manual are published in the Postal Bulletin, not the full text, as was formerly the case. This change is appropriate because ordinarily when changes are made to the Domestic Mail Manual the complete Manual is now republished. Publication is done quarterly, on a definite schedule, and copies are distributed to subscribers before the effective date of the changes. Accordingly, postal employees and mailers ordinarily need no longer rely on the Postal Bulletin for the text of the most recent changes, since they now appear in the Domestic Mail Manual on a current basis. Section 111.2(c) is also being amended to reflect the manner of publication and the publication schedule of the Domestic Mail Manual. Minor, updating amendments are also made to §§ 111.2 and 111.3.

List of Subjects in 39 CFR Parts 20 and 111

Foreign relations, Postal Service.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

§ 20.1 [Amended]

2. In § 20.1, in the second sentence, remove "20260" and add, in its place, "20260-5365".

§ 20.2 [Amended]

3. In § 20.2, remove the last sentence of paragraph (a) and add, in its place, the following: "Regional offices are located in Philadelphia, Memphis, Chicago, San Bruno, and Windsor, CT."; paragraph (b) is revised, and the first two sentences of paragraph (c) are revised to read as follows:

* * * * *

(b) A copy of the International Mail Manual, together with each amendment of it, is on file with the Director, Office of the Federal Register, National Archives and Records Administration, at 1100 "L" Street, NW., Room 8301, Washington, DC.

(c) Copies of the International Mail Manual may be purchased from the Superintendent of Documents, Washington, DC 20402-9371 for $14.00. This price covers two complete issues of the International Mail Manual. * * *

4. In § 30.2, the heading is republished, paragraphs (a), (b), and (c) are revised, paragraph (d) is redesignated as (e), and new paragraph (d) is added to read as follows:

§ 20.3 Amendments to the International Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, notices of changes made in the International Mail Manual will periodically be published in the Federal Register. A complete issue of the International Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the International Mail Manual will automatically receive the latest issue of the International Mail Manual from the Government Printing Office.

(b) When the Postal Service invites comment from the general public on a proposed change to the International Mail Manual, the proposed change and, if adopted, the interim or final regulation will be published in the **Federal Register**.

(c) Interim or final regulations published as provided in paragraph (b) of this section, and other changes to the International Mail Manual, adopted subsequent to the notices published under paragraph (a) of this section (except for corrections of minor errors or other nonsubstantive changes), are published in the Postal Bulletin, a weekly postal publication that may be purchased from the Superintendent of Documents, Washington, DC 20402-9371.

(d) Interim regulations will be published in full text or referenced, as appropriate, in the International Mail Manual at the place where they would appear if they become final regulations.

* * * * *

PART 111—[AMENDED]

5. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

§ 111.1 [Amended]

6. In § 111.1, the second sentence is revised to read as follows: "In conformity with that provision, and with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference in this part, the Domestic Mail Manual, a looseleaf publication published quarterly, March, June, September, and December, and maintained by the U.S. Postal Service, Washington, DC 20260–5365."

§ 111.2 [Amended]

7. In § 111.2, in paragraph (a), the second sentence is revised to read as follows: "Regional offices are located in Philadelphia, Memphis, Chicago, San Bruno, and Windsor, CT.".

8. In § 111.2, paragraphs (b) and (c) are revised to read as follows:

* * * * *

(b) A copy of the Domestic Mail Manual, together with each amendment of it, is on file with the Director, Office of the Federal Register, National Archives and Records Administration, at 1100 "L" Street, NW., Room 8401, Washington, DC 20408.

(c) The Domestic Mail Manual may be purchased from the Superintendent of Documents, Washington, DC 20402–9371 for $17.00. This price covers four complete issues of the Domestic Mail Manual.

9. The heading of § 111.3 is republished and paragraphs (a) and (c) are revised to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, notices of changes made in the Domestic Mail Manual will periodically be published in the Federal Register. A complete issue of the Domestic Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the Domestic Mail Manual will automatically receive the latest issue of the Domestic Mail Manual from the Government Printing Office.

* * * * *

(c) Except in emergency or other special circumstances when publication of the full text of interim or final regulations is warranted, summaries of interim or final regulations published as provided in paragraph (b) of this section, and summaries of other changes to the Domestic Mail Manual adopted subsequent to the notices published under paragraph (a) of this section (except for corrections of minor errors or other nonsubstantive changes), are published in the Postal Bulletin, a weekly publication that may be purchased from the Superintendent of Documents, 20402–9371.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–29903 Filed 12–28–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL-3499-4]

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration and other relief.

SUMMARY: The American Iron and Steel Institute ("AISI") has petitioned the U.S. Environmental Protection Agency ("EPA" or "the Agency") for reconsideration of the national ambient air quality standards for particulate matter promulgated on July 1, 1987 (52 FR 24634). The AISI petition also requests that the Agency issue additional information on control techniques for particulate matter, and that it stay implementation of the standards pending reconsideration of the standards and issuance of new control techniques information or, in the alternative, pending judicial review.

EPA has reviewed AISI's petition and finds that it should be denied in full. The issues AISI raises in support of reconsideration are either not new or not of central relevance to the outcome of the rulemaking. In addition, EPA provided comprehensive information on control techniques for particulate matter in 1984 and, since then, has provided and will continue to provide updated information as it becomes available. Finally, EPA has decided not to stay implementation of the standards because such a stay would be contrary to the public interest.

ADDRESSES: Material relevant to EPA's review and revision of the particulate matter standards can be found in Public Docket No. A–82–37, and material relevant to the promulgation of the regulations for implementing the standards can be found in Public Docket A–82–38. The dockets are available for public inspection between 8:00 a.m. and 3:00 p.m. on weekdays at EPA's Central Docket Section, South Conference Center, Room 4, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Ambient Standards Branch (Mail Code 12), Air Quality Management Division, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5533.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA published final revisions to the national ambient air quality standards (NAAQS) for particulate matter, originally adopted in 1971 under section 109 of the Clean Air Act (42 U.S.C. 7409). The 1971 standards included a 24-hour primary standard, an annual primary standard, and a 24-hour secondary standard,[1] each tied to measurement of "total suspended particulate matter" ("TSP").[2] The principal revisions in 1987 included (1) replacing TSP as the indicator for the ambient standards with a new indicator that includes only particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("PM_{10}"), (2) replacing the 24-hour primary TSP standard with a 24-hour PM_{10} standard of 150 $\mu g/m^3$, (3) replacing the annual primary TSP standard with an annual PM_{10} standard of 50 $\mu g/m^3$, and (4) replacing the secondary TSP standard with 24-hour and annual PM_{10} standards identical in all respects to the primary standards.

As discussed below, the 1987 revisions were the product of a lengthy and exhaustive administrative process, formally commenced in 1979 when EPA announced that it was (1) revising the air quality criteria underlying the 1971 standards and (2) reviewing those standards for possible revisions (44 FR 56731, Oct. 1, 1979).[3]

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[1] Under section 109(b) of the Clean Air Act, primary standards are intended to protect public health; secondary standards are intended to protect public welfare. *See also* section 302(h) of the Act, 42 U.S.C. 7602(g) (effects on public welfare).

[2] *See* 52 FR at 24635, col. 3.

[3] A more detailed description of the process EPA followed in revising the criteria document and standards for particular matter appears in the preamble to the revised standards (52 FR 24636–37).

1. Development of Revised Air Quality Criteria for Particulate Matter

With the endorsement of the Clean Air Scientific Advisory Committee ("CASAC") [4] of EPA's Science Advisory Board, EPA decided to review and revise the criteria document for particulate matter concurrently with that for sulfur oxides and to produce a combined particulate matter/sulfur oxides (PM/SOx) criteria document. Three successive drafts of the revised PM/SOx criteria document, prepared by EPA's Environmental Criteria and Assessment Office ("ECAO"), were made available for external review in 1980–81. EPA received numerous and often very extensive comments on each of the drafts from a variety of individuals and organizations, including AISI. During the same period, CASAC met to review the successive drafts in three public sessions attended by a large number of individuals and representatives of organizations, including AISI, many of whom provided critical reviews and new information for consideration. Between the first and second CASAC meetings, ECAO also held five other public meetings at which EPA, its consulting authors and reviewers, and other scientific and technical experts discussed ways of resolving outstanding issues in various chapters of the draft document.

Comments received on the successive drafts of the revised criteria document were considered in the final document, which was issued simultaneously with the proposal of revisions to the standards. A summary of the comments and EPA's responses was also prepared and placed in the public docket. CASAC also prepared a "closure" memorandum indicating its satisfaction with the final draft of the revised criteria document and outlining key issues and recommendations. The closure memorandum stated CASAC's conclusion that the revised document met the statutory requirement that it "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare" from particulate matter and sulfur oxides in the ambient air (52 FR 24655, col. 3). It also stated that the staff responsible for preparing the document had "proven responsive to Committee advice as well as to comments provided by the general public, and deserve[d] to be commended for the high quality of the document" (*id.*).

2. Review of the Standards: Development of Staff Paper

In the spring of 1981, EPA's Office of Air Quality Planning and Standards prepared the first draft of a "staff paper," a document not required by statute but an important element in the standards review process. Staff papers are written to help bridge the gap between the scientific review of health and welfare effects contained in criteria documents and the judgments required of the Administrator, in setting new or revised ambient standards. Thus, the draft staff paper for particulate matter, based on the then-existent draft of the revised criteria document, evaluated and interpreted the available scientific and technical information most relevant to the review of the existing standards and presented staff recommendations on revision of the standards. This and a second draft of the staff paper were reviewed at two CASAC meetings, and numerous written and oral comments were received from CASAC, representatives of AISI and other organizations, individual scientists, and other interested members of the public. The final staff paper, released in 1982, reflected the various suggestions made by CASAC and the public.

CASAC also prepared a closure memorandum on the staff paper, stating that it had been modified in accordance with CASAC's recommendations and was "consistent in all significant respects with the scientific evidence" in the revised criteria document. (52 FR 24658, col. 3). CASAC also commended the treatment of key scientific studies in the staff paper and the inclusion of numerical "ranges" identifying pollutant levels of interest for decisionmaking, stating that the latter decision "led to a marked improvement in the quality of the public dialogue" on the scientific basis for revising the standards (52 FR 24660, col. 1). For reasons stated in the closure memorandum, CASAC also recommended a "wider margin of safety" than those EPA had set for such pollutants as ozone and carbon monoxide (*id.* at 24659, col. 2).

3. Proposed Revisions to the Standards

In March 1984, EPA proposed a number of revisions to the standards for particulate matter (49 FR 10408, March 20, 1984). For reasons discussed in the proposal notice, "ranges" of alternative standards were included for both the primary (health-based) and secondary (welfare-based) standards (*id* at 10415, col. 2, 10416, cols. 2–3, 10417, col. 2). The Administrator expressed an inclination to select the primary standards from the lower portions of the proposed ranges but solicited "the possible participation and comment" on the question of which standard levels should be adopted (*id.*).

4. Post-Proposal Events

More than 300, often very extensive, written comments were received on the proposed revisions. EPA also held a public meeting to provide an additional opportunity for public comment, and a number of EPA officials, including the Administrator, met at various times with representatives of AISI and other organizations to discuss the proposal. CASAC also held a public meeting to review the proposals and to discuss the relevance of new health studies that had emerged since the Committee had completed its review of the revised criteria document. Based on its preliminary review of the new studies, CASAC recommended that EPA prepare separate addenda to the criteria document and staff paper to evaluate the studies and their potential implications for standard-setting.

EPA subsequently prepared draft addenda to both the criteria document and the staff paper, and it announced a supplementary period for public comment on the implications of the new studies and the two draft addenda for standard-setting. CASAC held another public meeting to review the draft addenda, and each was then revised to reflect CASAC and public comments. CASAC prepared closure memoranda on the two addenda, indicating that the criteria document addendum, together with the 1982 criteria document, represented a "scientifically balanced and defensible summary of the extensive scientific literature * * *" and that the staff paper addendum was "consistent in all significant respects with the scientific evidence * * *" and provided "the kind and amount of technical guidance that will be needed to make appropriate revisions to the standards" (52 FR 24658, col. 1, 24660, col. 1).

5. Final Standards and Subsequent Events

The final standards were published on July 1, 1987 (52 FR 24634), together with revisions of various related regulations. The preamble to the revised standards responded to the most important comments received on the proposals, and a more comprehensive compilation of comments and EPA responses to them (hereafter "Response to Comments" or

[4] CASAC is a standing committee of scientists and engineers external to the Federal government, established under section 109(d) of the Clean Air Act to advise the Administrator on the scientific basis for ambient air quality standards.

"RTC") was placed in the docket for the rulemaking.[5]

AISI and other interested parties filed a total of five petitions for judicial review of the revised standards and related regulations. AISI then filed the petition for reconsideration and related relief (hereafter "Pet.") to which this notice responds. The American Mining Congress later filed another petition for reconsideration, to which EPA is responding separately. The five petitions for judicial review have been consolidated into one case, *Natural Resources Defense Council v. Thomas*, DC Circuit Nos. 87–1437 *et al.*, which has been held in abeyance pending EPA's response to AISI's petition for reconsideration.

Criteria for Reconsideration

AISI seeks both "mandatory" reconsideration under section 307(d)(7)(B) of the Clean Air Act and what it terms "prudential" reconsideration under section 4(d) of the Administrative Procedure Act (APA). Section 307(d)(7)(B) of the Clean Air Act limits petitions for reconsideration both in time and scope.[6] Specifically, it provides that EPA shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the **Federal Register**, see section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule. In EPA's view an objection is of central relevance only if it provides substantial support for the argument that the standards should be revised. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653–54 (December 11, 1980), and decisions cited therein.

Although section 4(d) of the Administrative Procedure Act (APA) also establishes a right to petition for issuance, amendment, or repeal of a rule,[7] that provision almost certainly does not apply to petitions for reconsideration of actions to which the rulemaking provisions of section 307(d) of the Clean Air Act apply.[8] In any event, the criteria for evaluating such petitions under the APA are essentially the same as those for section 307(d)(7)(B) petitions. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653–54, and decisions cited therein.

Discussion

I. Petition for Reconsideration

Most of the arguments set forth by AISI in its petition for reconsideration simply are not based on new information. As such, they do not justify administrative reconsideration. The only arguments that might conceivably be considered new are not of central relevance to the outcome of the rulemaking. Thus, none of the issues raised in AISI's petition meet the criteria for reconsideration under section 307(d)(7)(B) of the Clean Air Act. In addition, I have concluded that none of AISI's arguments warrants reopening of the rulemaking as a discretionary matter.

A. Vinyl Chloride Decision

AISI argues that I must reconsider the primary standards for PM_{10} in view of a recent decision of the United States Court of Appeals for the district of Columbia Circuit that concerns the setting of national emission standards for hazardous air pollutants ("NESHAPs") under section 112 of the Act, 42 U.S.C. 7412. In *Natural Resources Defense Council v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (*"Vinyl Chloride"*), the court held that in considering costs and feasibility EPA must ordinarily follow a two-step process in setting NESHAPS. Under such approach, the Agency would first determine a "safe" level of exposure and then consider costs and feasibility in providing for the "ample margin of safety" required by section 112. 824 F.2d at 1164–66. The court also indicated that EPA could use a one-step process, provided that cost and feasibility are not considered in setting the standard. 824 F.2d at 1165, n. 11.

AISI contends that "[a]fter *Vinyl Chloride*, section 109 * * * must be construed as contemplating a two-stage analysis—first, a preliminary safety determination * * * and second, a separate determination as to the appropriate 'margin of safety.'" Pet. at 13. AISI acknowledges that the decision "dealt with section 112 of the Act" (*id.* at 12), but fails to note that the decision is clearly inapplicable to the Agency's setting of national ambient air quality standards ("NAAQS") under section 109 of the Act. 824 F.2d at 1158–59. It is therefore not of central relevance to the outcome of the rulemaking and does not require reconsideration of the PM_{10} NAAQS.

Indeed, the D.C. Circuit has already explicitly held that the Agency need not adopt a two-step process in setting a NAAQS under section 109. *Lead Industries Ass'n v. EPA*, 647 F.2d 1130 (D.C. Cir.), *cert. denied*, 449 U.S. 1042 (1980). There, one of the petitioners argued that EPA should have separately determined (1) the maximum level of a pollutant that is protective of human health, and (2) the reduction in that level needed to provide an adequate margin of safety. *Lead Industries*, 647 F.2d at 1161. Then-Administrator Costle explained that he had actually made allowances for margins of safety at several points in his analysis, rather than at the end of the analysis; that is, he had used a one-step process to arrive at a final decision, rather than trying first to identify a "safe" level and then adding a margin of safety. *Id.* The D.C. Circuit upheld the Administrator's approach, stating:

> Adding the margin of safety at the end of the analysis is one approach, but it is not the only possible method. Indeed, the Administrator considered this approach but decided against it * * * . The choice between these possible approaches is a policy choice of the type that Congress specifically left to the Administrator's judgment. The court must allow him the discretion to determine which approach will best fulfill the goals of the Act.

Id. at 1161–62. Thus, the D.C. Circuit has already decided that EPA need not employ a two-step process in setting a NAAQS, as long as the standard provides an adequate margin of safety.

[5] Docket A–82–37, Item V–C–1.

[6] Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), states:

> Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

[7] Section 4(d) of the APA, 5 U.S.C. 553(e).

[8] Section 307(d)(1)(N), 42 U.S.C. 7607(d)(1)(N) states: "The provisions of section 553 through 557 * * * of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to action to which this subsection applies." Actions to which subsection 307(d) applies include promulgation or revision of NAAQS. Section 307(d)(1)(A).

Moreover, the *Vinyl Chloride* court distinguished the operation of section 112 from its earlier analysis of section 109 in the *Lead Industries* case. In *Lead Industries*, the court noted that the statute does not specify economic and technological feasibility considerations as among the criteria on which ambient air quality standards are to be based. 647 F.2d at 1149 n. 37. The *Vinyl Chloride* court noted that "[t]he substantive standard imposed under the hazardous air pollutants provisions of section 112, in contrast with sections 109 and 110, is not based on criteria that enumerate specific factors to consider and pointedly exclude feasibility." 824 F.2d at 1158–59. Given the structural differences between sections 109 and 112, it follows that *Vinyl Chloride* does not require me to follow a two-step analysis in setting ambient air quality standards under section 109.

B. Unemployment Health Effects

AISI also contends that I must reconsider the primary standards to account for allegedly new evidence suggesting that setting the standard at higher levels would actually decrease the adverse health effects caused by exposure to PM_{10}. In essence, AISI argues that one effect of the primary standards will be increased unemployment in various industries. This increased unemployment, it contends, will lead to an increase in illness and death among workers (and their families) in these industries.

AISI initially made this argument during the comment period. Shortly after the close of the comment period, however, it submitted a report allegedly quantifying these adverse health effects. It submitted a second such report with its petition for reconsideration.[9]

AISI seems to ignore the fact that the Agency fully responded to its arguments on this issue, which were raised during the comment period. *See, e.g.*, Docket A-82-37, IV-D-341. The later submissions of quantitative information added nothing to what is, and always was, a legal issue. As discussed below, the information they contained was legally irrelevant for standard-setting under section 109. Accordingly, those submissions did not amount to new information centrally relevant to the outcome of the standard.

As the Agency made clear in its response to comments, any potential health consequences of compliance with the primary standards for PM_{10} are indirect costs of implementation, and thus cannot be considered in determining the appropriate levels of the standards. *Lead Industries*, 647 F.2d at 1148–51. *See also* Docket A-82-37, responses to comments IV-D-341, IV-D-346 and IV-J-12 (all citing section 108(a)(2) of the Act and *Lead Industries*).[10] The Act does not allow me to consider health effects that are not caused by *the polutant itself*, when promulgating a primary NAAQS. A primary standard is to be based upon air quality criteria for the pollutant that are published by the Agency. Section 109, 42 U.S.C. 7409. Section 108 of the Act clearly states that "[a]ir quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare *which may be expected from the presence of such pollutant in the ambient air*, in varying quantities:" 42 U.S.C. 7408(a)(2) (emphasis added). The statute makes no mention of measuring or taking account of health effects that might be caused by implementing controls necessary to meet the standards as opposed to the effects of the pollutant itself. AISI's argument on this issue therefore has no basis in the Clean Air Act, its legislative history or the relevant case law.[11]

The rulemakings and case law relied upon by AISI in support of its position are not relevant here. Neither involved the setting of a NAAQS under section 109 of the Act. *National Ass'n of Demolition Contractors v. Costle*, 565 F.2d 748, 753 (DC Cir. 1977), involved the review of a non-numerical, work-practice standard promulgated by EPA under section 112 of the Act, requiring the wetting of asbestos prior to the demolition of buildings. The Agency decided that asbestos need not be wetted during subfreezing temperatures because the workers would be endangered by ice formed during the process. But this work-practice standard under section 112 is inapposite to the setting of a numerical ambient air quality standard.[12] In the second work-practice NESHAP rulemaking cited by the petitioner, the risk posed to workers was from the pollutant itself, a radionuclide. Adverse health effects to mineworkers posed by Radon-222 simply were considered along with adverse health effects posed to the general public. *See* Standard for Radon-222 Emissions from Underground Mines, 50 FR 15386 (April 17, 1985).

C. EPA's Treatment of Health Evidence

AISI also argues that I should reconsider the standards on the ground that the pertinent health evidence was given "imbalanced treatment" in the preamble to the final rule (Pet. at 23–25). It argues that EPA gave undue weight to certain health studies, that the EPA staff has consistently "overinterpreted" such studies in an effort to justify overly

[9] AISI has not adequately explained why it could not have submitted its "unemployment health effects" reports during the comment period. AISI argues that such a submission was "impracticable" because EPA allegedly provided AISI certain information only two weeks prior to the end of the period. Pet. at 4 n. 3. This contention ignores the fact that EPA published on April 2, 1985 (over 19 months prior to the close of the comment period) a draft document that contained the information that AISI desired, a methodology to determine the probability that various areas would not attain the PM_{10} NAAQS. This methodology was used in the staff paper addendum to estimate the number of counties that would exceed particular PM_{10} values. The later information, provided to AISI on November 3, 1986, was merely EPA's latest estimates of areas with a 50% probability of exceeding specified PM_{10} values. See November 3, 1986 letter from John Bachmann of EPA to Earl F. Young, Jr. of AISI. Thus, AISI had available to it well in advance of the close of the comment period sufficient information to prepare its "unemployment health effects" reports, and it was not "impracticable" to submit them during the period for public comment. *See* 42 U.S.C. 3607(d)(7)(B) (setting out criteria for petition for reconsideration).

[10] The legislative history of the Clean Air Act also fully supports this view. Congress was aware that actions necessary to protect public health from ambient air pollution might lead to factory closings and determined that health protection was to take first priority. *See Lead Industries*, 647 F.2d at 1149.

[11] AISI also alleges in its petition that more lenient PM_{10} standards will not result in a lessening of air quality in most areas of the country, which already meet the standards and thus must comply with the Prevention of Significant Deterioration ("PSD") requirements in Part C of Title I of the Act. This contention seems to ignore EPA's projections that PM_{10} concentrations in many areas *do* currently exceed the PM_{10} NAAQS, and the health of people living in these areas therefore is at risk.

[12] Rulemaking under section 112 involves an integrated decision on both the health effects of a pollutant, and the measures needed to control source emissions to provide "an ample margin of safety." Further, the standards in the two cited examples, the asbestos and radionuclides NESHAPS, are both work-practice standards established because of the infeasibility of prescribing a numerical emissions standard in each case. *See* section 112(e)(1). In contrast, a section 109 standard simply sets a limit on the concentration of specified pollutants in the ambient air, as one part of a three-part criteria, standard-setting, and implementation plan process. See sections 108–110. To attain the NAAQS, the states must develop state implementation plans ("SIPs") which, among other things, provide emission limitations and control measures for individual sources. Section 110(a). While EPA may not consider direct or indirect costs in criteria issuance or standard setting under sections 108 and 109, states may weigh costs (including the impact of possible plant closures and layoffs) in crafting particular implementation measures to attain the standards. Beyond these considerations, the health impacts on workers considered in the section 112 rulemakings involved direct effects of the pollutant, or the specific work practices, and not, as urged by AISI, indirect effects on the health of workers that might result from the effects of control measures adopted by states under section 110, subsequent to promulgation of the NAAQS by EPA.

stringent standards, and that on reconsideration I should give much greater weight to "interpretations and studies that have been accepted throughtout the scientific community" (*id.* at 25, 18).

AISI appears to concede that its arguments in support of these points are not new and thus do not meet the test for mandatory reconsideration under section 307(d)(7)(B) of the Act (Pet. at 22–23). AISI, however, argues that I should exercise may inherent discretion to reconsider, "even on the basis of arguments previously raised" (*id.*), because those arguments are evidence that the EPA staff has "strained to justify the adoption of PM10 standards at the extreme lower bounds of the proposed ranges" (*id.* at 25). This line of argument seems to assume that my predecessor and I were unwittingly misled by the staff, and that simply reiterating points raised previously will persuade me that this is so. That AISI and its consultants continue to disagree with EPA's conclusions on points raised at various stages of the rulemaking, however, hardly establishes that my decision was in error or tainted by staff bias.

As to the correctness of my decision, AISI indeed presents no new information bearing on the health basis for the standards. Instead, it offers a sampling of arguments it and its consultants have presented before, in comments on the proposed standards and at various other stages in the review process since 1979.[13] EPA has already considered and responded to each of these arguments, by making revisions as appropriate in successive drafts of the 1982 criteria document, the 1982 staff paper, and the 1986 addenda to these documents; [14] by taking public comments into account in the final decision and responding to major comments in the preamble accompanying the revised standards (52 FR at 24648–53); and by responding in detail to all objections raised by AISI, its consultants, and other commenters in EPA's extensive Summary of and Response to Public Comments (Docket A–82–37, V–C–1 (June 2, 1987)) (hereafter "Response to Comments" or "RTC").[15]

Given this background, I find it striking that AISI has chosen to focus almost exclusively on the preamble to the final rule, as if the preamble were the only document in which the pertinent health evidence was considered. In doing so, AISI has largely ignored the detailed discussions of health studies in the criteria document, in the staff paper, and in the addenda to these documents, as well as the CASAC closure letters on these documents and CASAC's various recommendations to me.[16] Even more remarkably, AISI has ignored the detailed *responses* to its own and others' comments in EPA's Response to Comments and has made no attempt whatsoever to rebut these responses or otherwise show how they might be in error.[17] AISI's silence in this regard is telling.

None of the points AISI raises persuades me either that I have been misled or that there is any other reason to reopen the rulemaking. Accordingly, I am denying AISI's petition as it relates to EPA's consideration of the health evidence for the standards.

However, I believe the allegation that my decision was tainted by staff bias warrants a further response. As noted previously, the administrative process that culminated in my decision to revise the particulate standards was unusually lengthy and exhaustive. In reaching my final decision on the standards, I spent a great deal of time reviewing staff documents and discussing them with my staff. I also met with representatives of AISI to hear their views directly. Based on my own personal experience in the process, I believe the staff work on the standards was objective and unbiased.[18] Furthermore, an examination of the criteria document, the staff paper, and the addenda to these documents reveals that the staff's assessments of health studies, especially those that were thought to be potentially significant for standard-setting, typically identified both limitations and strengths associated with the use of them. *See, e.g.*, SPA at 16–17 (epidemiological studies generally), 17–23 (analyses of London data), 24–27 (Dockery and Dassen studies); CDA at 3–2 to 3–10 (analyses of London data), 3–15 to 3–17 (Dockery and Dassen studies). In the relatively few cases where authors objected to staff interpretations of their studies, the objections were typically noted or otherwise brought to the attention of Agency decision makers. *See, e.g.*, SPA at 44 (Lawther study); letter from William D. Ruckelshaus to Rep. Lyle Williams, Nov. 29, 1983, at 2 (Docket A–79–29, II–C–13). *See also* 52 FR at 24642, col. 3 (Lawther), 24649, col. 3 (Holland et al.), 24650, col. 2 (Lawther).

Moreover, the process EPA followed in preparing these documents assured ample opportunity for scrutiny by qualified experts and interested parties. As previously noted, a number of drafts of the criteria document, the staff paper, and the addenda to these documents were distributed for public comment and CASAC review and were revised in

[13] *See, e.g.*, Pet. at 25–26 n. 23 (objections of Professor Lawther dating to 1982).

[14] For convenience of reference, the 1986 addenda to the criteria document and staff paper are cited hereafter as "CDA" and "SPA," respectively.

[15] The only points AISI raises that might conceivably be considered new are (1) a consultant's comments on the Schwartz and Marcus reanalysis of the London mortality data (Pet. at 30 n. 31) and (2) an argument that EPA relied inappropriately on a "conservative assessment of lung function/particle relationship" from the Dockery study (*id.* at 33–36). The consultant's comments on the Schwartz and Marcus paper, however, essentially repeat arguments that were raised previously by AISI and its consultants, taken into account in the preamble to the final rule (52 FR 24650, col. 1), and discussed in detail in the Response to Comments (*see, e.g.*, RTC IV–J–6 ##4–5). Moreover, the Schwartz and Marcus paper itself was a staff analysis responding to points raised previously by AISI and others during the original comment period on the proposed standards (52 FR 24650, col. 1; CDA at A–2, A–14; SPA at 20–21); as such, it was consistent with previous analyses and served largely to confirm conclusions reached in published reports (*see, e.g.*, SPA at 21–22, 40–41; CDA at 3–9; RTC IV–J–19 #4). The process of taking comments, responding to them, taking further comments on the responses, responding to the further comments, and so forth must come to an end at some point. In the circumstances, I would give the consultant's comments relatively little weight even if they had presented new information.

As to the "conservative assessment of lung function/particle relationship" AISI cites, that particular element of the analysis was not used to justify setting the 24-hour standard at the lower bound of the proposed range as opposed to a higher level (which I chose to do for other reasons, as discussed in the preamble and related documents); rather, it was used to help assess whether an even more stringent standard (*i.e.*, one *below* the lower bound of the proposed range) might be necessary to protect against lung-function changes in children (*see* 52 FR 24643, cols. 2–3). For that purpose, a "conservative" (precautionary) approach to estimating the health risks was appropriate. My conclusion was that even this conservative analysis suggested that a more stringent standard was unnecessary (*id.*). Had I adopted AISI's less-conservative interpretation of the data, my conclusion would have been the same.

[16] This omission is especially noteworthy because the preamble to the final rule cited these documents repeatedly; indicated that I had "*adopted* the recommendations and supporting reasons contained in the staff paper and addendum and the CASAC closure statements"; and noted that, rather than repeat those discussions at length, the preamble discussion would focus primarily on considerations that most influenced my selection of particular options or that differed in some respect from those that influenced the staff's or CASAC's recommendations (52 FR at 24638, col. 3; emphasis added).

[17] One example of this is particularly striking. AISI asserts that comments on the Schwartz and Marcus reanalysis of the London mortality data were not "reflected, much less rebutted, in the preamble" (Pet. at 30 n. 31). Nowhere does AISI acknowledge that EPA responded to the comments in detail in its Response to Comments (*see e.g.*, RTC IV–J–6 #4) or attempt to rebut EPA's responses.

[18] My predecessor, having himself met with Professor Lawther and representatives of the steel industry, reached a similar conclusion in response to allegations of bias in the staff work on which the proposed revisions were based. *See* Letter from William D. Ruckelshaus to Rep. Lyle Williams, Nov. 29, 1983, at 2 (Docket A–79–29, II–C–13).

response to public and CASAC comments. The CASAC meetings, in particular, provided an opportunity for intensive discussions of pertinent health studies, including discussions with Professor Lawther and other authors of key studies.

CASAC also rendered its independent opinion on the quality and objectivity of the various staff documents. It concluded, unanimously, that the criteria document addendum, together with the 1982 criteria document, represented a "scientifically balanced and defensible summary of the extensive scientific literature * * *" (52 FR 24658, col. 1) and that the staff paper addendum was "consistent in all significant respects with the scientific evidence * * *" and provided "the kind and amount of technical guidance that will be needed to make appropriate revisions to the standards" (52 FR 24660, col. 1).[19]

The several opportunities for public comment on the proposed rule, of course, provided a further check against error in EPA's treatment of the health evidence. Indeed, then-Administrator Ruckelshaus chose to propose "ranges" of possible standard levels precisely "to air the issues and uncertainties fully and to encourage broad public participation and comment * * *" (49 FR 10416, cols. 2–3, 10417, col. 2).

Finally, CASAC's views on the key health studies, the staff assessments, and the implications of both for standard-setting were transmitted directly to me, so that I had the benefit of this independent advice in resolving matters that involved conflicting opinions. As discussed in the preamble to the final rule and in the Response to Comments, my decision was fully consistent with CASAC's advice.

At bottom, AISI's assertion that my decision gave "undue weight" to certain studies means simply that it and its consultants disagree with my conclusions as to which studies are key and how they should be interpreted. AISI in effect urges me to disregard studies suggesting the possibility of health risks at pollution levels below those at which there is a virtually unanimous consensus that effects are likely to occur. *See, e.g.,* Pet. at 31–32 (reanalyses of London mortality data). Given the precautionary nature of EPA's task under the statute, however, I cannot ignore studies suggesting the real possibility of health effects below those levels, particularly where the affected population is large and the health effect in question involves death or serious illness. Such studies may well be suggestive rather than conclusive, flawed rather than perfect, and susceptible to more than one interpretation. Thus, there will ordinarily be a degree of uncertainty about their significance and a range of scientific opinion about the conclusions that may be drawn from them. *See Lead Industries,* 647 F.2d at 1154–55 nn. 48–50, 1160.

In this case, AISI and others argued against reliance on such studies; CASAC advised reliance on them and recommended standards at the lower ends of the proposed ranges; and environmental groups and others argued that the studies required standards *below* the proposed ranges. Under the statute, I must act even where there is no consensus on such matters and, in doing so, err on the side of caution. *Lead Industries,* 647 F.2d at 1154–55. Consistent with CASAC's advice and the precautionary nature of my task, I took the studies into account and set standards which, in my judgment, allow an adequate margin of safety against the risks they suggest.

None of the points AISI raises concerning EPA's treatment of the health evidence leads me to believe that the rulemaking should be reopened to reconsider those decisions.

D. Failure to Consider Intermediate Levels

AISI further argues that I should exercise my discretion to reconsider because EPA failed to consider the option of setting primary standards at intermediate levels within the proposed ranges, focusing again on the preamble to the final rule and asserting that it contains "not one word" about the acceptability of levels between the lower and upper bounds of the ranges (Pet. at 37–39).

This argument is factually incorrect; as discussed below, EPA did consider the possibility of setting standards at intermediate levels. More broadly, the argument misconceives the nature of my statutory task. Section 109(b) of the Act requires me to set primary standards which, in my judgment, are requisite to protect the public health with an adequate margin of safety. If I find, based on my assessment of the pertinent health evidence, that a 24-hour standard of 150 ug/m^3 is necessary for that purpose, no elaborate analysis is needed to conclude that standards set at higher levels would provide less protection than I had found to be necessary. It is enough if EPA has aired the issue fully and I have taken into account any information and arguments purporting to how that the standard I believe to be necessary is not, in fact, necessary.

There can be no doubt that the question of intermediate levels was fully aired in the rulemaking. As noted previously, EPA's proposal to revise the particulate standards identified "ranges" of alternative standard levels from which final standards would be selected. Although then-Administrator Ruckelshaus stated his inclination (in the case of primary standards) to select standards from the lower portions of these ranges, he specifically solicited public comment on the issue of what standard level within each of the ranges would provide an adequate margin of safety given the health risks suggested by the available scientific information (49 FR 10416, cols. 2–3, 10417, col. 2).[20] In other words, he sought comment on all levels in the proposed ranges, including the lower and upper bounds and all intermediate levels. A number of commenters responded by arguing for standards at levels between the lower and upper bounds.[21]

In reaching my final decision, I considered the possibility of setting standards at intermediate levels and concluded that the standards should be set at the lower bounds of the proposed ranges to provide adequate margins of safety against serious health effects. With regard to the 24-hour standard, for example, the preamble to the final rule unequivocally states my conclusions (1) that a standard set at the lower bound of the proposed range (150 ug/m^3) is "necessary" to provide an adequate

[19] *See also* 52 FR at 24655, 24658 (quality of 1982 criteria document and 1982 staff paper).

[20] In this regard, AISI seems to misconceive the significance of the proposed ranges. The most recent staff and CASAC assessments of the health evidence did no necessarily leave me free to select standards from any portion of the ranges, as AISI seems to imply (Pet. at 37). Though it can be said that all levels within the ranges would have provided "some" margin of safety against the pertinent health risks (*see* 49 FR 10415, cols. 1–2), my task under the statute was to select levels that would provide an "adequate" margin of safety, considering such factors as the nature and severity of the health effects involved the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed (*id.* at 10410, col. 1). Neither the staff nor CASAC ever indicated that all levels included in the ranges would satisfy the statutory requirement. Indeed, CASAC indicated that the more recent health data suggested the need to focus attention on primary standards "at or perhaps below" the lower ends of the proposed ranges and ultimately recommended that I consider setting the revised standards at the lower ends of those ranges (52 FR 24660–61).

[21] *See, e.g.,* comments of San Antonio Manufacturers Association, Docket A–82–37, IV–D–33 (recommending 24-hour standard of 200 ug/m^3, annual standard of 55 ug/m^3); comments of Noranda Aluminum, Inc., Docket A–82–37, IV–D–99 (24-hour standard of 200 ug/m^3, annual standard of 60 ug/m^3); comments of Shell Oil Company, Docket A–82–37, IV–D–230 (24-hour standard of 175 ug/m^3, annual standard of 55 ug/m^3).

margin of safety against premature mortality and aggravation of bronchitis; (2) that such a standard would appear to provide adequate protection against other less-certain risks, including lung-function degradation in children; and (3) that "standards set at a somewhat higher level would * * * present an unacceptable risk of premature mortality and allow the possibility of more significant [lung function] changes." 52 FR 24643 (col. 3). *See also* 52 FR 244644–45 (annual standard). EPA also considered and responded to the various public comments suggesting that either or both of the primary standards be set at various levels between the lower and upper bounds of the proposed ranges. *See, e.g.,* RTC IV-D-33 ## 2a, 3a; RTC IV-D-99 #5; RTC IV-D-230 §§ 2, 4.

In short, EPA aired the possibility of setting standards at intermediate levels fully in the rulemaking, and I gave appropriate consideration to that possibility before reaching any final decision. Although AISI disagrees with the decision, it has presented no new, relevant information suggesting that I should have selected higher levels for the 24-hour and annual standards. Accordingly, I see no reason to reopen the rulemaking to reconsider this point.[22]

II. Issuance of Control Techniques Information

In addition to petitioning for reconsideration of the PM_{10} standards, AISI alleges that "EPA has not fulfilled its obligation to provide the States with up-to-date information on air pollution control techniques" (Pet. at 39).[23] This argument is simply wrong.

AISI apparently contends that a revised control techniques document must be issued each time a criteria document is revised. *See* Pet. at 40 n. 52. Section 108(b)(1) states that "[s]imultaneously with the issuance of [air quality] criteria under subsection (a) of this section, the Administrator shall . . . issue to the States and appropriate air pollution control agencies information on air pollution control techniques." 42 U.S.C. 7408(b)(1). Whether or not this requirement applies to revisions (as opposed to initial issuance) of criteria documents, EPA in fact issued a comprehensive control technology document ("CTD") for PM_{10} when it issued the revised criteria document and published proposed PM_{10} standards in 1984.[24] The Act also states: "The Administrator shall from time to time review, and *as appropriate*, modify, and reissue any criteria or information on control techniques issued pursuant to this section." Section 108(c), 42 U.S.C. 7408(c) (emphasis added). As the statutory language makes clear, it is for the Administrator to determine when the modification or reissuance of such material is appropriate. This is a matter left to his discretion. *See Consolidation Coal Co.* v. *Costle,* 483 F.Supp. 1003 (S.D. Ohio 1979) (Administrator did not abuse his discretion in refusing to expedite schedule for review and revision of sulfur dioxide criteria). *Cf. Environmental Defense Fund* v. *Thomas, 27 ERC 2008, 2017 (S.D.N.Y. 1988) ("revision and publication of sulfur oxide pollutant standards falls within the discretion of the Administrator").*

During the past decade the Agency has stressed the need to control nontraditional sources, as well as the more traditional industrial sources of particulate matter emissions. EPA has made voluminous amounts of material on control techniques for both traditional and nontraditional sources (including unpaved roads) available to the States since issuance of the PM_{10} CTD.[25] The Agency is continuing to study and provide guidance on PM_{10} control techniques, including information on the control of fine particulate emissions from nontraditional sources.[26] The issuance of a newly-packaged CTD is not necessary. What *is* helpful to the States is the publication of up-to-date *information* on control techniques, which the Agency has provided in the past and will continue to provide in the future.

III. Request for Stay of Implementation

The petitioner also requests that EPA stay implementation of the revised PM_{10} standards pending reconsideration of the standards or, in the alternative pending judicial review. Because I am denying AISI's petition for reconsideration in its entirety, a stay pending reconsideration is unnecessary, and I have decided that a stay pending judicial review would not be in the public interest. The revised standards are designed to protect human health and welfare. Delay in their implementation would be contrary to these goals. It would also foster an atmosphere of confusion because the States currently are engaged in revising their PM_{10} State Implementation Plans ("SIPs") and submitting them to EPA for approval under section 110 of the Act, 42 U.S.C. 7410. Staying the standards would disrupt this process.[27]

[22] AISI also suggests that the staff may not have provided me a thorough analysis of alternatives, citing and comparing "excerpts" from briefing papers prepared for my predecessor and me at different stages of the rulemaking process (Pet. at 37–38). The single document AISI cites of those used to brief me was prepared more than a year before my final decision, and AISI offers no support for its apparent assumption that the document is representative of the various briefing papers and other information presented to me in the overall course of my decision-making on the standards. More fundamentally, the means by which my staff and I communicated with each other in our internal deliberations are both privileged and irrelevant. What matters is whether my decision was soundly based and adequately explained. I believe it was.

[23] AISI does not suggest that this serves as adequate grounds to reconsider the standards or implementing regulations. Rather, it appears to ask the Agency to make available additional information on PM_{10} control techniques. EPA has provided such information in the past and will continue to do so in the future.

[24] The CTD was actually published in September 1982, and distributed to the States before the proposal of the PM_{10} standards. As a formal matter, however, the Agency deems a document in the **Federal Register**. *See* section 108(b) (1) and (d), 42 U.S.C. 7408(b) (1) and (d).

[25] A number of these reports and other materials are referenced in the Agency's "PM_{10} SIP Development Guideline," which was published in June 1987 and mailed to approximately 300 State and local air pollution control agencies shortly after the final PM_{10} implementation regulations were published on July 1, 1987. (The July 1 **Federal Register** notice references the PM_{10} SIP Development Guideline. 52 FR 24672).

In addition, EPA has published and made available through the National Technical Information Service ("NTIS"), to which State and local agencies have access, numerous studies on control techniques for such sources of fugitive dust as industrial processes, unpaved roads, storage piles, construction sites and mines. A report published by the Agency in 1986 summarized the results of several of these studies, and provided cost information on various control techniques. See "Identification, Assessment and Control of Fugitive Particulate Emissions," EPA-600/8-86-023 (August 1986).

EPA also held four workships across the country in August 1987 to brief State and local pollution control officials on implementing the PM_{10} NAAQS standards. A list of reference materials on PM_{10} control technology for point sources, fugitive sources and woodstoves was made available at these workshops. These materials were mailed to anyone who requested copies.

[26] The Agency recently has published and distributed to the States a document summarizing technical and regulatory information on PM_{10} controls for a variety of nontraditional sources. See "Control of Open Fugitive Dust Sources," EPA-450/3-88-008 (September 1988). Among the technical matters discussed in this document are demonstrated control techniques for PM_{10} emissions and, for the various techniques, (1) procedures for estimating control-effectiveness; (2) estimated effectiveness; (3) estimated costs and cost-effectiveness; and (4) procedures for estimating costs and cost-effectiveness.

[27] Moreover, even if the Agency were required to change the PM_{10} standards or implementing regulations as a result of judicial review, the States would be free to amend their SIP submissions. The SIPs may also be revised after they are approved.

AISI has not made any arguments that would lead me to seriously question the correctness of my decisions in promulgating the PM_{10} NAAQS and implementing regulations. For all the above reasons, its request for a stay is denied.

Dated: December 22, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-29961 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 50, 51, 52, 53, and 58

[FRL-3499-5]

National Ambient Air Quality Standards for Particulate Matter; Regulations for Implementing Revised Particulate Matter Standards

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration.

SUMMARY: The American Mining Congress ("AMC") has petitioned the Environmental Protection Agency ("EPA" or "the Agency") for reconsideration of the national ambient air quality standards for particulate matter promulgated under section 109 of the Clean Air Act on July 1, 1987 (52 FR 24634) and of regulations for implementing the standards promulgated the same day (52 FR 24672). The AMC petition asks that EPA make several "technical" changes in the standards and implementing regulations: (1) To provide for use of a geometric rather than an arithmetic mean in evaluating compliance with the annual-average standards; (2) to authorize adjustments for ambient temperature and pressure in calculating and reporting particulate matter sampling results; and (3) to authorize discounting of sampling results during periods of high wind speed. AMC also asks EPA to make what it calls a "policy" change to provide that the prevention of significant deterioration ("PSD") increments for particulate matter specified in section 163 of the Act be defined and measured by the particulate matter indicator (generally referred to as "PM_{10}") that was adopted for other purposes in the standards and implementing regulations.

After careful review of AMC's petition, EPA has concluded that it should be denied in full. Most of the points AMC raises were made and considered in the rulemakings at issue; as to the others, AMC has neither documented them nor shown that it was impracticable to raise them during the rulemaking proceedings. Accordingly, the Administrator has concluded that AMC's arguments do not meet the applicable criteria for reconsideration under the Clean Air Act, and that reopening the rulemakings to consider them further is unwarranted.

ADDRESSES: Material relevant to EPA's review and revision of the particulate matter standards can be found in Public Docket No. A-82-37, and material relevant to the promulgation of the implementing regulations (including issues involving the prevention of significant deterioration program) can be found in Public Docket A-82-38. The dockets are available for public inspection between 8:00 a.m. and 3:00 p.m. on weekdays at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC, telephone (202) 382-7549.

FOR FURTHER INFORMATION CONTACT: For information relating to the particulate matter standards, contact Mr. John H. Haines, Ambient Standards Branch (Mail Code 12), Air Quality Management Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5533. For information relating to the PSD increments for particulate matter, contact Mr. Gary McCutchen, Non-Criteria Pollutant Programs Branch (Mail Code 15), Air Quality Management Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5592.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA published final revisions of the national ambient air quality standards ("NAAQS") for particulate matter, originally adopted in 1971 under section 109 of the Clean Air Act (42 U.S.C. 7409). On the same day, EPA published final revisions of the regulations for implementing the standards (52 FR 24672) and of various related regulations. These actions were the products of a lengthy and exhaustive administrative process, formally commenced in 1979 when EPA announced that it was (1) revising the air quality criteria underlying the 1971 standards and (2) reviewing those standards for possible revisions (44 FR 56731, Oct. 1, 1979).

The process began with preparation of a revised criteria document under section 108 of the Act (42 U.S.C. 7408).[1] With the endorsement of the Clean Air Scientific Advisory Committee ("CASAC")[2] of EPA's Science Advisory Board, EPA had decided to revise the criteria document for particulate matter concurrently with that for sulfur oxides and to produce a combined document addressing both pollutants. After review of successive drafts of the document by CASAC and the public, EPA made the revised criteria document available to the public in 1982.

EPA staff also prepared a "staff paper" evaluating and interpreting the available scientific and technical information most relevant to review of the standards for particulate matter and presenting staff recommendations on revision of the standards. Drafts of this paper were also reviewed by CASAC and the public, and the final paper was issued in 1982.

In March 1984, EPA proposed a number of revisions of the existing standards (49 FR 10408, March 20, 1984).[3] Extensive comments were received on the proposal, both in writing and in testimony at a public hearing. CASAC also held a public meeting to review the proposal and to discuss the relevance of newly available health studies. On CASAC's recommendation, EPA prepared addenda to the criteria document and staff paper to evaluate the new studies. EPA also announced a supplementary period for public comment on the implications of the new studies and of drafts of the two addenda for its decision on revision of the standards. The final addenda, revised to reflect CASAC and public comments, were published in 1986.

As noted, the final revisions of the particulate matter standards were published on July 1, 1987 (52 FR 24634), together with revisions of EPA's regulations for implementing the standards (52 FR 24672) and of various related regulations. The preamble to the revised standards responded to the most important comments received on the proposal, and a more comprehensive compilation of comments and EPA responses to them (hereafter "Response

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[1] A more detailed description of the process EPA followed in revising the criteria document and standards for particulate matter appears in the preamble to the revised standards (52 FR 24636-37).

[2] CASAC is a standing committee of scientists and engineers external to the federal government, established under section 109(d) of the Clean Air Act to advise the Administrator on the scientific basis for ambient air quality standards.

[3] EPA proposed corresponding revisions of the regulations for implementing the standards on April 2, 1985 (50 FR 13130).

to Comments" or "RTC") was placed in the docket for the rulemaking.[4]

The American Mining Congress ("AMC") and other interested parties filed a total of five petitions for judicial review of the revised standards and related regulations. On December 7, 1987, AMC filed the petition for reconsideration (hereafter "Pet.") to which this notice responds. The American Iron and Steel Institute ("AISI") also filed a petition for reconsideration, to which EPA is responding separately. The fine petitions for judicial review have been consolidated into one case, *Natural Resources Defense Council* v. *Thomas*, D.C. Circuit No. 87-1437, which has been held in abeyance pending EPA's response to the AISI petition for reconsideration.

Criteria for Reconsideration

AMC seeks "administrative reconsideration of certain aspects of the final rules issued by [EPA] * * * relating to promulgation and implementation of revised [NAAQS] for particulate matter." (Pet. at 2). AMC does not state the statutory basis for its request for reconsideration. Presumably, the request was made pursuant to section 307(d)(7)(B) of the Clean Air Act, as section 307(d) is the provision under which the rulemaking was conducted.[5] Section 307(d)(7)(B) limits petitions for reconsideration both in time and scope. Specifically, it provides that EPA shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the **Federal Register**, *see* section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule. An objection is of central relevance only if it provides substantial support for the argument that the standards should be revised. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653-54 (December 11, 1980), and decisions cited therein.

Although section 4(d) of the Administrative Procedure Act (APA) also establishes a right to petition for issuance, amendment, or repeal or a rule,[6] that provision almost certainly does not apply to petitions for reconsideration of actions to which under the rulemaking provisions of section 307(d) of the Clean Air Act apply.[7] In any event, the criteria for evaluating such petitions under the APA are essentially the same as those for section 307(d)(7)(B) petitions. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653-54, and decisions cited therein.

Discussion

Congress sought to bring about a measure of finality in rulemakings under the Clean Air Act by requiring interested parties to raise all available objections during the rulemaking proceedings or not at all. The only exception provided is for objections based on "new information" of the type specified in section 307(d)(7)(B). *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653-54 (December 11, 1980), and decisions cited therein.

With the exception of its comments regarding periods of high wind speed, AMC simply reiterates comments that were made and considered in the rulemakings at issue. As to the windspeed issue, AMC has neither documented its objections nor shown that it was impracticable to raise them during the rulemaking proceedings.[8] Further, I am not persuaded by any of the old or new arguments AMC raises. Accordingly, I conclude that no part of AMC's petition meets the criteria for reconsideration in section 307(d) of the Act, and that reopening the rulemaking as a discretionary matter is not warranted.

I. *Technical Issues*

A. *Arithmetic Versus Geometric Mean*

AMC asks EPA to reconsider its selection of an arithmetic mean for evaluating compliance with the annual average NAAQS and to require instead the use of a geometric mean (Pet. at 3-5). In support of this request, AMC argues that the geometric mean is a better statistical measure and, in particular, is less sensitive to "aberrational" high values (*id.* at 4-5).

AMC makes no claim that these arguments are new, or that it was impracticable to raise them in the rulemaking. Indeed, AMC made virtually identical arguments in its comments on the rulemaking proposal (Docket A-82-37, IV-D-255 ##11-12; Docket A-83-48, Item IV-D-46 at 43-46), and similar arguments were made by a number of other commenters. Thus, the arguments do not meet the criteria for reconsideration under section 307(d) of the Clean Air Act.

Nor was there any failure to consider this issue fully in the rulemaking. The rationale for my decision to adopt an arithmetic mean, as recommended by EPA staff and CASAC, is explained in the EPA staff paper (at 80-81) and in the preamble to the final rule (52 FR 24640). EPA considered the comments of AMC and others carefully and responded to them both in the preamble (*id.* at 24653) and in its detailed Response to Comments (*e.g.*, Docket A-82-37, RTC IV-D-92 #1; IV-D-221 #14; IV-D-247 #7; IV-D-225 #12).

For these reasons, I see no reason to reopen the rulemaking based on the objections to selection of an arithmetic mean presented in AMC's petition.

B. Adjustments for Temperature and Pressure

The procedures specified for determining PM_{10} concentrations in the ambient air require correction of sampler measurements to "reference" temperature and pressure. 40 CFR Part 50, App. J. Arguing that these procedures yield calculated PM_{10} concentrations that overestimate actual PM_{10} exposures at high altitudes as compared to sea-level exposures, AMC asks EPA to allow adjustments for ambient temperature and pressure in calculating and reporting PM_{10} sampling results (Pet. at 5-7).

[4] Docket A-82-37, Item V-C-1. A similar procedure was followed for public comment on the proposal to revise the regulations for implementing the standards.

[5] Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), states: "Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States Court of Appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months."

[6] Section 4(d) of the APA, 5 U.S.C. 553(e).

[7] Section 307(d)(1)(N), 42 U.S.C. 7607(d)(1)(N) states: "The provisions of section 553 through 557 * * * of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to action to which this subsection applies."

[8] Moreover, AMC delayed five months before filing its petition. Such a delay is inconsistent with the principle of finality embodied in the mandatory reconsideration provision of section 307(d)(7)(B). The five-month delay, coupled with the utter lack of explanation for the delay, is further support for my conclusion that the petition does not meet the requirements for reconsideration under section 307(d)(7)(B).

Again, AMC makes no claim that its arguments on this issue are new, or that it was impracticable to raise them in the rulemaking. In fact, nearly identical arguments were raised during the rulemaking (Docket A-82-37, Item IV-D-327). Thus, AMC's arguments do not meet the criteria for reconsideration under section 307(d) of the Clean Air Act.

As indicated in EPA's discussion of this issue in the Response to Comments (Docket A-82-37, RTC IV-D-327 #3), the issue was not raised during the initial comment period on the rulemaking proposal, was not within the scope of the subsequent comment period, and had not been considered in the criteria document or by CASAC. EPA nonetheless addressed the issue by conducting a literature survey and assessment of the effect of altitude on the dosimetry of ambient aerosols (Docket A-82-37, Item IV-A-13), and it responded in detail to the arguments that had been raised (Docket A-82-37, RTC IV-D-327 #3). Among other things, EPA noted that the corrections for pressure were supported by concerns about possible health effects in exercising individuals and in individuals with compromised lung capacity; that (as is true of AMC's petition) the commenters had not discussed the merits of the correction for temperature; that eliminating the correction for temperature would increase the stringency of the standards in colder areas and decrease it in warmer areas; and that the levels of the standards in effect assumed the use of such corrections. For these and other reasons specified in the response, EPA concluded that it would be unwise to change its longstanding procedure at that time and indicated that the issue would receive further consideration during the next review of the particulate matter standards.

As indicated above, AMC does not claim that its arguments on this issue are new. Nor does AMC's petition discuss, much less seek to refute, the points made in EPA's Response to Comments on the issue. Because EPA has already considered and responded to the arguments AMC raises, I see no reason to reopen the rulemaking on this issue.

C. Discounting of PM_{10} Concentrations During High Wind Speeds

AMC asks EPA to amend 40 CFR Parts 53 and 58 "to allow discounting of PM_{10} concentrations during periods of high wind speed; *e.g.*, where the average wind speed exceeds 12 mph for more than 10% of the applicable monitoring period" (Pet. at 8). AMC furnishes no support or documentation for its arguments. It simply states in conclusory fashion that in certain areas of the country frequent dust episodes arise from sources that are naturally occurring and not subject to control. Similarly, AMC asserts in a conclusory manner that EPA's approach to discounting PM_{10} concentrations during high wind speeds is too limited and constrained to respond to this alleged problem.

AMC does not contend that it was impracticable to raise these arguments during the rulemaking, when the Agency amended Parts 53 and 58, nor that the petition is based on information that was not available during the rulemaking. In fact, there was full opportunity for comment on this issue. Yet AMC failed to comment on the wind-speed issue then and raises it now for the first time. Thus, AMC's arguments on this issue do not meet the criteria for reconsideration under section 307(d) of the Clean Air Act.

Nevertheless, I believe it appropriate to respond briefly to AMC's arguments, because they were not raised during the rulemaking and EPA therefore did not have an opportunity to state its views on this issue. EPA has already adopted a reasonable remedy for high particulate matter readings caused by high wind speeds, in Appendix K to 40 CFR Part 50. Section 2.4 of Appendix K provides a mechanism for adjustment of air quality data upon the occurrence of an "exceptional event," which is defined as "an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location." EPA has also issued guidance on when air quality data affected by high wind speeds may be discounted. *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events*, EPA-450/4-86-007 (July 1986). This guidance allows State and local air pollution control agencies to "flag" data they believe to have been caused by naturally occurring dust during periods of high wind speed.[9] *Id.* at 5-6. The data may then be excluded from any regulatory use, such as a determination of whether the area attains the NAAQS. *Id.* at 3. The guidance also provides specific criteria for the identification of exceptional events, including high wind speeds.[10] Thus, a system already exists which allows EPA and State air pollution control agencies to judge the validity of high ambient air quality readings during periods of high winds.

For the above reasons, I conclude that further amendment of 40 C.F.R. Parts 53 and 58 to provide for discounting of PM_{10} air quality data during periods of high wind speed is not justified.

II. *Policy Issue—PSD Increments*

AMC also petitions EPA to amend 40 CFR Parts 51 and 52 to provide that the numerical values of the prevention of significant deterioration ("PSD") increments for particulate matter specified in section 163(b) of the Act be defined and measured by the PM_{10} indicator. AMC argues that (1) Congress did not intend the particulate matter increments in section 163 to be defined in terms of total suspended particulate ("TSP"), (2) the decision in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1980), suggests that EPA could simply retain the numerical values for the section 163 increments but redefine them in terms of PM_{10}, (3) retaining the TSP increments is unlawful because there no longer is a TSP NAAQS, (4) the failure to adopt AMC's suggested approach will prove burdensome to the mining industry, and (5) EPA has violated the settlement agreement in *Chemical Manufacturers Association* v. *EPA*, No. 79-1112 (D.C. Cir.).

AMC and others raised all of these arguments during the comment period (*see, e.g.*, Docket A-83-48, Item VI-D-46; Docket A-82-38, Items IV-D-59, IV-D-35). Once again, AMC makes no claim that any of the arguments it now raises are new, that it was impracticable to raise them in the rulemaking, or that it is providing any new information on this issue. Thus, none of these arguments meets the criteria for reconsideration under section 307(d) of the Clean Air Act. Moreover, EPA carefully considered and fully responded to these arguments in the preamble to the regulations implementing the PM_{10} standards (52 FR 24672, 24699-24702) and in its detailed Response to Comments on the April 1985 proposal to revise those regulations (Docket A-82-

[9] AMC's suggested approach, on the other hand, would draw no distinction between high particulate matter readings caused by naturally occurring windblown dust and high readings caused by industrial source stack emissions or fugitive emissions (such as coal dust). AMC does not advance any reason why high particulate matter ambient readings due to industrial emissions should be discounted merely because the wind is blowing hard.

[10] While the guidance's definition of high winds is significantly higher than the 12 mph figure suggested by AMC, EPA's figures are simply guidance and not rigid cutoffs. State and local agencies are still free to flag data gathered during periods of wind speed lower than that mentioned in the EPA guidance. EPA would then consider whether the data were truly caused by an exceptional event, and whether they should be excluded from regulatory use. Moreover, the 12 mph cutoff suggested by AMC makes little sense, because many areas of the country routinely experience winds greater than that speed.

38, Item V-C-1 at 13-22). Therefore, I conclude that none of these arguments justifies reopening the rulemaking as a discretionary matter.

Dated: December 22, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-29960 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300194; FRL-3499-9]

Butanoic Anhydride and Pine Oil; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document clarifies the intent of two regulations currently listed in 40 CFR Part 180. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia C. Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: This document amends 40 CFR Part 180 by revising § 180.1034 (butanoic anhydride) and § 180.1035 (pine oil) to clarify that honey and beeswax are the raw agricultural commodities for which residues of the named chemicals are exempted from the requirement of a tolerance.

No new regulatory requirements are being added. The changes being made are merely technical amendments to produce conformity with other regulations in Part 180.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR Part 180:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1034 is revised to read as follows:

§ 180.1034 Butanoic anhydride; exemption from the requirement of a tolerance.

The insect repellent butanoic anhydride is exempted from the requirement of a tolerance for residues in the raw agricultural commodities honey and beeswax, when present therein as a result of its application in an absorbent pad over the hive to repel bees during the harvesting of honey.

3. Section 180.1035 is revised to read as follows:

§ 180.1035 Pine oil; exemption from the requirement of a tolerance.

Pine oil is exempted from the requirement of a tolerance for residues in the raw agricultural commodities honey and beeswax, when present therein as a result of its use as a deodorant at no more than 12 percent in formulation with the bee repellent butanoic anhydride applied in an absorbent pad over the hive.

[FR Doc. 88-29953 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 8E3583/R989; FRL-3499-7]

Pesticide Tolerances For Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide permethrin and the sum total of its metabolites in or on the raw agricultural commodities bulb onions and garlic. The Interregional Research Project No. 4 (IR-4) petitioned for these tolerances.

EFFECTIVE DATE: December 29, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 8E3583/R989], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of September 21, 1988 (53 FR 36588), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3583 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of New York and Oklahoma.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposed the establishment of a tolerance for the residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)-methanol (3-PBA) in or on the raw agricultural commodities dry bulb onions and garlic at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378(b) is amended by adding and alphabetically inserting the listing for the raw agricultural commodities dry bulb onions and garlic, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Garlic	0.1
* * * * *	
Onions, dry bulb	0.1
* * * * *	

[FR Doc. 88-29958 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 185

[OPP-300193; FRL-3499-8]

Inorganic Bromides; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document clarifies the intent of a food additive regulation for inorganic bromides. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia C. Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1806.

SUPPLEMENTARY INFORMATION: This document amends 40 CFR Part 185 by amending § 185.3700(a) to remove the reference to authorized use of 1,2-dibromo-3-chloropropane (DBCP) on raw agricultural commodities and, further, to remove the reference in § 185.3700(w) to the regulation 40 CFR 180.151.

All registrations for use of the nematocide DBCP in the production of food commodities were cancelled by December 31, 1986; and all tolerances for residues of inorganic bromides in or on raw agricultural commodities grown in soil treated with DBCP were revoked by a regulation published in the **Federal Register** of January 15, 1986 (51 FR 1791). However, the reference in § 185.3700(a) (formerly 21 CFR 193.250(a) prior to recodification published in the **Federal Register** of July 29, 1988 (53 FR 24666)) to DBCP was overlooked and not removed at that time.

The reference in 40 CFR 185.3700(w) to 40 CFR 180.151 is in error. There is no relationship between § 180.151, which regulates residues of ethylene oxide, and § 185.3700(w), which pertains only to residues of inorganic bromides. Therefore, § 185.3700(w) is being amended to remove the reference to 40 CFR 180.151. Section 185.3700(w) is being amended further to remove the reference therein to paragraph (b) of the same section, as paragraph (b) is "reserved" and lists no residue levels.

No new regulatory requirements are being added. The changes being made are merely technical amendments to achieve conformity with other regulations in Part 185.

List of Subjects in 40 CFR Part 185

Administrative practice and procedure, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR 185.3700:

1. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 185.3700 is amended in paragraph (a) by removing the phrase "or the nematocide 1,2-dibromo-3-chloropropane" and by revising paragraph (w), to read as follows:

§ 185.3700 Inorganic bromides.

* * * * *

(w) Where tolerances are established under sections 408 and 409 of the FFDCA on both the raw agricultural commodities and processed foods made therefrom, the total residues of inorganic bromides in or on the processed food shall not be greater than those designated in paragraph (a) of this section, unless a higher level is established elsewhere in this Part or in Part 180.

[FR Doc. 88-29954 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

Targeting in the Income and Eligibility Verification System for the Aid to Families With Dependent Children Program and the Adult Assistance Programs

AGENCY: Family Support Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim final rule applies to State agencies administering Aid to Families with Dependent Children (AFDC) under Title IV-A and the Adult Assistance programs under Titles I, X, XIV, and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act. It rescinds the current requirement that a State must follow up on all information items received under the matching operations of its Income and Eligibility Verification System (IEVS). This interim final rule allows States to allocate their resources to those categories of information items which are most cost-effective for follow-up and establishes procedures for submitting follow-up plans for approval. In addition, this rule changes the timeliness standard for the completion of action from 30 to 45 days.

DATES: This interim rule is effective January 30, 1989; comments will be considered if we receive them no later than February 27, 1989.

ADDRESSES: Comments should be sent to the Administrator of the Family Support Administration, Attention: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Office of Family Assistance, Family Support Administration, 5th Floor, 370

L'Enfant Promenade, SW., Washington, DC 20447, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person below.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone 202-252-5116.

SUPPLEMENTARY INFORMATION: The Deficit Reduction Act of 1984 (DEFRA) amended titles I, IV-A, X, VIV, and XVI (AABD) to require that a State plan must provide that information necessary for verification of income and eligibility is requested and exchanged in accordance with a State system which meets the requirements of section 1137 of the Social Security Act. We refer to this procedure as the Income and Eligibility Verification System. (IEVS).

Current regulations at 45 CFR 205.56 require that State agencies must actually avail themselves of the information received from each data source by following up on all information items and initiating a notice of case action or an entry in the case record that no case action is necessary within 30 days.

Section 9101 of Pub. L. 99-509, the Budget Reconciliation Act of 1986, revised section 1137 to ensure that no State is required to follow up on all of the information items received to verify the eligibility of recipients. The House Report accompanying the legislation (House Report 99-727, July 31, 1986 (pages 424-425)) further states that IEVS data are to be targeted by States to those uses which are likely to be the most productive. Under this interim final rule, States will no longer be required to follow up on all information items, but may instead follow up on a smaller number based on an approved State follow-up plan which defines the information to be excluded and provides a convincing justification for that exclusion.

This rule also affects the follow-up of IEVS information under the Food Stamp and Medicaid programs. Follow-up of information items covering recipients of those programs who also receive AFDC or adult assistance benefits are covered under this rule. On February 2, 1988, the Food and Nutrition Service published in the **Federal Register** (53 FR 2817) the rules for targeting IEVS information items for Food Stamp recipients who are not covered under this rule. The Health Care Financing Administration will also publish rules or instructions for Medicaid recipients not covered under this rule.

Approval of State Follow-up Plan

Section 9101 of Pub. L. 99-509 provides that no State shall be required to use 100 percent of such information items to verify the eligibility of all recipients. Congress directed the Secretary of the Department of Health and Human Services and the Secretary of the Department of Agriculture to publish rules to ensure that States are afforded the flexibility to target their efforts to the most productive use. Congress specified that States must be permitted the flexibility to prioritize and target the follow-up of match information and encouraged to use tolerance levels as an efficient method of targeting scarce State resources. Accordingly, we have revised 45 CFR 205.56(a)(1) to allow States to choose a strategy of excluding from follow-up categories of information items which they believe are not cost-effective.

States which intend to exclude items from follow-up must submit a follow-up plan which specifies the categories to be excluded and provides a description of the criteria defining each category. For each category, the State must provide a reasonable justification explaining why the follow-up would not be cost-effective. A formal cost-benefit analysis is not required. States may find it preferable to base their justifications on the general experience of their program in following up on specific categories of information.

States have a great deal of flexibility in developing these criteria. States could, for example, use Quality Control studies or past IEVS experience to justify discontinuation of follow-up with respect to selected information items. They may develop dollar thresholds or other techniques to isolate information items most likely to be practical for follow-up. For example, suppose that analysis of past IEVS experience reveals that State administrative costs of follow-up for interest income are not justified for items of $10 or less. Accordingly, the State could develop a follow-up plan which selects (for follow-up) interest items greater than $10 and excludes the rest.

The exclusion criteria may also use case characteristics of assistance units. The State in the above example might also discover that follow-up of interest income of $30 or less is not practical for assistance units residing in rural areas. Accordingly, the State could develop methods to classify its assistance units as "rural" or "metropolitan" according to county of residence. The plan might then indicate that follow-up would be reserved for metropolitan assistance units with interest income greater than $10 and rural assistance units with interest income greater than $30.

Whatever method of justification is chosen, the State must consider the effects of overpayments and underpayments in the Food Stamp and Medicaid programs as well as AFDC cash benefits.

This rule will allow States to allocate their best efforts to those data sources which they believe provide the best leads to unreported income or resources. However, we wish to emphasize the utility of the quarterly match with the State Wage Information Collection Agency (SWICA) which provides leads to unreported wage income and the annual match with the Internal Revenue Service which provides leads to unreported resources. We believe that States will continue to find these two sources to be very cost-effective tools in reducing payment errors. Therefore, in the absence of substantial justification, these items would not be excluded.

A State may exclude duplicative information items from two data sources without written justification if these items had been previously followed up with other sources. They are:

(1) Unemployment compensation information items received from the Internal Revenue Service.

(2) Earnings information items received from the Social Security Administration.

The State must indicate in the follow-up plan that it intends to exclude these duplicative items. Information items in these categories which are not duplicative, but provide new information, as in the case of leads to earnings or unemployment compensation in other States, may not be excluded without the written justification.

The Secretary will approve all categories of a State follow-up plan for which a reasonable justification has been provided and will notify the State within 60 days of submission of the plan. Those categories approved by the Secretary constitute "an approved State follow-up plan" and are incorporated into the IEVS requirements under the State plan. The State will also be notified which categories have not been approved and the reason for the disapproval.

The State must follow up on all information items in categories which have not been approved, but may submit a new follow-up plan, revise categories of a current follow-up plan, or submit additional justification for cost-effectiveness at any time. To deviate from an approved follow-up plan or to follow up at a rate of less than 100

percent for categories which have not been approved by the Secretary raises a question of noncompliance as set forth in 45 CFR 201.6.

Approval of a State follow-up plan does not relieve the State of its responsibility for erroneous payments or the State's liability for those payments, as provided by the Quality Control (QC) requirements. In addition, exclusion of items under a State follow-up plan does not alter the present requirement to retain all information items for use in QC reviews. All information items must be readily available to QC staff, including those items not selected for follow-up.

Follow-up of Information Items

Since publication of the final IEVS regulation, we received comments which indicated some misunderstanding of the action necessary to follow up on information items. Therefore, we wish to emphasize here that "follow-up" refers to comparison of match information items with case file information (either in an automated or manual file) and a determination of further action, if necessary. There is no Federal requirement that States re-document case file information each time an information item is received.

Follow-up is considered complete when the State annotates the case record that no case action is necessary because the information item substantially conforms to the information in the case file, is excluded from follow-up by an approved State plan, or when any discrepancy arising from their comparison is resolved and the case file is annotated and the recipient notified of any case action. For example, if the local agency compares an interest income item with the case file and discovers that a bank account balance was documented at a previous redetermination, it is not necessary to re-contact the bank to document the most recent account balance. In such a case, the State may consider that the information item substantially conforms with case file information; follow-up is completed when the case file is annotated that no further case action is necessary.

We have not defined when an information item "substantially conforms" to the information in the case file. We believe that each State can best decide what information merits closer scrutiny and third-party contact.

In cases where the information item does not substantially conform to the information in the case file, follow-up will not be complete until the local agency has resolved the discrepancy. If further investigation reveals the existence of income or resources not previously considered in the determination of eligibility or payment amount and resolution results in a reduction or termination of assistance, the State must send the recipient the appropriate notice of case action. On the other hand, if resolution of the discrepancy does not affect eligibility or the amount of payment, the required follow-up is considered complete when the local agency documents the case file that no further case action is necessary.

Some States are concerned whether their current IEVS procedures meet the requirements for follow-up. In those States with advanced information systems, it may be possible to compare match information items against case folder information without case worker involvement. For example, assume a State has an automated system with data fields for unearned income. The State programs its computer to compare information items from the IRS data source to information in corresponding data fields and provide a listing of those recipients for whom IRS information does not substantially conform to case file information. Subsequently, caseworkers resolve all questions arising form these discrepancies and annotate the case files accordingly. Even though only a small number of cases was manually reviewed, we consider the State to have followed up on all items. In other words, automated comparison of information may be considered as follow-up even without physical inspection of the case folder.

In other States, physical examination of the case folder information may be necessary. However, States need not "re-invent the wheel" for each subsequent match. States may compile lists or retain documentation of resolution of discrepancies from previous matches, curtailing duplicate development where possible.

Follow-up and Applicants

Current regulations at 45 CFR 205.56(a)(1)(iii) provide that IEVS-obtained information received during the application period shall be used, to the extent possible, to make the initial determination of eligibility. This provision is not changed. The statute refers only to follow-up actions with respect to recipients, and, therefore, this rule is applicable only to recipient households. We carefully considered revising current regulations to extend follow-up requirements to applicants, but concluded that it was not in the best interest of the program to include information items received during the application period in this interim final rule.

The application period is particularly important in that the State conducts an intensive review of all of the factors of eligibility, including the economic circumstances of the household. Thereafter, periodic redeterminations tend to be somewhat less intensive with questions concentrating on whether a change in circumstances has occurred in the past few months or is expected to occur in the next few months. Moreover, redeterminations are also frequently conducted by telephone or mail or in group interviews. The application process is therefore crucial to the integrity of the program and all information items should be pursued and resolved to the extent possible prior to authorization of assistance.

However, States may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information requested on an applicant, but received after assistance is authorized, is considered as information regarding a recipient, and may therefore be excluded under an approved follow-up plan.

Timeframes for Action

Current regulations at 45 CFR 205.56(a)(1)(iv) require that the State will either initiate a notice of case action or make an entry in the case record that no case action is necessary within 30 days of the receipt of an information item. Completion of action may be delayed beyond 30 days on up to 20 percent of the total information items received, but only if third-party verification has been timely requested and not received. In these cases, appropriate action must be completed no later than the date of the next redetermination or other case action.

The House Report accompanying Pub. L. 99–509 referred to this 30-day timeframe as too restrictive and suggested a 45-day standard for completion of follow-up. We, therefore, have revised regulations at 45 CFR 205.56(a)(1)(iv) to allow a 45-day standard for follow-up. We will continue to allow completion of action to be delayed beyond this time limit on up to 20 percent of the information items selected for follow-up, but not beyond the date of the next case acting or redetermination, whichever is earlier. This is a maximum time period and does not preclude a State from setting shorter timeframes for action on information items from a particular data base.

Justification for Dispensing with Notice of Proposed Rulemaking

The Administrative Procedure Act, 5 U.S.C. 553(b)(A), provides an exception to notice and comment rulemaking requirements for rules of agency organization, procedure, or practice. We believe this rule can be characterized as procedural.

Section 402(a)(25) of the Social Security Act currently requires a State plan to provide for a system of income and eligibility verification in accordance with section 1137 of the Act. The primary effect of this rule is to implement a statutory change to section 1137 relaxing current verification procedures to allow States to determine which IEVS data is cost-effective for follow-up. In order to ensure that the State system is consistent with the statutory change, the rule requires the State to submit a plan amendment that includes a reasonable justification for excluding categories of information items from follow-up as not cost-effective. The plan amendment will be approved if the justification is provided. The rule does not prescribe criteria by which cost-effectiveness must be judged.

The rule also reflects Congress' intent that a State be provided more than the 30 days currently allowed by regulation to complete its follow-up on information received through IEVS. We have therefore amended current rules to extend the follow-up timeframe to 45 days. While we also view this provision as relaxing current procedural requirements, we recognize that it could be viewed as having a substantive impact on States. However, we believe notice and comment procedures need not be followed for this requirement, since to delay publication would be contrary to the public interest. The Administrative Procedure Act, 5 U.S.C. 553(b)(A), provides that where the Department for good cause finds that prior notice and public comment is unnecessary, impracticable or contrary to the public interest, it may dispense with that notice and public comment if it incorporates a brief statement in the interim final regulations of the reasons for doing so.

The Department finds that there is good cause to dispense with prior notice a public comment with respect to this change. We find that publication of this requirement in proposed form would be contrary to the public interest since it relaxes a restriction contained in current regulations and delay would prevent States from taking advantage of the longer time period Congress indicated in the legislative history should be granted to the States to follow up (H.R. Rep. No. 99-797, pages 424 and 425).

While Notice of Proposed Rulemaking is being waived, we are interested in comments and advice regarding these changes. We will review any comments which we receive on or before February 27, 1989 and will publish the final rule with any necessary changes.

Executive Order 12291

This interim final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. The effect of this regulatory change on the economy will be less than $100 million and will have an insignificant effect on costs or prices. Competition, employment, investment, prductivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises. Therefore, it is not a major rule within the definition of Executive Order 12291.

Paperwork Reduction Act

This rule contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. The requirement will not be effective until the Department obtains OMB approval at which time a notice will be published in the **Federal Register** to notify the public of such action. Other organizations and individuals desiring to submit comments on these requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Justin Kopca.

Regulatory Flexibility Analysis

We certify that this action, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program 13.808, Public Assistance)

List of Subjects in 45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: June 13, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: September 21, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Part 205 is amended as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 continues to read as set forth below, and the authority citations following all the sections in Part 205 are removed.

Authority: Section 1102; 49 Stat. 647; 42 U.S.C. 1302.

2. Section 205.56 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iv) introductory text, and (a)(1)(iv)(A), to read as follows:

§ 205.56 Requirements governing the use of income and eligibility information.

* * * * *

(a) * * *

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance. States wishing to exclude categories of information items from follow-up must submit for the Secretary's approval a follow-up plan describing the categories of information items which it proposes to exclude. For each category, the State must provide a reasonable justification that follow-up is not cost-effective. A formal cost-benefit analysis is not required. A State may exclude information items from the following data sources without written justification if followed up previously from another source: Unemployment compensation information received from the Internal Revenue Service, and earnings information received from the Social Security Administration. Information items in these categories which are not duplicative, but provide new leads, may not be excluded without written justification. A State may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary will approve or disapprove categories of information items to be excluded under the plan within 60 days of its submission. Those categories approved by the Secretary will constitute an approved State follow-up plan for IEVS. For those information items not excluded from follow-up,

* * * * *

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall within forty-five (45) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: Completion of action may be delayed beyond forty-five (45) days on no more than twenty (20) percent of the information items targeted for follow-up, if:

(A) The reason that the action cannot be completed within forty-five (45) days is the nonreceipt of requested third-party verification; and

* * * * *

[FR Doc. 88-29917 Filed 12-28-88; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

Personal Radio Services; Technical Amendments, Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum; final rules.

SUMMARY: This document corrects an inadvertent error in an *Order* adopted by the FCC (53 FR 36788) that clarified the Technical Regulations of the Personal Radio Services. The Personal Radio Services include the General Mobile Radio Service, the Radio Control Service and the Citizens Band Radio Service. The correction is to add the frequency 75.79 MHz between 75.77 MHz and 75.81 MHz in the list of frequencies in paragraph (a) of Section 95.623, 47 CFR 95.623(a).

DATES: This correction is effective December 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632-4964.

Erratum

Released: December 14, 1988.

By the Commission:

1. On July 26, 1988, the Commission adopted an *Order*, 3 FCC Rcd 5032 (1988), in this matter rewriting the technical regulations of the Personal Radio Services Rules contained in Subpart E of Part 95, 47 CFR 95.601-95.669. The Personal Radio Services include the General Mobile Radio Service (GMRS), the Radio Control Radio Service (R/C), and the Citizens Band Radio Service (CB).

2. In the rules that were adopted, one frequency was inadvertently omitted from the listing of frequencies in paragraph (a) of § 95.623. The frequency 75.79 MHz should be inserted between 75.77 MHz and 75.81 MHz in this paragraph.

3. Paragraph (a) of § 95.623, 47 CFR 95.623(a), is hereby amended to correct this error. This action is effective upon public notice of the correction appearing in the **Federal Register.**

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29870 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

Change to NASA FAR Supplement Concerning Proposal Evaluators

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), Chapter 18 of the Federal Acquisition Regulation System in Title 48 of the Code of Federal Regulations. This rule requires that non-government proposal evaluators be appointed special government employees before participating in the evaluating process.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

This rule was published for comment as a proposed rule in the **Federal Register** of September 20, 1988 (53 FR 36475). One public-sector comment was received, which was given due consideration in preparing the final rule. This rule requires that JPL and other non-government participants in certain proposal evaluation proceedings be appointed special government employees because these appointees would then be subject to the same conflict of interest statutes and policies that regular Federal employees are subject to, and this would ensure better control and management over the evaluation process. Individual arrangements are made between NASA and each special government employee. The terms of appointment are flexible and can accommodate considerations related to other employment. Remuneration, if any, may range from reimbursement of expenses to payment for services. Special government employees are authorized under 18 U.S.C. 202.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Part 1815

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1815—[AMENDED]

1. The authority citation for 48 CFR Part 1815 continues to read as follows:

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

2. In 1815.413-2, paragraph (b), is revised to read as follows:

1815.413-2 Alternate II.

* * * * *

(b) Policy. It is NASA policy to have proposals evaluated by the most competent technical and management sources available. When it is necessary to disclose a proposal outside the Government to meet NASA's evaluation needs—

(1) Personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413.

(2) The requirements in paragraphs (c) and (d) below shall be met.

(3) JPL and other non-government participants in evaluation proceedings shall be appointed as special government employees, except for evaluation proceedings resulting from Broad Agency Announcements (1835.016) and unsolicited proposals.

* * * * *

[FR Doc. 88-29884 Filed 12-28-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 71146-8001]

Foreign Fishing; Groundfish of the Gulf of Alaska

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of Pacific cod to total allowable level of foreign fishing (TALFF) in the Western Regulatory Area of the Gulf of Alaska. This action is necessary as an amount of Pacific cod in the Western Regulatory Area will not be harvested by U.S. fishermen during the remainder of the 1988 fishing year, and may therefore be apportioned to TALFF. It is intended to comply with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective December 23, 1988. Comments are invited until January 13, 1989.

ADDRESS: Comments should be sent to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: James W. Brooks at 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the EEZ of the Gulf of Alaska are managed by the Secretary under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

One of the groundfish species managed under the FMP is Pacific cod, for which a total allowable catch (TAC) in the Western Regulatory Area of the Gulf of Alaska equal to 19,000 metric tons (mt) has been specified for 1988 (53 FR 890, January 14, 1988). Under § 672.20(d)(2), the Secretary of Commerce (Secretary) may apportion to TALFF any part of the domestic annual harvest (DAH) amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

During August 1988, the Director, Alaska Region, NMFS, (Regional Director) conducted a survey of the U.S. industry that indicated 12,000 mt of Pacific cod in the Western Regulatory Area would not be harvested by U.S. fishermen during the remainder of the fishing year. At its September 28-October 1, 1988 meeting, the Council concurred with the survey findings, and certified to the Secretary that this amount of Pacific cod was surplus to U.S. fishing needs, and, therefore, was available for apportionment to TALFF. A more recent assessment of domestic fishery performance by the Regional Director indicated that the surplus does not exceed 7,600 mt. Consequently, the Secretary finds that 7,600 mt of Pacific cod in the Western Regulatory Area will not be harvested by U.S. fishermen and reapportions this amount from DAH to TALFF.

Other Matters

This action is taken under the authority of 50 CFR 672.22 and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that a prior opportunity for public comment for 30 days under § 672.22(b)(1) is impracticable and contrary to the public interest, because reapportioning DAH to TALFF for Pacific cod would have no effect due to the few remaining days of the 1988 fishing year.

Under 672.22(b)(2), public comments will be accepted on the necessity for, and extent of, the adjustment for a period of fifteen (15) days after the effective date of this notice.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: December 23, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-30000 Filed 12-23-88; 3:42 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 250
Thursday, December 29, 1988

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88-149]

Swine, Pork, and Pork Products Imported From Great Britain; Addition to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the entry into the United States of pork and pork products and the movement into the United States of swine by adding Great Britain to the lists of countries in which hog cholera is not known and not determined to exist. We have determined that hog cholera has been eradicated from Great Britain. The proposed revision would relieve certain restrictions on the entry into the United States of pork and pork products and the movement into the United States of swine from Great Britain.

DATE: Consideration will be given only to comments postmarked or received on or before February 27, 1989.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-149. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 10782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate the entry and movement into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including hog cholera.

Section 94.9 of the regulations restricts the entry into the United States of pork and pork products from countries where hog cholera is known to exist. The restrictions include cooking, heating, or curing and drying procedures designed to destroy organisms that could spread hog cholera. Section 94.10 of the regulations, with certain exceptions, prohibits the movement into the United States of swine that originate in, are shipped from, or transit any country in which hog cholera is determined to exist. Section 94.9 lists all countries of the world where hog cholera is not known to exist; § 94.10 lists all countries of the world where hog cholera is not determined to exist.

Based on surveys conducted by the government of Great Britain, we have determined that there is no reason to believe that hog cholera exists in Great Britain. No case of hog cholera has been reported in Great Britain since the disease was eradicated in August 1987.

Therefore, we are proposing to amend § 94.9 by adding Great Britain to the list of countries in which hog cholera is not known to exist; we also propose to amend § 94.10 by adding Great Britain to the list of countries in which hog cholera is not determined to exist. The adoption of this proposal would relieve restrictions on the entry into the United States of pork and pork products and the movement into the United States of swine from Great Britain.

Miscellaneous

On July 27, 1973, we amended § 94.9(a) (See 38 FR 20065, Docket Number 73-085), to add Sweden to the list of countries in which hog cholera is not known to exist. However, Sweden was inadvertently left out in the first sentence, and should have been added after "New Zealand". Therefore, this document would correct the list to include Sweden.

This document would also make nonsubstantive changes in § 94.9(a) by deleting surplusage.

In a document published in the **Federal Register** on July 2, 1987 (52 FR 25020-25021, Docket Number 87-063), we had proposed to amend the regulations by adding Great Britain to the lists of countries contained in §§ 94.9(a) and 94.10. Shortly after the proposed rule was published, however, hog cholrea was discovered in Great Britain. Therefore, we did not publish a final rule. However, Great Britain has again eradicated hog cholera and has remained free of the disease for one year. We are therefore reproposing the rule to add Great Britain to the lists of countries in which hog cholera is not known and not determined to exist.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Our proposal would affect only the small number of U.S. swine producers who have expressed an interest in obtaining breeding stock, swine semen, or both, from Great Britain. We anticipate that the number of swine and the amount of swine semen that would be imported annually from Great Britain would not be significant, and would not have an impact on other U.S. swine producers. We expect that only one or two shipments of swine semen would be imported from Great Britain each year. We expect that no more than 100 swine would be imported form Great Britain each year, and we anticipate that only 3

or 4 importers would be involved. These importations are insignificant when compared with the 300,000 or more swine that were imported into the United States in 1987.

In addition, Great Britain has no pork processing plants that are approved by the USDA's Food Safety and Inspection Service. Therefore, even if Great Britain were to be recognized as being free of hog cholera, commerical shipments of pork products from that country to the United States would still be prohibited. Thus, while individuals would be allowed to import small quantities of pork and pork products for personal consumption, commercial shipments would continue to be ineligible for importation.

For these reasons, the amount of pork and pork products imported into the United States from Great Britain would remain very small, and would have no significant impact on U.S. swine producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inpsection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 94

Animal diseases, Hog cholera, Import, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

Accordingly, 9 CFR Part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (a) of § 94.9 would be revised to read as follows:

§ 94.9 Pork and pork products from countries where hog cholera exists.

(a) Hog cholera is known to exist in all countries of the world except Australia, Canada, Denmark, Dominican Republic, Finland, Great Britain (England, Scotland, Wales, and Isle of Man), Iceland, New Zealand, Northern Ireland, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands.[1]

* * * * *

§ 94.10 [Amended.]

3. Section 94.10 would be amended by adding "Great Britain (England, Scotland, Wales, and Isle of Man)," immediately after "Finland,".

Done in Washington, DC, this 22 day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29912 Filed 12-28-88; 8:45 am]

BILLING CODE 3410-34-M

[1] See also other provisions of this part and Parts 92, 95, 96, and 327 of this chapter for other prohibitions and restrictions upon importation of swine and their products.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Ensuring the Effectiveness of Maintenance Programs for Nuclear Power Plants; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On November 28, 1988 (53 FR 47822) the Commission published for public comment a rule that would require commercial nuclear power plant licensees to strengthen their maintenance activities in order to reduce the likelihood of failures and events caused by the lack of effective maintenance. The comment period for this proposed rule was to have expired on January 27, 1989. The Nuclear Management and Resources Council (NUMARC) has requested a sixty-day extension of the comment period. In view of the importance of the proposed rule, the amount of time that the NUMARC suggests is required in order to provide meaningful comments on behalf of its member utilities, and the desirability of developing a final rule as soon as practicable, the Commission has decided to extend the comment period for an additional thirty days. The extended comment period now expires on February 27, 1989.

DATE: The comment period has been extended and now expires February 27, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Deliver comments to: 11155 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3730.

Dated at Rockville, Maryland this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary for the Commission.

[FR Doc. 88-29992 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 50 and 55

Education and Experience Requirements for Senior Reactor Operators and Supervisors at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations regarding educational requirements for operating personnel at nuclear power plants. The proposed amendments would require additional education and experience requirements for senior operators and supervisors. In promulgating the proposed amendments, the Commission has identified two alternatives.

Under the first alternative, the proposed amendment would apply to senior operators. It would require that each applicant for a senior operator license to operate a nuclear power reactor have a bachelor's degree in engineering, engineering technology, or the physical sciences from an accredited

university or college. The proposed amendment would upgrade the operating, engineering, and accident management expertise provided on shift by combining engineering expertise and operating experience in the senior operator position.

Under the second alternative, the proposed amendment would apply to persons who have supervisory responsibilities, such as shift supervisors or senior managers. It would require that they have enhanced educational credentials and experience over that which is normally required for senior reactor operators. The proposed amendment would upgrade the operating, engineering, and accident management expertise provided on shift by combining engineering expertise and operating experience in the shift supervisor position.

The Commission believes that adoption of either of the alternatives, for senior operators or shift supervisors, would further ensure the protection of the health and safety of the public by enhancing the capability of the operating staff to respond to accidents and restore the reactor to a safe and stable condition.

DATES: Comment period expires February 27, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Comments may also be delivered to the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC between 7:30 a.m. and 4:15 p.m.

Examine comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis at the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

Obtain single copies of the environmental assessment and finding of no significant impact and the regulatory analysis from M.R. Fleishman, Office of Nuclear Regulatory Research, Washington, DC 20555, telephone (301) 492-3794.

FOR FURTHER INFORMATION CONTACT: M.R. Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3794.

SUPPLEMENTARY INFORMATION:

Background

Since the Three Mile Island Unit (TMI-2) accident on March 28, 1979, in which human error, among other factors, contributed to the consequences of the accident, the issue of academic requirements for reactor operators has been a major concern of the Nuclear Regulatory Commission (NRC). In July 1979, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," (NUREG-0578)[1] made specific recommendations for a Shift Technical Advisor (STA) to provide engineering and accident assessment expertise during other than normal operating conditions. On October 30, 1979, the NRC notified all operating nuclear power licensees of the short-term STA requirements, i.e., that STAs should be on shift by January 1980, and that they should be fully trained by January 1981. In November 1980, "Clarification of TMI Action Plan Requirements," (NUREG-0737), provided further details to licensees regarding implementation of the STA position. It identified the STA as a temporary position pending a Commission decision regarding long range upgrading of reactor operator and senior operator capabilities.

The qualifications of operators were also addressed by the 1979, "Lessons Learned Task Force," (NUREG-0585), the 1980 Rogovin report, "Three Mile Island: A Report to the Commissioners and to the Public," (NUREG/CR-1240), and the 1982, "Report of the Peer Advisory Panel and the Nuclear Regulatory Commission on Operator Qualifications," (SECY 82-162).[2] Although the 1982 report recommended against imposition of a degree requirement, the consensus among these reports was that greater technical and academic knowledge among shift operating personnel would be beneficial to the safety of nuclear power plants.

On October 28, 1985, the NRC published in the **Federal Register** (50 FR 43621) a final policy statement on engineering expertise on shift to allow an alternate means of providing the necessary technical and academic knowledge to the shift crew. Option 1 of the Policy Statement permits an individual to serve in the combined Senior Operator/Shift Technical Advisor (SO/STA) role if that individual holds either a bachelor's degree in engineering, engineering technology, physical science, or a professional engineer's license. Option 2 permits continuation of the separate STA who rotates with the shift and holds a bachelor's degree or equivalent and meets the criteria as stated in, "Clarification of TMI Action Plan Requirements," (NUREG-0737). The Commission also encourages the shift supervisor to serve in the dual-role position, and the STA to take an active role in shift activities.

On May 30, 1986, the NRC published an advance notice of proposed rulemaking (ANPRM) (51 FR 19561). The purpose of the ANPRM was to extend the current level of engineering expertise on shift, as described in the Commission's Policy Statement on Engineering Expertise on Shift (50 FR 43621) and to ensure that senior operators have operating experience on a commercial nuclear reactor operating at greater than twenty percent power, e.g., "hot" operating experience (Generic Letter 84-16). The ANPRM was the result of a Commission decision to consider an amendment to its regulations (Parts 50 and 55) and to obtain comments on the contemplated action to upgrade the levels of operating, engineering, and accident management expertise on shift.

In addition to describing the proposed rule in general, the ANPRM presented a list of twenty questions concerning various aspects and implications of the proposed rule. Two hundred letters were received in response to the ANPRM. A summary and analysis of the comments are included in SECY-87-101 dated April 16, 1987. The NRC has reviewed, in detail, all the comments made on the ANPRM as well as comments received since that time. In general, the commenters were opposed to a degree requirement for senior operators. The proposed amendments in this notice reflect in detail many of the comments and responses to the questions posed. Apart from the detailed comments on the proposed contents of the rule, a number of general comments were provided regarding the possible adverse effects of requiring degrees for senior operators. The public comments as well as those raised during NRC staff review, can be categorized as follows:

[1] Copies of all NUREGS referenced may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

[2] The documents with SECY designators and the Generic Letter discussed in this rule are available at the NRC Public Document Room at 2120 L Street, Lower Level, NW., Washington, DC.

1. The proposed rule is not necessary.
2. Experience is more important than a bachelor's degree.
3. The proposed rule will have a negative impact on safety.
4. The proposed rule result in a greater operator turnover rate.
5. The proposed rule will basically block the career path of reactor operators, resulting in lower morale.
6. There will be less overall experience on shift due to the promotion of SOs into management positions.

The Advisory Committee on Reactor Safeguards (ACRS) also considered the proposed requirement and discussed it at several meetings in 1986 and 1987. The ACRS strongly supported the concept of having engineering expertise on each shift. However, they did not agree that requiring a degree for senior operators was the best approach, though they agreed that specific technical knowledge should be required. They believed that, because of the concern about adverse effects raised by many knowledgeable individuals, the proposed rule should be reconsidered.

The Commission has carefully considered the numerous comments received on the ANPRM as well as the recommendations of the ACRS. During its deliberations subsequent to the ANPRM, the Commission considered the following three options regarding improving engineering expertise on shift:

1. Proceed with the contemplated degree rule and concurrent policy statement as proposed in the ANPRM. This option would in the long-term result in at least two Senior Operators on shift who have bachelor's degrees.
2. Propose a rule to require a degreed individual on shift similar to a Senior Manager, as described in SECY-84-106, "Proposed Rulemaking Concerning Requirements for Senior Managers."
3. Amend the Policy Statement on Engineering Expertise on Shift (50 FR 43621) to explicitly encourage licensees to develop programs leading to degrees, to utilize the combined SO/STA option and to phase out use of separate STA.

The Commission has decided to proposed two alternative amendments for consideration and public comment with the understanding that, following the public comment period, only one alternative would be selected for final promulgation. The alternatives proposed are similar to Options 1 and 2 but with significant differences based on comments and further considerations by the Commission following the ANPRM. Although comments received on the ANPRM were generally unfavorable, the Commission believes that it would be beneficial to have a full public airing of views on these to proposals.

Concurrent Policy Statement

The Commission will publish concurrently with the final rule a policy statement which encourages nuclear power plant licensees, working with the nuclear industry, to:

1. Implement personnel policies that emphasize the opportunities for licensed operators to assume positions of increased management responsibility;
2. Develop programs that would enable currently licensed senior operators, reactor operators and shift supervisors to obtain college degrees; and
3. Obtain college credit for appropriate nuclear power plant training and work experience through arrangements with the academic sector.

Discussion

The NRC is concerned that operator qualifications to deal with accidents beyond design basis conditions warrant improvement. Operator training programs and related emergency operating procedures generally do not consider accident conditions beyond inadequate core cooling. There is a general consensus that well qualified operators can substantially mitigate the effects of severe accidents. The industry Degraded Core Rulemaking Program (IDCOR) industry group, for example, has developed arguments that operators could substantially reduce the risk posed by these conditions. The NRC is considering the need for more extensive severe accident training and emergency operating procedures as well as engineering qualifications for senior operators.

There are numerous approaches that may be taken regarding the issue of improved operator capabilities; the Commission has decided to request comments on two approaches. The proposed amendments would only affect persons associated with nuclear power reactors. They would not affect persons associated with non-power nuclear reactors such as research and test reactors. Each alternative approach will be considered in parallel. Each approach is discussed separately. Much of the discussion of Alternative 2 duplicates that of Alternative 1 so that each may be viewed on its own merits.

Alternative 1—Requirements for Senior Operators

The purpose of this proposed alternative is to upgrade the operating, engineering, and accident management expertise provided on shift by combining both engineering expertise and operating experience in the senior operator function. The NRC believes this approach will enhance the capability of the operating staff to analyze and respond to complex transients and accidents and thereby further ensure the protection of the health and safety of the public.

The policy statement on engineering expertise on shift published in the **Federal Register** on October 28, 1985 (50 FR 43621) provided an interim method of achieving more engineering capability on shift. Essentially, with Alternative 1 the NRC is moving from interim requirements which provide engineering capability for accident conditions (the STA), to requiring engineering capability, and nuclear power plant operating experience, in the same individual (the SO).

In Alternative 1, the proposed amendment would require each applicant for a senior operator (SO) license to operate a nuclear reactor, after [4 years following the effective date of the rule], to have a bachelor's degree in engineering, engineering technology, or the physical sciences from an accredited university or college. Applicants with other bachelor's degrees from an accredited institution, or from a foreign college or university, would be considered on a case-by-case basis if the utility (licensee) certifies that the applicant has demonstrated engineering expertise and high potential for the SO position. The Commission does not want to prevent individuals with excellent engineering experience, but with nontechnical degrees, from becoming SOs; however, degree equivalency will no longer be accepted. An accredited university or college is defined as an educational institution in the United States which has been approved by a regional accrediting body.

The proposed amendment would apply to applicants for a SO to operate a nuclear power reactor. People who held SO licenses on [4 years following the effective date of the rule] would be exempt from the degree requirement. Thus, those persons who hold a senior operator license on [4 years following the effective date of the rule], would be "grandfathered" (i.e., a lifetime exemption) by the proposed amendment. Even if they were to lose their SO license in the future, e.g. due to a change in jobs of plants, they could still reapply for a new SO license without satisfying the degree requirement. It is recognized that "grandfathering" current SOs could result in SOs without degrees for an extended period of time. Since the Commission's intent is to maintain at least the same degree of engineering expertise on shift as currently exists, the STA policy described under options 1

and 2 of the October 28, 1985 policy statement (50 FR 43621) would continue in effect. Thus, if two "grandfathered" SOs are used on shift, the facility licensee would be required to have a separate individual on shift who has the STA education and experience described in NUREG-0737. If one of the SOs has a degree and one is "grandfathered," Option 1 of the policy statement would be satisfied. When all SOs have degrees, the policy statement would no longer be needed.

The concurrent policy statement will encourage previously licensed SOs to obtain degrees. In the past the NRC has accepted "equivalents" to the bachelor's degree for a separate STA. The equivalents were based upon specialized utility training or other work experiences. For the proposed amendment, however, equivalency would not be acceptable to the NRC in lieu of a degree. Because the Commission is not in a position to evaluate the academic equivalency of utility training, it encourages utilities to seek out academic institutions who will evaluate the training programs and grant course credit for such equivalency based upon work experience or specialized training. Thus the concurrent policy statement will encourage efforts to have the training accepted by the colleges for partial credit toward fulfilling the requirements of an accredited degree.

The degree requirement would not apply to licensed reactor operators (ROs). However, the concurrent policy statement will encourage ROs to obtain degrees so that they can progress to the SO position and to other utility positions. The Commission believes a degree requirement for SOs on shift, along with the concurrent policy statement, will not only enhance public health and safety, but will also enhance promotion opportunities for SOs.

The cutoff date of four years following the effective date of the rule for application for a SO license by individuals who do not have degrees is chosen for three reasons. First, it will allow operators now in training sufficient time and notice to complete a degree before application. Second, it should not cause undue hardship on operators who are now in the process of preparing and training for the senior operator license, and third, licensees have been encouraged by the Policy Statement on Engineering Expertise on Shift (Option 1) to move toward a dual-role SO/STA position. Furthermore, those operators who are licensed as SOs on the cutoff date would be "grandfathered."

In Alternative 1, the proposed amendment would also require one year of "hot" and at least 3 years total operating experience for each applicant for a SO license. A RO license is required in order to get "hot" control room operating experience; thus, the proposed amendment expands the current NRC policy, described in Regulatory Guide 1.8, Revision 2, dated April 1987, "Qualification and Training of Personnel for Nuclear Power Plants," to ensure that SOs with degrees have sufficient operating experience. Regulatory Guide 1.8, in position C.1.e., allows an applicant for a SO license with a degree to have only 2 years of responsible power plant experience, none of which needs to be as a reactor operator. Thus, Regulatory Guide 1.8 will be revised if the proposed amendment is adopted. The proposed amendment would require the SO applicant with a degree to serve as a RO at greater than 20 percent power for at least 1 year. This does not mean that the reactor must be at power 100 percent of the time during the year, however, the 1 year time period should not include periods of significant downtime for maintenance or refueling (i.e., periods that exceed 6 weeks duration). Special provisions are proposed in order to accommodate those applicants from facilities that are unable to operate above twenty percent power due either to (a) the facilities not having completed their initial startup program and being licensed to run at power, or (b) the facilities being in an extended shutdown mode. In the case of the facilities not yet licensed to run at power, alternative approaches to meet the twenty percent power requirement may be approved by the Commission. In the case of facilities in extended shutdown, the Commission may process the application and administer the written and operating tests but would defer issuance of the senior operating license until the twenty percent power requirement is fulfilled.

This proposed requirement for a SO applicant with a degree also implies that an applicant for a RO license with a degree must only have 2 years of related nuclear power plant experience. This is a change to the guidance in Regulatory Guide 1.8 which endorses the American National Standard, ANSI/ANS-3.1-1981, "Selection, Qualification and Training of Personnel for Nuclear Power Plants." The standard indicates that a RO applicant must have a minimum of 3 years of power plant experience of which at least 1 year shall be nuclear power experience. If the proposed amendment is adopted, it would supersede the guidance in Regulatory Guide 1.8 and necessitate its revision in accord with the amendment. Also, position C.1.d of Regulatory Guide 1.8, on educational criteria, would have to be revised to reflect this amendment.

The concurrent policy statement is intended to encourage licensees (utilities) and the nuclear industry to provide incentives and management opportunities for SOs as well as to improve the engineering capabilities of the on shift crew. The SO with a degree and shift operating experience can become a valuable personnel resource for the utility, one who combines shift operational management experience with the potential for greater management responsibility. The policy statement, among other things, will encourage licensees to provide that career path.

The Commission believes that requiring a degree will contribute to the goal of having SOs who have operational experience, technical and academic knowledge, and educational credentials that should improve their performance as operators and possibly open career paths from which they may have been excluded in the past. The SOs with degrees should be able to respond better to off normal incidents. While there will be increased training to cover accident conditions, training alone is not sufficient. It is impossible to cover every eventuality during training. The operators must have sufficient understanding of basic engineering principles, and detailed knowledge of nuclear design and operation to appropriately respond to situations that have not been previously covered in training sessions. In addition, SOs with degrees will have greater opportunity for professional growth since they will have the qualifications needed to advance to managerial positions. With the chance for personal growth should come greater job satisfaction. The validity of these beliefs has been reenforced by the experiences of licensed operators participating in an ongoing utility sponsored program similar to what is being proposed herein. The Commission also believes that migration of SOs upward into plant management will contribute to improved plant safety.

Alternative 2—Requirements for Supervisors

The purpose of this proposed alternative is to upgrade the operating, engineering, and accident management expertise provided on shift by combining both engineering expertise and operating experience in the shift supervisor or senior manger function described in § 50.54(m)(2)(ii) of the regulations. The NRC believes this will enhance the capability of the operating staff to analyze and respond to complex

transients and accidents and thereby further ensure the protection of the health and safety of the public.

The policy statement on engineering expertise on shift published in the **Federal Register** on October 28, 1985 (50 FR 43621) provided an interim method of achieving more engineering capability on shift. Essentially, with Alternative 2, the NRC is moving from interim requirements which provide engineering capability for accident conditions (the STA), to requiring engineering capability, and nuclear power plant operating experience, in the shift supervisor or senior manager.

In Alternative 2, the proposed amendment would revise § 50.54, Conditions of licenses, regarding the requirements for a shift supervisor or senior manager. It makes a distinction between power plant sites with one control room and those with two or more control rooms. The intent of the proposed amendment is to ensure that there is a separate shift supervisor for each control room who is responsible for overall operation of all fueled units operated by the control room at all times there is fuel in any of the units. The Commission may permit exemptions to the one supervisor per control room amendment, on a case-by-case basis, for those situations where control rooms may be close to each other. The proposed amendment would require each shift supervisor, after [4 years following the effective date of the rule], to have one or more of the following enhanced educational credentials: A bachelor's degree from a program accredited by the Accreditation Board for Engineering and Technology (ABET); a professional engineer license issued by a state government; or, a bachelor's degree and an Engineer-in-Training (EIT) certificate that indicates one has passed an examination administered by a state or other recognized authority. This requirement will ensure a minimum level of engineering expertise for each shift supervisor. The bachelor's degree with the EIT would not necessarily have to be in a technical discipline, provided the person meets the state education and experience criteria for administration of the EIT. The NRC recognizes that in some states it may not be possible to be registered as a professional engineer or receive an EIT certificate without having received either a bachelor's degree from an ABET accredited program or a bachelor's degree in a technical discipline. For individuals in those states, the NRC is considering other options available for administering an EIT equivalant examination. The STA policy described under options 1 and 2 in the October 28, 1985 policy statement (50 FR 43621) would be eliminated since the shift supervisor would be providing the engineering expertise on shift and there would be no need for the STA.

In the past the NRC has accepted "equivalents" to the bachelor's degree for a separate STA. The equivalents were based upon specialized utility training or other work experiences. For the proposed amendment, however, equivalency would not be acceptable to the NRC in lieu of one of the educational credentials. Because the Commission is not in a position to evaluate the academic equivalency of utility training, it encourages utilities to seek out academic institutions who will evaluate the training programs and grant course credit for such equivalency based upon work experience or specialized training. Thus, the concurrent policy statement will encourage efforts to have the training accepted by the colleges for partial credit toward fulfilling the educational requirements for the shift supervisors.

The educational credential requirement would not apply to licensed reactor operators (ROs) or senior operators (SOs). The concurrent policy statement will encourage all ROs and SOs to obtain the enhanced educational credentials so that they can progress to the shift supervisor position and to other utility positions. The Commission believes that the educational requirement for shift supervisors, along with the current policy statement, will not only enhance public health and safety, but will also provide a route for promoting ROs and SOs. By restricting the requirement to shift supervisors, the Commission believes that the normal progression from RO to SO can be retained for those ROs and SOs who do not wish to obtain the enhanced educational credentials and who have no desire to enter management.

The date of four years following the effective date of the rule for implementation of the educational credentials requirement for shift supervisors is chosen for two reasons. First, it will allow shift supervisors sufficient time and notice to complete a degree. Second, it should not cause undue hardship on shift supervisors since licensees have been encouraged by the Policy Statement on Engineering Expertise on Shift (Option 1) to move toward a dual-role SO/STA position; which has frequently been assumed by the shift supervisor.

In Alternative 2, the proposed amendment would also require one year of "hot" and at least 3 years total operating experience for each shift supervisor or senior manager. The proposed amendment changes the current NRC policy, described in Regulatory Guide 1.8, Revision 2, dated April 1987, "Qualification and Training of Personnel for Nuclear Power Plants." Regulatory Guide 1.8, in position C.1.d., states that a shift supervisor only needs a high school diploma. Thus, Regulatory Guide 1.8 will be revised, if the proposed amendment is adopted, to reflect the new educational credentials and experience required to become a shift supervisor (i.e., 3 years experience with 1 year as a RO). The proposed amendment would require the shift supervisor to serve as a RO at greater than 20 percent power for at least 1 year. This does not mean that the reactor must be at power 100 percent of the time during the year; however, the 1 year time period should not include periods of significant downtime for maintenance or refueling (i.e., periods that exceed 6 weeks duration). Special provisions are proposed in order to accommodate shift supervisors from facilities that are unable to operate above twenty percent power due to the facilities not having completed their initial startup program and being licensed to run at power. For such facilities, alternative approaches to meet the twenty percent power requirement may be approved by the Commission.

The concurrent policy statement is intended to encourage licensees (utilities) and the nuclear industry to provide incentives and management opportunities for shift supervisors as well as to improve the engineering capabilities of the on shift crew. The shift supervisor with enhanced educational credentials and shift operating experience can become a valuable personnel resource for the utility, one who combines shift operational management experience with the potential for greater management responsibility. The policy statement, among other things, will encourage licensees to provide that career path; both for shift supervisors and other operating personnel who obtain enhanced educational credentials.

The Commission believes that requiring enhanced educational credentials will contribute to the goal of having shift supervisors who have operational experience, and technical and academic knowledge, that should improve their performance as supervisors and possibly open career paths from which they may have been excluded in the past. The shift supervisors should be able to respond

better to off normal incidents. While there will be increased training to cover accident conditions, training alone is not sufficient. It is impossible to cover every eventuality during training. The shift supervisors must have sufficient understanding of basic engineering principles, and detailed knowledge of nuclear design and operation to appropriately respond to situations that have not been previously covered in training sessions. In addition, shift supervisors with enhanced educational credentials will have greater opportunity for professional growth since they will have the qualifications needed to advance to managerial positions. The Commission also believes that migration of shift supervisors upward into plant management will contribute to improved overall plant safety.

Conclusion

Although the Commission believes there is a net benefit of the proposed amendments in enhancing public health and safety, it acknowledges that this judgment is based on a qualitative assessment of the relative contributions of various factors, some with potential positive impacts and others with potential negative impacts. The most significant positive factor is the enhanced capability of the shift operating staff to effectively manage accidents. Increased operating experience of plant management is also an anticipated longer term benefit. However, there are possible disadvantages. For Alternative 1, they include (1) the potential for lower morale among reactor operators without degrees whose natural career path, promotion to the SO level, is blocked, and (2) the potential reduction of overall operating experience on shift as SOs with degrees move to other work. For Alternative 2, the disadvantages include the potential for lower morale among senior operators without degrees whose promotion to the shift supervisor level is blocked.

Upon consideration of these and other factors, such as those identified by the public comment process on the ANPRM, the Commission concludes, at this time, that the overall effect of the proposed amendments would be beneficial and would result in greater plant safety. This benefit will be achieved over time by improved quality of the operational personnel and by plant management that has a better understanding of the unique operational problems associated with nuclear power reactor operations. The Commission believes that increasing the educational level of the operating staff will increase professionalism both in the control room and throughout the utility with a resultant improvement in plant safety.

Invitation to Comment

In view of the unusual nature of this notice of proposed rulemaking, in which two alternatives are proposed, the Commission specifically encourages comments regarding comparison of the alternatives. Comments are particularly solicited in regard to:

1. Which alternative is preferable assuming one will be selected?
2. What are the potential impacts of each of the alternatives on licensee staffing?
3. Regarding implementation of the alternatives, would there be a more appropriate transition period for each alternative than the one proposed?
4. Alternative 2 provides for three different methods for demonstrating technical expertise with educational credentials. Would some other method be desirable for this purpose? Are there other alternative ways to demonstrate knowledge of appropriate engineering fundamentals for people who may be ineligible to take the EIT examination?
5. Should a requirement be imposed requiring all senior operators to pass an Engineering in Training (EIT) or equivalent examination as a measure of basic technical expertise in addition to, or instead of, the two proposals in this notice? If such a requirement were in place, would it be necessary to require enhanced educational credentials for shift supervisors?
6. Independent of a degree requirement, is there a need for the experience requirements to be increased for the shift supervisor position? Are the proposed requirements called for in the two alternatives sufficient?

Additional Views of Commissioner Roberts

In this proposed rulemaking the Commission is considering two alternatives regarding educational requirements for operating personnel. The first alternative, which is an old proposal, would impose a degree requirement in senior operators. The second alternative would require enhanced educational credentials for supervisory personnel. Although I have not reached a judgment on the need for supervisory personnel to have enhanced educational credentials, I am supporting the publishing of the second alternative in order to obtain the benefit of the public's comments. In the case of the degreed operator proposal, I cannot do so.

Since I have been a member of the Commission, there have been numerous proposals dealing with the size, qualifications and organization of the operating crew at nuclear power plants. Several of these proposals were adopted by the Commission because it was determined that they would enhance safety; others were discussed and dropped because no basis was found to support them. The proposal for degreed operators was an example of the latter.

It is unfortunate that this issue continues to surface. As reflected in the earlier public comments on this issue, the mere potential for imposition of this requirement is having a negative impact on operator morale. I continue to believe a requirement for degreed senior operators is ill advised. Not only is there no demonstrated safety benefit from this action but there is a significant potential for negative safety implications. To once again publish this proposal will only continue the negative impact this issue is having on operator morale.

In 1981, the Commission formed a peer review panel to consider specifically reactor operator qualifications including whether a BS level degree should be required for senior operators. This peer review panel concluded (ref. -SECY-82-162) that not only was there no evidence that a formal degree was necessary for job performance but that "imposition of such a requirement, without evidence that the requirement is needed to perform the job, is likely to result in a decrement in overall performance and thus *impair public safety*" (emphasis added). In spite of numerous studies conducted by the staff since 1982, there is still no evidence that a BS degree is needed to perform the job of senior operator. In fact, in the recent report entitled "Human Factors Research and Nuclear Safety", the National Research Council Panel on Human Factors Research Needs in Nuclear Regulatory Research recommended research in this area prior to making a degree mandatory. The panel considered this research a high priority as "(a)n injudicious regulation could lead to problems with both morale and recruiting without necessarily improving safety."

Although I agree that it is valuable to have personnel with operating experience in utility management, it is inappropriate to attempt to accomplish this objective by so severely penalizing reactor operators and senior operators. I do not believe that one obtains the motivation and abilities that makes an individual a good manager merely by obtaining a degree. Those individuals with motivation and ability will pursue a degree to improve their qualifications. There are currently a significant number of senior operators who have degrees. This should provide a sufficient pool of individuals resulting in an infusion of operating exerience into utility management.

I believe that the Commission and the industry have put in place a number of programs which have upgraded and will continue to upgrade the qualifications of reactor operators. In addition, the increased recognition of the importance of well qualified operators will continue to pay dividends in the future. A number of utilities are providing opportunities for their operators to further their education. I fully support and encourage these initiatives. These programs will allow those with ability and desire to progress up the management chain. I am confident that these initiatives will enhance the safe operation of our nuclear power plants. However, one can not expect immediate results. These initiatives take time to show improvements.

When commenting on Alternative 2 of the proposed rulemaking I will be particularly interested in comments concerning the viability of this proposal. To be viable, this proposal must allow for the orderly progression of operating personnel through the ranks from auxiliary operator to shift supervisor so as to ensure experienced personnel on shift. Specifically, I would like to know, from the perspective of current operating personnel, how accessible are ABET accredited engineering programs? If the PE or EIT options are selected, which states allow registration and/or classification as an EIT without an ABET accredited degree? In light of the fact that states require work experience to be registered as a PE and, with a non-accredited engineering or related degree, often require work experience to be classified as an EIT, will state registration boards grant credit for operating experience as "acceptable professional experience . . . of a grade and character indicating that the applicant may be competent to practice engineering"? If credit is granted for operating experience, does this experience have to be acquired after receiving a degree?

I will also be interested in comments in response to Questions 4, 5 and 6 of the Invitation to Comment.

Environmental Impact—Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0011, 3150-0018, and 3150-0090.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC. Single copies of the analysis may be obtained from M. R. Fleishman, Office of Nuclear Regulatory Research, Washington, DC 20555, telephone (301) 492-3794.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. It also affects individuals licensed as operators at these plants. The companies that own these plants and the individual plant employees licensed to operate them do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

However, because there may be now or in the future small entities which will provide licensed operators to nuclear power plants on a contractual basis, the NRC is specifically seeking comment as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on them while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following items:

1. The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.
2. How the proposed regulations could be modified to take into account their differing needs or capabilities.
3. The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.
4. How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.
5. How the proposed regulations, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for the proposed rule. The Commission has determined, based on this analysis, that backfitting to comply with the requirements of this proposed rule will provide a substantial increase in protection to public health and safety or the common defense and security at a cost which is justified by the substantial increase. The backfit analysis on which this determination is based reads as follows:

1. *Statement of the specific objectives that the proposed backfit is designed to achieve.*

The objective of the proposed rule is to upgrade the operating, engineering, and accident management expertise provided on shift by combining both engineering expertise and operating experience in the senior operator or shift supervisor functions.

2. *General description of the activity that would be required by the licensee or applicant in order to complete the backfit.*

The proposed rule, under Alternative 1, would require each applicant for a senior operator (SO) license to operate a nuclear power reactor, after [4 years following the effective date of the rule], to have a bachelor's degree in engineering, engineering technology, or the physical sciences from an accredited university or college. Applicants with other bachelor's degrees from an accredited institution, or from a foreign college or university, would be considered on a case-by-case basis if the utility (licensee) certifies that the applicant has demonstrated engineering expertise and high potential for the SO position. The Commission does not want

to prevent individuals with excellent engineering experience, but with nontechnical degrees, from becoming SOs; however, degree equivalency will no longer be accepted. An accredited university or college is defined as an educational institution in the United States which has been approved by a regional accrediting body.

The proposed amendment would apply only to applicants for a SO license to operate a nuclear power reactor. People who hold SO licenses on [4 years following the effective date of the rule] would be exempt from the degree requirement. Those persons who hold a senior operator license on [4 years following the effective date of the rule] would be "grandfathered" by the proposed rule. The proposed amendment would not apply to SO applicants for non-power nuclear reactors such as research and test reactors. Licensed reactor operator (ROs) would not be required to have a degree. The proposed rule would also require one year of "hot" (i.e. as an RO at greater than 20 percent power) and at least 3 years total operating experience for each applicant for a SO license. Special provisions would be proposed to accommodate those applicants from facilities that are unable to operate above 20 percent power.

The proposed requirements of Alternative 1 would only apply to power reactor licensees indirectly. There would be no modification of or addition to the organization, i.e. administrative and functional structure, required to operate a nuclear power reactor as a result of this proposed amendment because:

1. the person to whom the SOs report would not change;
2. the number of SOs per shift would not change;
3. the total number of operators per shift would not change;
4. the training requirements, written examinations and operating tests for a SO would not change; and
5. the tasks performed by a SO would not change.

However, the power reactor licensees would have to get new SOs from a group of individuals who already have appropriate degrees or else provide the educational oppportunity for their own employees to obtain a degree.

The proposed rule, under Alternative 2, would require a separate shift supervisor for each control room who is responsible for overall operation of all fueled units operated by the control room at all times there is fuel in any of the units. The requirement would only apply to power reactor licensees; it would not apply to licensees for non-power nuclear reactors such as research and test reactors. Exemptions to the one supervisor per control room requirement, may be permitted, on a case-by-case basis, for those situations where control rooms may be close to each other. Each shift supervisor, after [4 years following the effective date of the rule], would need to have one or more of the following enhanced educational credentials: A bachelor's degree from a program accredited by the Accreditation Board of Engineering and Technology (ABET); a professional engineer license issued by a state government; or, a bachelor's degree and an Engineer-in-Training (EIT) certificate that indicates one has passed an examination administered by a state or other recognized authority. This requirement will ensure a minimum level of engineering expertise for each shift supervisor. The bachelor's degree with the EIT would not necessarily have to be in a technical discipline provided the person meets the state education and experience criteria for administration of the EIT. The proposed rule would also require one year of "hot" and at least 3 years total operating experience for each shift supervisor or senior manager. Special provisions would be proposed to accommodate those applicants from facilities that are unable to operate above 20 percent power.

3. *Potential change in the risk to the public from the accidental off-site release of radioactive material.*

It is not feasible to quantitatively evaluate the change in risk to the public as a result of the proposed rule. That is, the effect of the SO or shift supervisor on the probability and consequences of an accident, and the change in the probability and consequences of an accident as a result of requiring either the SO to have a bachelor's degree or the shift supervisor to have enhanced educational credentials is not known. The Commission believes that requiring degrees for SOs or enhanced educational credentials for shift supervisors will contribute to the goal of having SOs or shift supervisors who have operational experience and technical and academic knowledge that should improve their performance as operators and possibly open career paths from which they may have been excluded in the past. The SOs with degrees or shift supervisors with enhanced educational credentials should be able to respond better to off normal incidents. While there will be increased training to cover accident conditions, training alone is not sufficient. It is impossible to cover every eventuality during training. The operators must have sufficient understanding of basic engineering principles, and detailed knowledge of nuclear design and operation to appropriately respond to situations that have not been previously covered in training sessions. In addition, SOs with degrees or shift supervisors with enhanced educational credentials will have greater opportunity for professional growth since they will have the qualifications needed to advance to managerial positions. The Commission believes that there will also be an improvement in plant safety as SOs or shift supervisors migrate upward into plant management although this improvement could be counter balanced, in part, by a potential reduction in overall operating experience on shift as SOs with degrees move to other work.

4. *Potential impact on radiological exposure of facility employees.*

There is not expected to be any significant change in the radiological exposure of facility employees due to the proposed rule except for the unquantifiable reduction in the probability and consequences of an accident and the subsequent reduction in exposure.

5. *Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.*

One of the questions posed in the May 30, 1986 ANPRM, relative to Alternative 1, concerned what the implementation and operation costs of the proposed amendment would be to the utilities. The cost estimates received ranged from negligible to prohibitive. Various scenarios for achieving the desired staffing level of SOs with degrees were assumed. These varied from hiring individuals with degrees and passing them through the normal utility training programs to taking ROs and sending them to college while either paying them at overtime rates or hiring replacement ROs. A utility could also implement an onsite college degree program for its operators, for example, a program currently being run for an operating plant costs $250,000 per year to educate 60 people. The range of costs of such an onsite program are estimated to vary from $250,000 to $480,000 per year. The cost to the utilities of Alternative 2 would be less since there would be fewer shift supervisors to train.

It is clear that there are numerous methods that can be used to implement the proposed rule with an extreme range of costs depending on the method adopted. It would be a utility's choice as to which method to adopt, taking into

account the various cost and personnel considerations.

6. *The potential safety impact of changes in plant or operational complexity, including the effect on other proposed and existing regulatory requirements.*

There would be no changes in the plant or operational complexity and hence, no potential safety impact related to them. However, there would be an effect on the guidance provided in Regulatory Guide 1.8. Relative to Alternative 1, the guidance in Regulatory Guide 1.8 allows an applicant for a SO license with a degree to have only 2 years of responsible power plant experience, none of which needs to be as a reactor operator. This would have to be revised if Alternative 1 is adopted since the proposed amendment would require a SO applicant with a degree to serve as a RO at greater than 20 percent power for at least 1 year. Furthermore, the guidance indicates that a RO applicant must have a minimum of 3 years of power plant experence of which at least 1 year shall be nuclear power experience. This would have to be revised since it is inconsistent with the proposed amendment which implies that an applicant for a RO license with a degree must have 2 years of related nuclear power plant experience. Finally, position C.1.d of the Regulatory Guide would have to be revised to indicate that a bachelor's degree is the minimum educational requirement for a SO candidate rather than a high school diploma. Relative to Alternative 2, current guidance in Regulatory Guide 1.8, Revision 2, April 1987, "Qualification and Training of Personnel for Nuclear Power Plants," states that a shift supervisor only needs a high school diploma. This would have to be revised, if Alternative 2 is adopted, to reflect the new educational credentials and experience required to become a shift supervisor (i.e., 3 years experience with 1 year as a RO).

7. *The estimated resource burden in the NRC associated with the proposed backfit and the availability of such resources.*

It is anticipated that there will be relatively minor impact on NRC staff resources as a result of implementing the proposed rule. For Alternative 1, there may be some increase in the number of applications to process and tests to administer, because of the attempts of current ROs to become SOs prior to the cut-off date, but this should not cause a significant impact on the NRC staff. No new resource requirements are expected.

8. *The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit.*

The proposed rule only applies to SO applicants for operation of a nuclear power reactor or to shift supervisors. It does not apply to SO applicants or shift supervisors for non-power nuclear reactors such as research and test reactors.

The facility type, design or age should have no relevancy to the impact or practicality of the proposed backfit. For Alternative 1, the degree to which each utility licensee has already implemented an educational program would be most important. Those facilities which have implemented such a program will clearly be less affected by the proposed backfit than would those facilities that have not. For Alternative 2, the number of reactors and control rooms on a site would have greater significance. Those facilities which have only one control room on their site would be least affected by the proposed rule.

9. *Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.*

The proposed rule, when made effective, would be in final form and not on an interim basis.

Alternative 1—Requirements for Senior Operators

List of Subjects in 10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 55.

PART 55—OPERATORS' LICENSES

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 55.4, a new definition is added in alphabetical order to read as follows:

§ 55.4 Definitions.

* * * * *

"Accredited university or college" means an educational institution in the United States which has been approved by a regional accrediting body.

* * * * *

3. In § 55.31, a new paragraph (e) is added to read as follows:

§ 55.31 How to apply.

* * * * *

(e) Each applicant for a senior operator license to operate a nuclear power reactor, after [4 years following the effective date of the rule], must have a bachelor's degree in engineering, engineering technology, or the physical sciences from an accredited university or college. Applicants with other bachelor's degrees from an accredited institution, or from a foreign college or university, will be considered on a case-by-case basis if the reactor plant licensee certifies that the applicant has demonstrated engineering expertise and high potential for the senior operator position. In addition, except as noted in paragraphs (e)(1) and (e)(2) of this section, after [4 years following the effective date of the rule], each applicant for a senior operator license must have at least three years of operating experience at a nuclear power plant, of which one year's experience must be as a licensed control room operator for a nuclear power reactor operating at greater than twenty percent power. At least six months of the nuclear power plant experience must be at the plant for which the applicant seeks the license. An authorized representative of the facility licensee will verify that the requirements of this paragraph have been met as a part of certifying the applicant's qualifications pursuant to paragraph (a)(4) of this section. Any person holding a senior operator license on [4 years following the effective date of the rule] is exempt from the requirement to have a bachelor's degree.

(1) For each applicant from a facility that has not completed preoperational testing and an initial startup test program as described in its Final Safety Analysis Report, as amended and approved by the Commission, and has not yet been licensed to operate at power, the Commission may approve alternatives that provide experience equivalent to operation at twenty percent power.

(2) For each applicant from a facility that has (i) completed preoperational testing as described in its Final Safety Analysis Report, as amended and approved by the Commission, and (ii) is in an extended shutdown which precludes operation at greater than twenty percent power, the Commission may process the application and may administer the written examination and operating test required by §§ 55.43 and 55.45 of this part, but may not issue the license until the required evidence of operation at greater than twenty percent power is supplied.

Alternative 2—Requirements for Supervisors

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, paragraph (m)(3) is removed and the introductory text to paragraph (m)(2) and paragraph (m)(2)(ii) are revised, to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(m) * * *

(2) Notwithstanding any other provisions of this section, licensees of nuclear power units shall meet the following requirements:

(i) * * *

(ii)(A) For single unit sites or multiple unit sites with one control room, the licensee shall have at its site a person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit.

(B) For multiple unit sites with two or more control rooms, the licensee shall have at its site a person for each control room who: holds a senior operator license for all fueled units operated by the control room; and is responsible for overall operation of these units at all times there is fuel in any of them. Exemptions may be considered on a case-by-case basis taking into account the physical location of the control rooms.

(C) After [4 years following the effective date of the rule], each person described in paragraphs (m)(2)(ii)(A) and (m)(2)(ii)(B) of this section must have one or more of the following educational credentials: A bachelor's degree from a program accredited by the Accreditation Board for Engineering and Technology (ABET); a professional engineer license issued by a state government; or, a bachelor's degree and an Engineer-in-Training (EIT) certificate that indicates one has passed an examination administered by a state or other recognized authority.

(D) Except as noted below, after [4 years following the effective date of the rule], each person described in paragraphs (m)(2)(ii)(A) and (m)(2)(ii)(B) of this section must have at least three years of operating experience at a nuclear power plant, of which one year's experience must be as a licensed control room operator for a nuclear power reactor operating at greater than twenty percent power. At least six months of the nuclear power plant experience must be at the plant for which the person has responsibility. For each person at a plant that has not completed preoperational testing and an initial startup test program as described in its Final Safety Analysis Report, as amended and approved by the Commission, and has not yet been licensed to operate at power, the Commission may approve alternatives that provide experience equivalent to operation at twenty percent power.

* * * * *

Dated at Rockville, Maryland this 23rd day of December, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary for the Commission.

[FR Doc. 29993 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 88-AEA-4]

Proposed Alteration of Restricted Area R-6601 Fort A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the boundaries and change the controlling agency for Restricted Area R-6601 Fort A.P. Hill, VA. The Department of the Army has requested an enlargement of R-6601 to accommodate additional training requirements. In addition, the proposed action would revise the assigned controlling agency.

DATES: Comments must be received on or before February 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 88-AEA-4, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical

Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

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 and energy aspects of the proposal. Send comments on environmental and land use aspects to: Ron Boucher, Environmental Coordinator, Attn.: AFZI-DEH, Fort A.P. Hill, Bowling Green, VA 22427-5000.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. 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. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to increase the size of Restricted Area R-6601 by approximately 2 miles to the northeast and about ½ mile to the southwest. This enlargement is needed to permit more effective utilization of terrain and installation facilities and to provide increased training opportunities in establishing mortar and artillery firing positions during advance and retrograde operations. All additional land to be incorporated into R-6601 is owned by Fort A.P. Hill. In addition, the amendment would revise the controlling agency assigned for R-6601. Section 73.66 of Part 73 of the Federal Aviation Regulations was republished in Handbook 74.00.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that 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 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a0, 1510, 1522; Executive Order 10854; 49i U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.66 [Amended]

2. § 73.66 is amended as follows:

R-6601 Fort A.P. Hill, VA [Amended]

By removing the present boundaries and controlling agency and substituting the following:

Boundaries. Beginning at lat. 38°04'37" N., long. 77°18'45" W.; thence along U.S. Highway 301; to lat. 38°09'45" N., long. 77°12'00" W.; thence along U.S. Highway 17; to lat. 38°07'50" N., long. 77°08'30" W.; to lat. 38°05'30" N., long. 77°09'06" W.; to lat. 38°04'40" N., long. 77°10'20" W.; to lat. 38°03'12" N., long. 77°09'35" W.; to lat. 38°02'22" N., long. 77°11'40" W.; to lat. 38°02'30" N., long. 77°14'40" W.; to lat. 38°01'50" N., long. 77°16'08" W.; to lat. 38°02'15" N., long. 77°18'04" W.; to lat. 38°02'40" N., long. 77°19'00" W.; thence to the point of beginning.

Controlling agency. FAA, Richmond ATCT.

Issued in Washington, DC, on December 21, 1988.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-29894 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Mandatory Review of the Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Rescheduling of the additional public hearing in Washington, DC.

SUMMARY: On December 1, 1988, the Presiding Officer published in the **Federal Register** (53 FR 48550) an announcement that an additional public hearing would be held on January 17, 1989, in Washington, DC. The Presiding Officer has now rescheduled that hearing to commence on February 3, 1989.

DATES: The public hearing will commence in Washington, DC, at 9:30 a.m. on February 3, 1989, in Room 332, Federal Trade Commission Building, 6th and Pennsylvania Avenue NW., Washington, DC.

FOR FUTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, Room 319, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580, telephone number: 202-326-3642.

SUPPLEMENTARY INFORMATION: On December 1, 1988, the Presiding Officer publishing in the **Federal Register** (53 FR 48550) an announcement that an additional public hearing would be held on January 17, 1989, for the purpose of receiving testimony upon substantial economic issues from three expert

witnesses, Dr. Burt F. Barnow, Dr. Timothy P. Daniel, and Dr. Fred S. McChesney.

In order to accommodate all of the witnesses who requested an opportunity to testify at the San Francisco, California hearing, it has been necessary to extend that hearing through January 18, 1989. For this reason, the Presiding Officer has rescheduled the additional Washington, DC hearing to commence on February 3, 1989. Only the witnesses named above will be permitted to testify.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 88-29942 Filed 12-28-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 50

Notification, Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines

AGENCY: Mine Safety and health Administration, Labor.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's advance notice of proposed rulemaking (ANPRM) for 30 CFR Part 50 which requires mine operators to investigate mine accidents and injuries; report mine accidents, injuries, illnesses, employment, and coal production; and maintain copies of these reports.

DATE: Written comments must be received on or before February 17, 1989.

ADDRESS: Send comments to Patricia W. Silvey, Director, office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 14, 1988, MSHA published an ANPRM in the **Federal Register** (53 FR 45878) on 30 CFR Part 50 which sets forth investigation, recordkeeping, and reporting requirements. Mine operators are required to investigate each accident and occupational injury; report each accident, occupational injury or occupational illness to MSHA; and maintain records of each accident and investigation report. The mine operators must also submit employment and coal production data. This information is used by MSHA and the mining community to identify safety and health problems and injury trends. MSHA also uses this information to determine national fatality and injury incidence rates of the mining industry.

The ANPRM stated that the comment period would remain open until January 13, 1989. In response to requests from the mining community, MSHA is extending the comment period to February 17, 1989. All interested parties are encouraged to submit comments prior to this date.

Date: December 22, 1988.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-29922 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3498-8]

Designation of Areas for Air Quality Planning Purposes Attainment Status Designations; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request for Kane and DuPage Counties to be redesignated under section 107(d) of the Clean Air Act from nonattainment to attainment for the ozone national ambient air quality standards (NAAQS). This request was based on a lack of monitored violations of the ozone standard in these counties. USEPA's June 12, 1984 (48 FR 46082), final rulemaking rejected the State's request to redesignate Kane and DuPage Counties. IEPA and Illinois State Chamber of Commerce petitioned for review of USEPA's action before the United States Court of Appeals for the Seventh Circuit. In its November 4, 1985, opinion in *Illinois State Chamber of Commerce v. USEPA*, 775 F.2d 1141 (7th Cir. 1985), the court remanded the rulemaking to USEPA, calling for a clarification of the basis on which USEPA disapproved the request for redesignation of Kane and DuPage Counties.

Today's rulemaking clarifies USEPA's ozone redesignation policy and announces USEPA's proposed rulemaking action, which again would reject the State's request to redesignate Kane and DuPage Counties to attainment for ozone.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 30, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. History

Under section 107(d) of the Clean Air Act (Act), the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. *See, e.g.*, 43 FR 8962 (March 3, 1978) and 43 FR 46004 (October 5, 1978). As part of that promulgation EPA promulgated Illinois' initial request to designate Kane and DuPage Counties as nonattainment for ozone 43 FR 8962, 8998-89 (March 3, 1978) In accordance with section 107(d)(5) of the Act, on January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted an ozone redesignation request for a number of counties in Illinois. Among those for which Illinois sought redesignation to attainment for ozone were Kane and DuPage Counties (the Counties). This request was based on a lack of monitored ozone standard violations in these counties.

USEPA originally found the redesignation request for Kane and DuPage to be unacceptable because: (1)

Ozone standard violations continue to occur in the Chicago area, which suggests that additional control of ozone precursor emissions (in particular, control of Volatile Organic Compound (VOC) emissions) is necessary to attain the standard there; and (2) VOC emissions from Kane and DuPage Counties are believed to contribute significantly to high ozone concentrations monitored downwind of the Chicago urban area. For these reasons, USEPA proposed to disapprove the redesignation request for Kane and DuPage Counties on October 11, 1983 (48 FR 46082).

A number of comments were submitted to the USEPA during the comment period following the proposed rulemaking. These comments were addressed by USEPA in final rulemaking on June 12, 1984 (48 FR 24128). This final rulemaking disapproved the redesignation of Kane and DuPage Counties to attainment for ozone.

The IEPA and the Illinois State Chamber of Commerce (ISCOC) submitted a joint petition for review of USEPA's action before the Court of Appeals for the Seventh Circuit (herein referred to as the Seventh Circuit or simply as the court).

In its challenge, Illinois argued that, among other things, because no violations had been monitored in Kane and DuPage counties and since those counties had originally been approved as nonattainment areas separate from other nonattainment areas in the Chicago area, EPA had improperly based its decision to retain their nonattainment designation on air quality monitored in other areas or was trying to change the borders of the nonattainment area to make all of Chicago one nonattainment area. Under either approach, the state argued, EPA was doing something not authorized by law. *Id.* at 1146–47.

In its opinion in *Illinois State Chamber of Commerce,* the court stated that the basis of EPA's action was unclear, and speculated on two theories EPA might have used to justify the denial of the redesignation request. The first was that an entire urbanized area should be considered one nonattainment area for ozone because all sources in and near a city should be assumed to contribute to the ozone problem monitored in the urbanized area. *Id.* at 1145. A second, slightly different, theory that could have been advanced by EPA, according to the court, was that a nonattainment area for ozone must be large enough to include both the polluted area and all major sources contributing to ozone pollution in that area, even if those sources were located well upwind of the monitored pollution. *Id.* Under that theory, though, southeastern Wisconsin, which monitors the worst ozone concentrations attributable to Chicago-area sources, and the greater Chicago area itself would be part of the same nonattainment area. The court noted that those theories were inconsistent with each other because under the "urbanized area" theory, the peak ozone concentration area, miles downwind of the urbanized area, would not be included in the nonattainment area for the city but under the "polluted area plus sources" theory, it would. *Id.*

The court questioned whether EPA was actually applying either of these theories. It noted, first, that EPA had approved Illinois' initial request to designate each county in the Chicago area as a separate nonattainment area, rather than grouping the counties as a single nonattainment area under one of the two theories just described. It also noted that EPA had subsequently approved the redesignation of Will and McHenry Counties from nonattainment to attainment, even though both counties, in the court's words, were "arguably part of the larger Chicago area," and hence perhaps should not have been redesignated to attainment. *Id.* at 1145–46.

Although the court could not decipher EPA's rationale for denying the redesignations, it noted that either of the theories it had identified could be defended. It recognized that, because ozone pollution occurs downwind of sources, the polluted area itself typically does not contain all of the sources of the pollution. For that reason, the court concluded that the nonattainment area might need to be large enough to include even areas with clean air. *Id.*

Several other theories advanced by the court presume, by contrast, that EPA intended to label the counties as separate nonattainment areas, on the ground that an area's ozone attainment designation must be determined by looking at air quality downwind and outside the area itself. *Id.* The court noted that nothing in the statute required EPA to monitor within the area itself and that, according to the first of these alternative theories, perhaps the best way to monitor for ozone was downwind. *Id.* at 1149. The court stated, however, that if this were the rationale for EPA's action, the Agency needed to clarify its off-location monitoring requirements. *Id.* The court also theorized that an area's designation could be determined on the basis of ozone *precursors* monitored in the area itself. The court stated, however, that this theory too would require a better explanation of EPA's use of measurements of ozone precursors.

The court believed it more likely, though, that EPA was arguing that it never intended to treat each county in the Chicago area as a separate nonattainment area and that Kane and DuPage counties, as part of the Chicago nonattainment area or its fringe area of development, could not be upgraded until the entire area reached attainment. *Id.* Under this theory, EPA's promulgation of the original listing of counties was merely an accident of recordkeeping, rather than reflecting an intent to treat adjacent counties as separate nonattainment areas. *Id.* at 1149–1150. The court noted, moreover, that the "urbanized area" theory described above would explain the different treatment of Will and McHenry counties which, although containing significant sources of ozone, do not contain any part of the Chicago urbanized area as defined by the U.S. Census Burau on the basis of the 1970 Census. *Id.* Finally, the court questioned how the attainment status of an area should be changed—whether on the basis of monitoring within the area itself or otherwise. *Id.*

Because the Court could not determine from the record a rational, internally consistent basis for EPA's denial of the redesignation of Kane and DuPage Counties, the court remanded the denial to EPA for reconsideration and for clarification of the grounds on which EPA dealt with the Illinois request.

B. Purpose of This Notice of Proposed Rulemaking

It is the purpose of this proposed rulemaking to:

1. Summarize and clarify USEPA's current policy on the designation of areas for ozone, taking into account the various theories described by the court in *Illinois State Chamber.*

2. Summarize technical study results on the formation and transport of ozone.

3. Review available local data that affect USEPA's decision on the merits of the State's redesignation request for Kane and DuPage Counties. An effort is made to expand upon the USEPA's logic contained in the technical review documents used to support the previous proposed and final rulemakings on this issue. More recent data are also discussed.

4. Provide a list of literature and policy memoranda used by USEPA in reaching its decision on this issue.

5. Provide a new starting point for public response to USEPA's revised proposed rulemaking.

6. Provide as thoroughly as possible the rationale for USEPA's revised proposed action.

7. Announce USEPA's proposed rulemaking action and solicit comment.

II. Review of Ozone Designation Policy

A. The Statute

Current USEPA designation policy was generated following the 1977 amendment of the Act. Recognizing a lack of progress in attaining the air quality standards, Congress added Part D to the Act to provide a set of control requirements and attainment dates for areas not attaining the air quality standards. While Part D requirements apply only to areas designated as nonattainment under section 107 of the Act, States may choose to control emissions in areas larger than designated nonattainment areas.

Section 107 directed States to submit to the Administrator a list of all areas within the boundaries of the State and how they should be designated in relation to the NAAQS. EPA was to review the list, modify it as necessary, and promulgate it in final form. Section 107(d)(2), 42 U.S.C. 7407(d)(2). A designation of nonattainmnt triggered a requirement for Part D SIP revisions providing for, among other measures, the implementation of reasonably available control technology (RACT) as a means to bring about attainment of the standard as expeditiously as practicable but no later than the statutory deadline. Section 172(b)(3), 42 U.S.C. 7502(b)(3).

Section 171(2) of the Act defines the term "nonattainment area" as "* * * for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant." The defined nonattainment area must include any area defined to be nonattainment of the primary (health-related) or secondary (welfare-related) NAAQS under Section 107(d)(1).

Two points concerning the Section 171(2) nonattainment area definition should be noted. First, the size of a nonattainment area is not defined (nor is it defined in Section 107). Second, discretion is given to USEPA (the Administrator) in selecting procedures other than modeling or monitoring for defining the existence and extent of nonattainment areas.

B. Ozone Formation and Transport

USEPA and IEPA have not conducted area specific photochemical dispersion modeling for the Chicago area. Without such modeling or equivalent techniques, it is impossible to isolate the impacts of Kane and DuPage Counties' precursor emissions on downwind ozone concentrations. A number of studies, however, exist which allow USEPA to develop an opinion on the potential for such air quality impacts. Presented in this subsection of this **Federal Register** is a discussion of USEPA's view of ozone formation and transport derived from various studies and reports. Specific reports are referenced where appropriate. Other publications which discuss the formation and transport of ozone are listed in the May 23, 1986, Technical Support Document (TSD) for this proposed rulemaking.

Smog chamber studies confirm that reactions involving VOC and nitrogen oxide (NOx) and the presence of sunlight are a source of ozone.[1] Urban areas are significant source areas of these ozone precursors. Monitoring studies in and downwind of a number of urban areas [2] show that major urban areas are associated with significant downwind ozone concentrations. These studies also show that urban ozone plumes are spatially broad with plume widths being measured on the order of tens of kilometers. Monitoring at fixed sites shows elevated ozone concentrations that span several hours. These large spatial and temporal dimensions, coupled with a wide range of transport trajectories typically found in the atmosphere's near-surface mixing layer, suggest that precursor emissions from a large spatial area may be responsible for the high ozone concentrations observed significantly downwind of that area.

Analyses of transport trajectories [3] indicate that transport trajectories exhibit a significant variation over height and time. Within the surface mixing layer, pollutant transport and dispersion can occur in the vertical direction, as well as in the horizontal direction. Therefore, an air parcel arriving at a given location may have passed over a relatively large upwind area over which precursor loading may have occurred. For this reason, one cannot narrowly define the upwind source areas based on the wind trajectory for a single level.

Ozone concentrations resulting from precursor emissions in a given area may peak some distance downwind of a source area. The distance to peak ozone concentrations may be increased by the injection of new ozone precursors into air parcels downwind of the initial source areas.

Monitoring studies [4] also indicate that relatively high ozone concentrations can be detected 50 to 100 kilometers or more downwind of major source areas. Such distances involve relatively long transport times and, because of the variability of wind trajectories over time, large upwind source areas. Smog chamber studies and modeling [5] indicate

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[1] USEPA, EPA-600/8-78-004 "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (April 1978). NOx is produced by combustion sources such as motor vehicles.

[2] Cleveland, Kleiner, *Transport of Photochemical Air Pollution from Camden-Philadelphia Complex*, 9 Environmental Science and Technology 886 (September, 1975).

E. Martinez, E. Meyer, "Urban-Nonurban Ozone Gradients and Their Significance (March, 1976) (Proceeding From Symposium Held March 12, 1976 in Raleigh, N.C.).

USEPA, EPA-600/3-77-017, "Proceedings, International Conference on Photochemical Oxidant Pollution and its Control" (February, 1977).

N. Possiel, W. Eaton, M. Saeger, J. Sickles, W. Bach, C. Decker, "Ozone Precursor Concentrations in Vicinity of a Medium Sized City" (June, 1979) (unpublished paper presented at the 1979 Air Pollution Control Association Conference).

K. Sexton, H. Westburg, "Ambient Ozone Hydrocarbon Measurements in the Houston Urban Plume" (June, 1980) (unpublished paper presented at the 1980 Air Pollution Control Association Conference).

Correspondence to Donald Theiler, Wisconsin DNR, and Daniel Goodwin, Illinois EPA, from Steve Rothblatt, USEPA, dated April 7, 1982, with attachment: "Analysis of Chicago and Milwaukee Ozone Concentrations for the Impact of Interstate Ozone Transport".

[3] Karl, *Ozone Transport in the St. Louis Area*, 12 Atmospheric Environment 1421 (July, 1978).

P. Samson, J. Moddy, "Trajectories as Two-Dimensional Probability Fields" (November, 1980) (unpublished report).

[4] Cleveland, Kleiner, *Transport of Photochemical Air Pollution from Camden—Philadelphia Complex*, 9 Environmental Science and Technology 886 (September, 1975).

E. Martinez, E. Meyer, "Urban-Nonurban Ozone Gradients and Their Significance (March, 1976) (Proceedings from Symposium Held March 12, 1976).

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[5] USEPA, EPA-600/8-78-004, "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (April, 1978).

that peak ozone concentrations take several hours to form after the initial emission of ozone precursors.

The above observations support USEPA's policy, explained below, of requiring that an entire urban area and its adjacent areas of development be assumed to be responsible for downwind ozone standard violations. Without the use of a photochemical dispersion model or equivalent techniques, it is impossible to distinguish the precise downwind effect of the precursor emissions from one subsection of an urban area from that due to precursor emissions from another subsection of the urban area.

C. Designation Policy Statements

Since enactment of the 1977 Amendments, USEPA has produced a number of rulemakings and policy memoranda concerning USEPA's policy on the designation of attainment, nonattainment, or unclassifiable areas. The most significant of these are listed below along with the summary of USEPA policy statements related to the size of area designations for nonattainment areas. For a more complete discussion of redesignation policy, see the Technical Support Document (TSD). The publications are discussed in their chronological order.

1. *October 7, 1977, Memorandum from David G. Hawkins (USEPA) to Regional Administrators, Region I–X, Subject: "Model Letter Regarding State Designation of Attainment Status".*

[Since oxidant levels well in excess of the oxidant standard (0.08 parts per million (ppm), 1-hour average, not to be exceeded more than once per year at the time of this memoranda) have been shown to persist for many miles downwind or urban areas, the area designated as nonattainment around urban areas should reflect this phenomenon.]

2. *January 3, 1978, Memorandum from David G. Hawkins (USEPA) to Regional Administrators, Region I–X, Subject: "Attainment/Nonattainment Status Designations".*

[The designated nonattainment area for photochemical oxidants should be of sufficient size to include most of the significant hydrocarbon sources.]

3. *February 24, 1978, Memorandum from The Administrator to Regional Administrators, I–X, Subject: "Criteria for Approval of 1979 SIP Revisions".*

[In defining the area for which ozone precursor emissions must be evaluated, it is stated that the analysis area must be large enough to cover the entire urbanized area, as defined by the U.S. Bureau of Census, and adjacent fringe areas of development.]

4. *October 5, 1978, Federal Register, 43 FR 46993, Subject: "Part 81—Air Quality Control Regions, Criteria, and Control Techniques.*

[In responding to a negative comment on the designation of an entire county as nonattainment for photochemical oxidants, it is stated that to declare solely the urbanized area as nonattainment would be inconsistent with the physical nature of ozone formation and transport.]

5. *March 5, 1982, Memorandum from G.T. Helms (USEPA) to David Howekamp, Subject: "National Policy Issues Concerning Section 107 of the Clean Air Act".*

[Nonattainment areas should be large enough to include both the areas where the monitored violations occur and the areas where the sources causing these violations are located. The urbanized area should be the minimum nonattainment area size for ozone.]

6. *April 21, 1983, Memorandum from Sheldon Meyers (USEPA) to Director, Air Management Division Regions I, V, IX, and to Director, Air and Waste Management Division, Regions II–IV, VI–VIII, X, Subject: "Section 107 Designation Policy Summary."*

[An entire urbanized area, plus fringe areas of development, should be designated as nonattainment for urban ozone nonattainment areas. The nonattainment area for ozone should include the significant VOC sources.]

7. *March 2, 1984, Letter from Darryl T. Tyler (USEPA) to Daniel J. Goodwin (IEPA)*

[The area of ozone nonattainment must include the urbanized area as defined by the U.S. Bureau of Census and other fringe areas with significant VOC sources.]

Thus, EPA's policies have consistently held that, in urban areas, an ozone nonattainment area shall include, at a minimum, the urbanized area as defined by the U.S. Bureau of Census, and the adjacent fringe areas of development containing significant precursor (VOC or nitrogen oxide (NOx)) sources. This theory comports with the court's speculation that EPA believed an urbanized area should be considered one nonattainment area because all the sources in the area were assumed to contribute to the ozone problem in and downwind of the area. In addition to the urban area and its fringe areas of development, the downwind areas experiencing monitored violations of the ozone standard should also be designated as nonattainment. These areas may be treated as their own isolated area for the purpose of developing an attainment demonstration, assigned to the upwind urban nonattainment area or assigned to a different neighboring urban nonattainment area. If urban nonattainment areas overlap, it will be necessary for the State Implementation Plan (SIP) to address the participating of downwind areas into one of the possible urban ozone nonattainment areas for the purpose of assembling ozone attainment demonstrations.

Moreover, EPA's initial acceptance of states' lists that designated adjacent urban and suburban counties as separate nonattainment areas does not reflect the view that urban area designations should be divided along county lines. Such prior approvals resulted from inadvertent recordkeeping rather than a conscious intent to divide urbanized areas into several separate nonattainment areas. This is reflected in EPA's policies on air quality planning in ozone attainment areas. EPA requires each state to prepare a single plan, based on a single set of technical data, for the entire group of designated nonattainment counties located in a single urban area and its adjacent areas of development. All such counties, furthermore, are subject to the same pollution control requirements. Thus, the division of urban areas into separate, county-specific designated nonattainment areas is an artifact of the lists the states submitted, and has no substantive consequence under Part D.

III. Redesignation Request for Kane and DuPage Counties

A. The State Submittal

On January 27, 1983, the IEPA submitted a request to USEPA proposing redesignation to attainment for a number of areas for ozone, carbon monoxide, total suspended particulates, and nitrogen dioxide. The remainder of this **Federal Register** addresses the ozone portion of this redesignation request for Kane and DuPage Counties, Illinois. All other portions of the January 27, 1983, redesignation request have undergone final USEPA rulemaking.

As support for the redesignation request and in accordance with EPA policy of requiring the most recent 3 years of data, the IEPA referenced 1980 through 1982 ozone data and 1979 through 1981 annual air quality summary reports which cover the ozone monitoring data for the entire State. The peak 1980–1982 ozone concentrations and expected ozone standard exceedances for all Kane and DuPage ozone monitoring sites were summarized.

The data indicate that no violation of the ozone standard was recorded in either DuPage County or Kane County in the 1980–1982 period. This lack of monitored ozone standard violations

forms the basis of the IEPA redesignation request.

In Kane and DuPage Counties, no violations of the ozone NAAQS have been monitored during the period of 1980 through 1987.

B. The Chicago Area Ozone Problem: The Role of Kane and DuPage Counties

For reasons described above, USEPA's ozone designation policy requires that the ozone nonattainment area include all of an urbanized area, as defined by the U.S. Bureau of the Census, and its adjacent areas of development and/or significant VOC emissions. DuPage County contains a significant portion of the Chicago urbanized area and, for this reason, must be maintained as part of the Chicago designated nonattainment area. Kane County, on the other hand, contains the separate urban areas of Aurora and Elgin as defined by the 1980 Census. These urban areas are the most significant VOC source areas in Kane County. It should be noted that these adjacent urban areas were part of a single urban area, Aurora-Elgin, as defined by the 1970 Census, when Kane County was originally designated as nonattainment for ozone. This unified urban area has a population exceeding 200,000.

The 1980 Census specifies the urban area population of Kane County as being 239,018 (95,482 in Elgin and 143,536 in Aurora). Both Aurora and Elgin are adjacent to the Chicago urbanized area along the north-south border between Kane and DuPage Counties. Even though the 1980 Census defined these areas as separate urban areas, USEPA views these areas as a single area of significant VOC-source contributions to the Chicago-area ozone problem, as well as a component of the greater Chicago source area. Regardless of how these areas are defined by the Census Bureau, USEPA considers them to be areas of development adjacent to, and hence contributing to, ozone violations in and downwind of, the Chicago urban area.

To assess the significance of the Kane County area (particularly Aurora-Elgin) as a Chicago ozone-precursor source area, it is appropriate to compare the VOC emissions and urban population (a barometer of area and mobile source VOC emissions) of Kane County with those from small, isolated urban areas where elevated ozone levels have been monitored. Monitoring data from 1977 from Harrisburg, Pennsylvania, Columbia, South Carolina, and Shreveport, Louisiana, showed multiple ozone concentrations in excess of the current 0.12 ppm ozone standard. The 1977 VOC emissions in these urban areas were: Harrisburg—19,772 tons/year; Columbia—25,107 tons/year and Shreveport—19,074 tons/year. The 1970 populations were Harrisburg—241,000; Columbia—242,000; and Shreveport—234,000.[6] These urban populations and VOC emission rates are similar to the urban population (239,018) and 1980 VOC emission rate (48,053 Kilograms/day or approximately 19,100 tons/year) or Kane County. Thus, the Voc emissions from Kane County are significant and have a high potential of contributing significantly to elevated downwind ozone concentrations. A similar conclusion can be drawn for DuPage County, which had a 1980 urban population of 646,408 and 1980 VOC emissions of 97,316 Kilograms/day (38,930 tons/year).

Futhermore, in 1977, airborne ozone sampling was conducted upwind and downwind of Springfield, Illinois,[7] to determine if cities smaller then the Aurora-Elgin urban area (with populations under 10,000) could contribute detectable additions to downwind ozone concentrations. A comparision of VOC and NOx emissions from Springfield with those from other urban areas showed it was similar in precursor emissions levels to other cities with populations of 100,000.[8] The airborne studies clearly showed that, under ozone conducive conditions, precursor emissions from a small city (smaller than the urbanized populations of Kane and DuPage Counties) could produce a significant, measurable increase in downwind ozone concentrations. As much as 0.02 ppm above background ozone concentrations could be detected up to 72 kilometers (45 miles) downwind of the urban area.

The center of the Aurora-Elgin area is approximately 54 kilometers west-southwest of Deerfield, 56 kilometers south-southwest of Libertyville, 56 kilometers west-southwest of Evanston, and 68 kilometers south-southwest of Waukegan. The center of DuPage County is approximately 44 kilometers south-southwest of Deerfield, 51 kilometers south-southwest of Libertyville, 38 kilometers southwest of Evanston, 60 kilometers south-southwest of Waukegan. All of the monitoring locations in those areas show ozone standard violations during the 1984–86 and 1980–82 periods. These distances are in the range of significant ozone transport observed in other areas.

C. Future Source Growth

It is also appropriate to consider future source growth. Where significant source growth is expected to occur, potentially increasing ozone concentrations, it is appropriate to maintain nonattainment designations to ensure full implementation of all emission control requirements necessary to address the contribution of the growth to the area's problem.

In the Chicago area, the VOC emissions inventories in the 1982 SIPs make it difficult to determine relative changes in point source industrial emissions due to source growth. Considerable variation in source growth estimates exists among the various source categories. In addition, certain portions of the 1980 emission inventory for the Chicago demonstration area have undergone significant revision over time, making it unclear what the growth rates by county actually are.

On the other hand, it is possible to make assumptions about area source and mobile source emissions which comprise more than 50 percent of the total VOC emissions. Assuming that changes in population are good indicators of changes in area source and mobile source emissions, population projections for DuPage and Kane Counties can be used to predict area and mobile source emission growth in the Counties. Data presented in the Illinois SIP indicated that Kane County is expected to undergo a 26.0 percent population increase between 1980 and 1987. DuPage County was expected to undergo a 11.2 percent population increase between 1980 and 1987. Therefore, both counties were expected to experience a significant population increase. These growth rates are in contrast to the 0.5 percent decrease in population indicated for Cook County, as presented in the SIP. Given that the predicted increase in population was fairly sizable, significant increases in area source (e.g., consumer product) and mobile source (e.g., car) emissions were expected to result from the population growth. This emissions growth warrants continuing the nonattainment designations for these counties.

In previous rulemaking on this issue and in this notice, it was previously indicated by the USEPA that no 1980–1982 violations of the ozone NAAQS had been monitored in Kane and DuPage Counties. It was also indicated, however, that the local monitoring data do not present a complete picture of the ozone formation potential of precursor

[6] Memorandum from Warren P. Freas, USEPA, to Robert E. Neligan, USEPA, Subject: Ozone Data for Shreveport, Louisiana, Dated December 6, 1977.

[7] C.W. Spicer, D.W. Joseph, P.R. Sticksel, *An Investigation of the Ozone Plume from a Small City*, 32(3) Journal of the Air Pollution Control Association (March, 1982).

[8] *Ibid.*

emissions from these counties. Due to the secondary nature of ozone formation, precursor emissions may contribute to ozone concentrations outside of these counties. For this reason, monitoring only inside of a precursor source area does not demonstrate the full impact of the local precursor emissions and downwind ozone concentrations. Therefore, monitoring data alone for Kane and DuPage Counties cannot form the sole basis for the designation of these counties.

Moreover, the distance between the precursor sources and the downwind ozone peak concentrations may be increased as additional NOx emissions are encountered downwind. Nitrogen oxide reacts with ozone to produce nitrogen dioxide and oxygen, thus locally suppressing ozone concentrations. The resultant nitrogen dioxide, along with other ozone precursors, may result in added ozone in the source area plume further downwind (See E. Martinez and E. Meyer, pages 30–35, 44 and 55–57).

Several studies have been conducted in the Chicago-Milwaukee area which provide some evidence concerning the extent of the source area for ozone standard violations in the Chicago area. Relevant conclusions drawn from these studies are given here.

Considering only days with high ozone concentrations somewhere in the Chicago area or its downwind environs including southeastern Wisconsin, USEPA found high ozone concentrations to be primarily associated with winds from the southerly quadrants (the quadrant bounded by east and south and the quadrant bounded by south and west). This was particularly true for ozone monitoring sites in northeastern Illinois and southeastern Wisconsin. Considerable variation in resultant wind directions [9] measured at Midway Airport, O'Hare Airport, and Racine were found in these quadrants for high ozone days.[10] This indicates a large precursor source area must be considered when evaluating all ozone standard violation sites in the Chicago area and its downwind environs.

Based on airborne and ground-based observations, Lyons and Cole [11] concluded that precursor emissions from the entire Chicago metropolitan area with its 7 million population was responsible for the ozone standard violations monitored in Racine and Kenosha, Wisconsin. A similar conclusion was drawn in a report by Cole and Shaffer.[12] This study concluded that precursor emissions from the Chicago Metropolitan Interstate Air Quality Control Region (which includes Kane and DuPage Counties) contributed substantially to ozone standard violations monitored in Southeastern Wisconsin in 1976. The Cole and Shaffer report also described a mechanism by which precursor emissions well inland from the Lake Michigan shoreline can contribute to ozone standard violations monitored downwind along the shoreline under lake breeze conditions. Precursor emissions from inland may be injected into the offshore return air flow at a lake breeze front, thus adding to downwind ozone concentrations resulting from a recycling of transported pollutants further downwind.[13]

An analysis of ozone data from Racine and resultant wind directions measured at Mitchell field in Milwaukee during 1973 showed that 92 percent of the days with peak hourly ozone concentrations above 0.08 ppm had daytime winds from the southwest through east-southeast.[14]

From the above, it can be concluded that the Chicago urban area and its adjacent fringe areas of development and significant sources is the precursor emission source area responsible for the ozone standard violations monitored in Northeastern Illinois and in Kenosha and Racine Counties, Wisconsin. Since Kane and DuPage Counties are part of this source area, it must be further concluded that precursor emissions in these counties do contribute to the ozone standard violations monitored in Northeastern Illinois, and in Kenosha and Racine Counties, Wisconsin. USEPA's ozone redesignation policy requires that monitoring data in all of an urban area and nearby potentially affected downwind areas be considered.

The NAAQS for ozone is defined at 40 CFR Part 50 to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) over the most recent three years of monitoring at each site is greater than one (0.1). A monitored exceedance occurs when the peak one hour concentration monitored during a given day exceeds 0.124 ppm (See "Guideline for the Interpretation of Ozone Air Quality Standard", EPA–450/4–79–003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days.

Since the number of expected standard exceedances must equal or exceed the number of observed standard exceedances, it can be concluded that any monitor recording four or more observed standard exceedances during a 3-year period has recorded a violation of the ozone standard. If less than 3 years of data are available for a given monitoring site, fewer exceedances constitute a violation of the ozone standard: for example, three exceedances when only 2 years of data are available; and two exceedances when only 1 year of data is available. Using the above exceedance frequencies, the peak ozone data can be screened for sites with obvious ozone standard violations. During the 1980–1982 period (the period addressed in the State's redesignation request), the ozone standard was violated at the following Chicago related sites: (1) Illinois: Taft High School; Dixie Highway; Evanston; Skokie; Deerfield; Libertyville; and Waukegan; (2) Indiana: Hammond (1300 141st Street site); 900 North County Road; and Burns Harbor, and (3) in Wisconsin: Kenosha and Racine. During a recent 3 year period, 1984 through 1986, the ozone standard was violated at the following Chicago related sites: (1) Illinois: Evanston; Deerfield; Libertyville; and Waukegan; (2) Indiana: Gary; Hammond (1300 141st Street site) and Porter Counties sites (1100 North Mineral Street, Water Treatment Plant, and Valparaiso); and (3) Wisconsin: Kenosha and Racine.

It is of interest to note that a recent (1983–1985) violation of the ozone standard was monitored in Des Plaines. Des Plaines is only 2 miles from the northeastern corner of DuPage County. Given the spatial nature of ozone concentrations (ozone concentrations are relatively constant over long

[9] A "resultant wind direction" is the direction of the wind vector that is the sum of a number of discrete wind vectors measured during the day and, in particular, during the daylight hours.

[10] Correspondence to Donald Theiler, Wisconsin DNR, and Daniel Goodwin, Illinois EPA, from Steve Rothblatt, USEPA, dated April 7, 1982, with attachment: "Analyisis of Chicago and Milwaukee Ozone Concentrations for the Impact of Interstate Ozone Transport".

[11] Lyons, Cole, Photochemical Oxidant Transport: Messoscale Lake Breeze and Synoptic Scale Aspects, 15 Journal of Applied Meteorology 733 (July 1976).

[12] H.S. Cole, J. Shaffer, "Photochemical Oxidant Transport Along The Western Shoreline of Lake Michigan: A Case Study, August 17–22, 1976" (August, 1977) (unpublished report).

[13] *Ibid.*

[14] Lyons, Cole, *Photochemical Oxidant Transport: Messoscale Lake* Breeze and Synpothic Scale Aspect, 15 Journal of Applied Meteorology 733 (July, 1976).

distances), this monitored ozone standard violation implies that part of DuPage County may be experiencing unmonitored ozone standard violations.

In Kane and DuPage Counties, no violations of the ozone NAAQS have been monitored during the period of 1980 through 1987. Nevertheless, during both the period covered by the State's redesignation request and during the most recent 3 years, ozone standard violations have been monitored in the Chicago urban area and in southeastern Wisconsin where, as explained above, EPA believes Chicago's ozone precursor emissions have a significant impact on ozone concentrations.

As the court theorized, EPA's redesignation policy requires that a nonattainment area consist of the entire urbanized area and fringe areas of development and ozone precursor sources. The Court also correctly theorized that, although the Chicago area is listed by counties, a single county, if part of an urbanized area or fringe area of development, may not be redesignated to attainment until the entire area has reached attainment. Accordingly, Kane and DuPage counties, as part of the Chicago urbanized area, may not be redesignated to attainment.

IV. Will County and McHenry County Designations

In their previous arguments before the Seventh Circuit Court of Appeals, the IEPA and ISCOC argued that USEPA's previous action in approving a redesignation request for Will and McHenry Counties for ozone was inconsistent with its action on Kane and DuPage Counties. The Illinois State Chamber of Commerce (ISCOC) argued that the USEPA only considered the in-county data in approving the redesignation of Will and McHenry Counties. It is obvious from the Seventh Circuit decision that there is a likelihood of confusion about USEPA's designation policy, particularly as a result of the different actions taken by USEPA in Will and McHenry Counties and in Kane and DuPage Counties.

As noted in USEPA's final rulemaking technical support document, the primary reason that USEPA approved the State's redesignation request for McHenry and Will Counties was that these counties contain essentially none of the Chicago urbanized area nor a contiguous urbanized area. (The 1970 census showed that the Joliet and Chicago urbanized areas were not in direct contact with each other).

To be sure, USEPA was aware of the VOC precursor emissions in Will County. It determined, however, that, unlike emissions from Kane and DuPage Counties, these emissions come mainly from stationary source emissions,[15] and it assumed that these emissions would be significantly reduced as a result of Illinois' statewide reasonably available control technology (RACT) regulations, which were to apply to major stationary sources in all areas of the State regardless of the attainment status of an area. USEPA was operating under the assumption that nothing (in terms of stationary source control) could be gained by keeping Will and McHenry Counties designated nonattainment. Reliance on the State's commitment to RACT, however, later proved misplaced. The State later withdrew its commitment to statewide RACT.[16] Furthermore, at the time EPA believed it could unilaterally redesignate an area to nonattainment. Subsequently the Seventh Circuit Court of Appeals ruled that EPA could not unilaterally redesignate an area. *See Bethlehem Steel* v. *EPA*, 638 F.2d 944 (7th Cir. 1983).

V. Conclusions

EPA concludes that:

1. Ozone standard violations continue to be monitored in the Chicago area and its downwind environs.

2. Kane and DuPage Counties either contain a significant part of the Chicago urbanized area (as defined by the U.S. Census Bureau) or contain adjacent areas of significant ozone precursor emissions.

3. VOC emissions from Kane and DuPage Counties contribute significantly to the monitored standard violations attributable to Chicago-area sources, and are expected to continue to contribute in the future.

4. Portions of DuPage County could be experiencing nonmonitored violations of the ozone standard as evidenced by the recent standard violations in Des Plaines.

Proposed Action and Solicitation of Public Comment

USEPA again proposes to reject the State's request to redesignate Kane and DuPage Counties, Illinois, to attainment of the ozone NAAQS.

In making this proposal, USEPA requests that all commentors submit all cited support publications along with a synopsis of the relevant portions of these publications. A simple submittal of a reference list with no elaboration will not allow an adequate, thorough response by USEPA.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

Authority: 42 U.S.C. 7401–7642.

Dated: November 6, 1987.

Editorial Note: This document was received at the Office of the Federal Register, December 23, 1988.

William H. Sanders,

Acting Regional Administrator.

[FR Doc. 88–29962 Filed 12–28–88; 8:45 am]

BILLING CODE 6560-50-M

[15] In McHenry County, in contract, emissions levels are lower and dominated by mobile source emissions.

[16] In its May 26, 1988 SIP call, EPA proposed that a broader nonattainment area, to include all counties listed in the Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA) as defined by OMB, be used for future ozone SIP planning purposes. On June 6, 1988 (53 FR 20722), EPA formally proposed such a broad designation for purposes of implementing a recent Congressional enactment called the "Mitchell-Conte Amendment" to the 1987 Continuing Resolution. Under this directive, if made final, Will and McHenry Counties would be included in the nonattainment area.

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40 CFR Part 180

[PP 9E2149, 3E2910/P474, FRL-3499-6]

Sodium Chlorate; Proposed Exemption From Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of the defoliant, desiccant, and fungicide sodium chlorate when used as a harvest aid in or on the raw agricultural commodities dry edible beans and southern peas. This proposal, which eliminates the need to establish a maximum permissible level for residues of sodium chlorate in or on the commodities, was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 9E2149, 3E2910/P474], must be received on or before January 30, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–755C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of exemptions from the requirement of a tolerance for residues of sodium chlorate when used in accordance with good agricultural practice as a harvest aid in or on certain raw agricultural commodities.

1. *PP 9E2149.* Petition submitted on behalf of the California, Minnesota, Michigan, and North Dakota Agricultural Experiment Stations for edible dry beans.

2. *PP3E2910.* Petition submitted on behalf of the Arkansas, Georgia, Missouri, Oklahoma, and Tennessee Agricultural Experiment Stations for southern peas.

Sodium chlorate is a strong oxidizing agent that can be easily reduced to sodium chloride in the presence of organic material. The available data indicate that the proposed use results in negligible residues of sodium clorate on the raw agricultural commodities. Dried beans and southern peas are normally rehydrated and cooked prior to human consumption, and these processes favor further reduction of sodium chlorate residues to sodium chloride.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemptions from the requirement of a tolerance include:

1. An acute oral study in rats with an LD^{50} (median lethal dose) of 5 grams (gms)/kilogram (kg).

2. A 90-day feeding study in rats with a no-observed-effect level (NOEL) of 100 milligrams (mg)/kilogram (kg)/day.

3. A 90-day feeding study in dogs with a NOEL of greater than 360 mg/kg/day (highest dose tested).

4. A teratogenicity study in rats with NOEL's of greater than 1,000 mg/kg/day (highest dose tested) for maternal and developmental effects.

The above studies were submitted to provide a basis for evaluating the toxicological significance of sodium chlorate residues in the human diet and for determining whether additional studies are needed to complete an evaluation of the chemical. Although the available studies are adequate to determine that the proposed exemption from the requirement of a tolerance for sodium chlorate is adequate to protect the public health, the Agency has requested mutagenicity studies to determine whether it is acceptable to continue to defer or to waive the remaining chronic toxicity requirements for sodium chlorate. The mutagenicity studies are due in October 1989.

Based on the above information considered by the Agency, the exemptions from the requirement of a tolerance established by amending 40 CFR 180.1020 would protect the public health. Therefore, it is proposed that the exemptions be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 9E2149, 3E2910/P474]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-602), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 16, 1988.

Herbert Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1020 is revised to read as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

Sodium chlorate is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities when used as a defoliant, desiccant, or fungicide in accordance with good agricultural practice.

Commodities

Beans, dry, edible
Corn, fodder
Corn, forage
Corn, grain
Cottonseed
Flaxseed
Flax, straw
Guar beans
Peas, southern
Peppers, chili
Rice
Rice, straw
Safflower, grain
Sourghum, grain
Sourghum, fodder
Sourghum, forage
Soybeans

Sunflower seed

[FR Doc. 88-29959 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CGD86-025;CGD 88-079]
RIN 2115-AD 12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is developing safety regulations for uninspected fishing, fish processing and fish tender vessels to implement the provisions of the Commercial Fishing Industy Vessel Safety Act of 1988 (Act), Pub. L. 100-424. Response to this advance notice will help the Coast Guard determine the appropriate standards to propose for these vessels.

DATE: Comments on this advance notice must be received on or before February 27, 1989.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-079), U.S. Coast Guard, 2100 Second Street SW., Washington, DC. 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, except federal holidays, at the Marine Safety Council (G-LRA-2), Room 3600, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Comments may also be delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Noman Lemley, Office of Marine Safety, Security and Environmental Protection, (202) 267-0001.

SUPPLEMENTARY INFORMATION: The public is invited to participate in the earliest stages of this rulemaking procedure by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this advance notice (OGD 88-079), identify the specific issues of this advance notice to which each comment applies, and give reasons for the comments. Receipt of comments will be acknowledged if a stamped self-addressed post card or envelope is enclosed with the comments. All comments received before the expiration of the comment period will be considered before further action is taken. No public hearing is currently planned for this notice, however, one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a hearing are received and the Coast Guard determines that the opportunity to make oral presentations at this stage will aid the rulemaking process.

This advance notice outlines the requirements that are being considered and requests specific information that commentors believe will aid the Coast Guard in developing proposed regulations for uninspected fishing, fish processing and fish tender vessels. Views, data, or arguments that are considered pertinent should be submitted.

An Advance Notice of Proposed Rulemaking was published in the **Federal Register** on July 9, 1987 (52 FR 25890) (CGD 86-025) addressing potential requirements for uninspected fish processing vessels necessary to implement the Commercial Fishing Industry Vessel Act (Pub. L. 98-364). A correction document was published on August 10, 1987 (52 FR 29556). That project is overtaken by this rulemaking since Pub. L. 100-424 has revised the requirements of Public Law 98-364. Therefore, Coast Guard Docket 86-025 is withdrawn. Comments received by the Coast Guard under CGD 86-025 will be placed in the docket with those received on this rulemaking.

Drafting Information

The principal persons involved in drafting of this advance notice are Mr. N.W. Lemley, Office of Marine Safety, Security and Environmental Protection and CDR G.A. Gallion, Office of the Chief Counsel.

Background

Commerical fishing is now one of the most dangerous industries in the United States. On the average, 84 fishermen die and 250 fishing vessels are total losses each year. The Coast Guard investigates 1100 marine casualties involving fishing vessels each year. A lack of comprehensive regulatory safety requirements has been perceived as a contributing cause of this high casualty rate. Commercial fishing is the only major marine commercial industry for which inspection, licensing, operation and equipment regulations, other than for basic safety equipment, are essentially non-existent.

Each year the Coast Guard responds to approximately 3000 offshore search and rescue (SAR) cases involving commercial fishing vessels. These cases result in the saving of over 500 lives and over $75 million in property annually. The Coast Guard's SAR data base for FY86 and FY87 also shows, not surprisingly, that more than 85% of the commercial fishing vessels assisted are greater than 25 feet in length, and about 20% of cases occur more than 20 miles offshore. Although fishing vessels account for about 5% of the SAR cases worked by the Coast Guard, the cases on average tend to be more serious in nature, requiring more rescue resources and more rescue time. For these reasons, commercial fishing vessel SAR cases account for nearly 15% of the operating cost of the Coast Guard's SAR program. SAR statistics for Alaska alone show that 25% of SAR cases involve commercial fishing vessels and about 250 lives and $30 million of property are saved each year.

The Coast Guard, recognizing the importance of improving the safety record of the U.S. fishing fleet, but not having specific legal authority to regulate, developed a voluntary safety program for the commercial fishing industry in 1985. The program includes voluntary design standards developed and published by the Coast Guard as Navigation and Vessel Inspection Circular No. 5-86 (NVIC 5-86) and a Vessel Safety Manual for personnel training published by the North Pacific Fishing Vessel Owners' Association (NPFVOA). Both were well received throughout the U.S. as well as internationally. They provide practical advice on improving fishing vessel safety. The Congress, recognizing the need to make significant improvements more quickly, adopted legislation to assure corrective action in several specific safety areas. The President signed the legislation September 9, 1988.

The Commercial Fishing Industry Vessel Safety Act of 1988 requires safety regulations, studies of licensing and inspection issues, and the establishment of a Commercial Fishing Industry Vessel Advisory Committee, all provided in an effort to greatly improve safety in this dangerous industry. The Coast Guard solicited applications for appointment to membership on the Committee in the **Federal Register** on September 23, 1988 (53 FR 37075). Implementation of the law will impact about 33,000 documented fishing industry vessels and about 100,000 fishing industry vessels numbered under state laws.

Discussion

On September 9, 1988, Title 46 United States Code, was amended in Chapter 45 (Uninspected Commercial Fishing Industry Vessels, Sections 4501 through

4508) by the Commercial Fishing Industry Vessel Safety Act of 1988, Pub. L. 100–424. This Chapter, as amended, is applicable to all uninspected fishing vessels, fish processing vessels and fish tender vessels. It does not apply to fish processing vessels of more than 5000 gross tons and fish tender vessels of more than 500 gross tons since they are subject to inspection under 46 U.S.C. 3301 (11) and (12). Also, it does not apply to vessels engaged solely in sport fishing that are subject to inspection under 46 U.S.C. 3301(8) as small passenger vessels and are regulated under 46 CFR Subchapter T, or to vessels carrying 6 or less passengers that operate as uninspected passenger vessels regulated under 46 CFR Subchapter C. Vessels that alternate between commercial and sport fishing must comply with the requirements for the service in which they are engaged.

The Act requires the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures. Certain of these requirements may be made applicable only to documented vessels that operate beyond the boundary line described in 46 CFR Part 7 or that operate with more than 16 individuals on board. In prescribing regulations, the Secretary must consider the specialized nature and economics of the operations and the character, design, and construction of these vessels. Requiring alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulations is not permitted. Certain fish processing vessels must meet the requirements for classification by the American Bureau of Shipping or other similarly qualified organization. Chapter 45 also provides for the enforcement of the regulations as well as authority for termination of a voyage when conditions warrant that action.

To implement the Act, the Coast Guard will assess information concerning the appropriate safety equipment and operational standards, their costs, and the current safety practices in fishing, fish processing and fish tender vessel operation. The Coast Guard is considering adding the standards developed to Subchapter C of Title 46, Code of Federal Regulations in a new part which would apply only to uninspected fishing industry vessels. The Coast Guard envisions using the requirements of 46 CFR Subchapter C, together with the voluntary standards of the American Boat and Yacht Council and the voluntary standards in the Coast Guard's NVIC 5–86, as a basis for developing the standards. The Coast Guard published notification of the issuance of NVIC 5–86 in the **Federal Register** of October 20, 1986 (51 FR 37247), indicating that it contains recommended standards for commercial fishing vessels. In addition to the location described in the **ADDRESSES** section above, NVIC 5–86 may be seen at any Coast Guard District Headquarters, Marine Inspection or Marine Safety Office. It may be purchased by sending a check to Commandant (G–MTH), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC, 20593–0001 in the amount of $11.00 payable to the U.S. Treasury.

The Act authorizes the Secretary of Transportation to prescribe regulations over a wide range of safety issues, and directs issuance of regulations to require installation, maintenance and use of specific equipment. Subjects to be addressed by this rulemaking include:

(1) Navigation equipment such as compasses, anchors, charts, radars, radar reflectors and depth sounders,

(2) Radio communication equipment such as emergency position indicating radio beacons and radios allowing communications with land based search and rescue units,

(3) Visual distress signals,

(4) Lifesaving equipment such as life preservers, buoyant apparatus, liferafts and immersion suits,

(5) Life rails, grab rails, and other equipment to address risk of serious injury,

(6) Firefighting equipment such as portable and semiportable extinguishers, detection systems, fixed extinguishing systems and fire alarms,

(7) Flame arrestors or similar devices for gasoline engines,

(8) Use and installation of insulation materials,

(9) Storage of flammable and combustible materials,

(10) First aid equipment,

(11) Fuel, ventilation and electrical systems,

(12) Operational stability including bilge pumps, bilge alarms, and stability information,

(13) Collection of casualty information, and

(14) Information relative to a seaman's duty to notify his employer regarding illness.

The Act has varied applicability depending on the date of vessel construction or conversion, area of operations, or number of persons on board. The categories of applicability of safety standards are given in the following table:

TABLE.—APPLICABILITY OF SAFETY STANDARDS

Section 46 U.S.C.	Vessels affected	Nature of authority to regulate
46 U.S.C. 4502(a)—Requires the Development of Regulations for Equipping All Affected Vessels With Specified Safety Equipment.		
4502(a)	All Uninspected Commercial Fishing Industry Vessels *Includes*: All state numbered vessels. (See footnote 1). All documented vessels. (See footnote 2.)	The Coast Guard is *required* to develop regulations in the areas discussed in this section of the Act.
46 U.S.C. 4502(b)—Requires the Development of Regulations for Equipping All Affected Vessels With Specified Lifesaving and Navigation Equipment.		
4502(b)	Only those *documented* Uninspected Commerical Fishing Industry Vessels that operate beyond the boundary line *or* that operate with more than 16 individuals on board. (See footnote 3.) *Includes*: (1) All documented vessels that operate beyond the boundary line. (2) All documented vessels that operate with more than 16 individuals on board.	The Coast Guard is *required* to develop regulations in the areas discussed in this section of the Act. The Coast Guard is *permitted* to develop regulations to minimize risk of injury to the crew during vessel operations.

TABLE.—APPLICABILITY OF SAFETY STANDARDS—Continued

Section 46 U.S.C.	Vessels affected	Nature of authority to regulate
46 U.S.C. 4502(c)—Permits the Development of Regulations for Equipping All Affected Vessels With Specified Navigation, Lifesaving, Fire Protection and Fire Fighting Equipment		
4502(c)	Uninspected Commerical Fishing Industry Vessels built or converted after *31 December 1988* that operate with more than 16 individuals on board. *Includes*: (1) All new or converted state numbered vessels that operate with more than 16 individuals on board. (2) All new or coverted documented vessels that operate with more than 16 individuals on board.	The Coast Guard is *permitted* to develop regulations in the areas discussed in this section of the Act.
46 U.S.C. 4502(d)—Requires the Development of Regulations for Operating Stability		
4502(d)	Uninspected Commercial Fishing Industry Vessels built or substantially altered in a manner that affects operating stability after *31 December 1989*. *Includes*: (1) All new or substantially altered state numbered vessels. (See footnote 4.) (2) All new or substantially altered documented vessels.	The Coast Guard is *requried* to develop regulations in the areas discussed in this section of the Act.

Footnote 1; State numbered vessels are those which are not documented with the Coast Guard and therefore registered with the a state. The Coast Guard issues certificates of number in locations where states do not register vessels. Currently, only Alaska does not have an approved numbering system.

Footnote 2: Any vessel of at least 5 net tons which engages in the fisheries, unless exempted under 46 CFR 67.01-7, must be documented. Documentation required for the operation of vessels in certain trades, serves as evidence of vessel nationality, and, with certain exceptions, permits vessels to be subject to preferred mortgages.

Footnote 3: Boundary lines are set forth in 46 CFR 7. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets and rivers. In some areas, they are along the 12 mile line which marks the seaward limits of the continguous zone.

Footnote 4: Substantially altered means alteration of a vessel to engage in a different fishery or to have significant amounts of equipment or permanent topside weights added that would materially alter its seakeeping characteristics so as to make it an unstable platform.

Comments and recommendations on specific items are requested which will assist the Coast Guard in formulating the proposed standards outlined below. The Coast Guard welcomes information that commentors might offer the assist it in considering the specialized nature and economics of fishing, fish processing and fish tender vessel operations; their character, design, and construction; and the costs associated with equipment, construction, reporting and operating requirements being considered.

The entries in the following outline of the proposed requirements indicate which of the legal cites authorizes the specific requirements.

Outline of Proposed Requirements

Subchapter C—Uninspected Vessels

Add as Parts 27, 28 and 29:

PART 27—UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

Section 27.01 Authority and Purpose.

Section 27.05 Application.

Section 27.10 Definitions of terms used in Parts 27, 28, and 29 (Buoyant apparatus and vessel examination may have different meanings than now used for inspected vessels.).

Section 27.15 Exemptions and Equivalents.

(Vessels of less than 36 feet and not operating on the high seas are exempted from the requirements for life boats or liferafts by the Act. The Act also authorizes the Secretary of Transportation to exempt vessels from specific regulations prescribed under the Act for good cause. This section would give procedures for establishing good cause. This section would also provide for determinations by the Coast Guard in establishing equivalents to the regulations.)

PART 28 REQUIREMENTS

Section 28.01 Application.

Section 28.05 Life Preservers and other Lifesaving Equipment.

Section 28.05.1 Life Preservers and Ring Lifebuoys.

(One USCG approved life preserver for each person on board plus an additional number to provide for emergency situations when some members of the crew may not have access to principal life preserver stowage locations are being considered. One ring life buoy on each side as a minimum and equivalency provisions for providing for man overboard retrieval are also being given consideration. Requirements relating to work vests are also envisioned. Requirements for lifesaving gear for individuals would be similar to those found in 46 CFR Subchapter C, Part 25, which are currently applicable to these vessels. Additionally, an approved immersion suit would be an acceptable substitute for a life preserver.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.05.5 Liferafts.

(Liferafts to accommodate 100% of those on board are being considered. Liferafts would ultimately, by some specific date, be required to be USCG approved, but as an interim measure the liferafts on board could be used, if serviceable and adequate, to meet safety needs. The survival equipment may also be different from that in approved liferafts if it is adequate to meet safety needs. Hydraulic release units or alternate float-free arrangements and servicing will be addressed.)

(Applicability: 4502(b); 4502(c), not applicable to vessels less than 36 feet in length not operating on the high seas).

Section 28.05.10 Immersion Suits.

(One USCG approved immersion suit of a suitable size will be required for each person on board. These would only be required north of 32 degrees north latitude and south of 32 degrees south latitude. Design standards, stowage, and maintenance requirements would be included as well as provisions to address continued carriage of nonapproved immersion suits considered acceptable.)

(Applicability: 4502(b), 4502(c)).

Section 28.05.15 Marking, Stowage, Maintenance.

(Requirements for marking, stowage and periodic maintenance are being considered. Life preservers would be required to be marked with the name of the vessel, while immersion suits would not since they often are the property of the crew and may be moved from vessel to vessel. Rafts would not be required to be marked with the vessel name since they are not always carried on the same vessel. Equipment would be required to be easily accessible in an emergency and stowed so that it can be used in drills where drills are required. Lifesaving equipment would be required to be maintained in a ready for use condition. Where servicing is required, a periodic schedule would be specified.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.10 Distress Signals.

(USCG approved signals, 6 hand red flares and 6 hand orange smoke signals, or alternatively 12 combination flare and smoke distress signals, stowed in a watertight container are being considered.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.20 Emergency Position Indicating Radio Beacons (EPIRBS).

(Type, stowage and maintenance requirements. The provisions will reflect those found in 46 CFR 25.26, published in the Federal Register August 17, 1988 (53 FR 31004). The new 406 Mhz EPIRB is required on vessels that operate on the high seas on or after August 17, 1989.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.30 Fire Extinguishing and Detecting Equipment.

Section 28.30.1 Fire Extinguishers.

(A USCG approved B–U would be required in each galley and engineroom, and a USCG approved A–U would be required in each space accessed by the crew. These are similar requirements to those now found in NVIC 5–86 and 46 CFR Subchapter C, Part 25.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.30.5 Fire Extinguishing Systems.

(Fixed systems for enginerooms on certain sized vessels are bein considered. USCG approved Halon or carbon dioxide systems are envisioned.)

(Applicability: 4502(c)).

Section 28.30.10 Fire Pumps.

(Fire pumps for certain sized vessels are being considered.)

(Applicability: 4502(c)).

Section 28.30.15 Fire Alarms.

(Alarm systems for certain sized vessels are being considered for machinery and living spaces.)

(Applicability: 4502(b), 4502(c)).

Section 28.30.20 Fire Detection Systems.

(Detection systems for certain sized vessels are being considered for machinery and living spaces.)

(Applicability: 4502(b), 4502(c)).

Section 28.35 Bilge Systems.

(Fixed bilge piping, fixed bilge pumps and high level alarms are being considered. Such requirements would be similar to standards in NVIC 5–86.)

Section 28.35.1 Bilge Alarms

(Bilge alarms are being considered for spaces subject to entry of water during vessel operations through openings or seal failures, such as lazarettes and enginerooms.)

(Applicability: 4502(c)).

Section 28.35.5 Bilge Pumps and Fixed Piping

(Applicability: 4502(c)).

Section 28.40 Stowage and Handling of Flammable and Combustible Material.

(Quantity limitations, stowage, handling, and transfer requirements similar to the provisions of 46 CFR Part 105 are being considered. These requirements will not address pollution concerns currently covered elsewhere in the regulations. They may include stowage of combustible solids, such as packing materials, and other items such as paint.)

(Applicability: 4502(b), 4502(c)).

Section 28.45 Fuel, Ventilation, and Electrical Systems

Section 28.45.1 Fuel Systems

(Specific standards for fuel piping and fuel tanks are being considered. Standards similar to recreational vessel standards such as those of the American Boat and Yacht Council or, for vessels on the high seas or carrying more than 16 individuals, standards in 46 CFR Subchapters F and T, are being contemplated. The use of nonconventional fuels, such as liquefied gas, will be addressed.)

(Applicability: 4502(c)).

Section 28.45.5 Ventilation

(A requirement for two fire proof and gastight vent ducts with one extending to the bilge for each space containing internal combustion machinery is being considered. Spaces containing fuel tanks would be required to be fitted with gooseneck vents at least 1½ inches in diameter. Fuel tanks would be required to be fitted with vents exiting on the exterior of the hull and fitted with flame screens of corrosion resistant wire mesh. Requirements similar to those of 46 CFR Subchapter T are being contemplated. The removal of explosive vapors is the primary concern.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.45.10 Electrical Systems

(Specific requirements for electrical systems are being considered. Standards similar to those for recreational vessels such as those of the American Boat and Yacht Council or, for vessels on the high seas or carrying more than 16 infividuals, standards in 46 CFR Subchapters J and T, are being contemplated.)

(Applicability: 4502(c)).

Section 28.50 Equipment to Minimize Injuries

Section 28.50.1 Protection from Moving Machinery

(Requirements to provide protective shields, etc., for exposed moving machinery parts are being considered.)

(Applicability: 4502(b), 4502(c)).

Section 28.50.5 Cooking and Heating Appliances

(Standards for cooking and heating appliances, fuels and their installation, similar to those in 46 CFR Subchapter T, are being considered.)

(Applicability: 4502(d), 4502(c)).

Section 28.50.10 Life Rails and Grab Rails

(Standards for rails at the periphery of weather decks and standards for grab rails at deck house sides and in corridors are being considered. Requirements similar to those in 46 Subchapter T are being contemplated.)

(Applicability: 4502(b), 4502(c)).

Section 28.55 Structural Fire Protection

(Fire resistant bulkheads between the engineroom accommodation spaces are being considered for larger vessels, as is use of noncombustible insulation.)

(Applicability: 4502(c)).

Section 28.60 Means of Escape

(Provisions are being considered which would assure effective access to lifesaving equipment. Additionally, for larger vessels the general rule would be

to provide two means of escape from areas frequented by the crew. Text similar to that of 46 CFR Subchater T, Part 177.15 is being considered.)

(Applicability: 4502(b), 4502(c)).

Section 28.65 First Aid Kits.

(First aid kits meeting an industry standard, or a medicine chest for larger vessels, are being considered.)

(Applicability: 4502(b), 4502(c)).

Section 28.70 Operational Stability

Section 28.70.1 Stability Standards

(The intact and damaged stability standards in NVIC 5–86 are being considered for all sizes of vessels and all services. The approval of calculations and stability guidance would be necessary. Roll testing and simplified forms of determining stability are considered to be unacceptable. Procedures will be included to specify how the Coast Guard will accept evidence of compliance with stability requirements from an insurance company, a classification society or other qualified organization. The Coast Guard is considering accepting certification of compliance only from approved third party organizations.)

(Applicability: 4502(d)).

Section 28.70.5 Stability Guidance for Vessel Operators

(Guidance material would be required to be carried in a simplified form that would permit a master to make a knowledgeable judgment about vessel loadings. There are several acceptable formats for presenting such guidance. Therefore, the form of the guidance would be the choice of the owner. Certificaiton of compliance with the stability standards would include approval of the guidance material.)

(Applicability: 4502(d); this applies only to vessels built or substantially altered after 31 December 1989.).

Section 28.70.10 Inclining Tests

(Inclining tests will be necessary to determine the weight and center of gravity of the vessel without consumables, liquid ballast or fish on board for use in required stability calculations. Testing procedures used on inspected vessels and vessels with load lines are being considered and would require that the Coast Guard, or its approved representative, witness and approve the test. Requiring tests after major modifications and conversions is also being considered.)

(Applicability: 4502(d)).

Section 28.75. Navigation and Radio Communications Equipment.

(Equipment standards similar to those in NVIC 5–86 are being considered.)

Section 28.75.1 Navigation Equipment

Section 28.75.1.1 Nautical Charts

(Applicability: 4502(b), 4502(c)).

Section 28.75.1.2 Compasses

(Applicability: 4502(b), 4502(c)).

Section 28.75.1.3 Anchors

(Applicability: 4502(b), 4502(c)).

Section 28.75.1.4 Radar Reflectors

(Applicability: 4502(b), 4502(c)).

Section 28.75.1.5 Radar

(Applicability: 4502(c)).

Section 28.75.1.6 Depth Sounders

(Applicability: 4502(c)).

Section 28.75.5 Radio Communication Equipment

(Applicability: 4502(b), 4502(c)).

Section 28.80 Reporting of Casualty Information

(Consideration is being given to requiring self-insured owners, and/or any entity underwriting primary insurance for commercial fishing industry vessels, to periodically report information on accidents that result in a personnel injury, loss of life, or damage by or to a vessel, its outfitting, gear, or cargo. The thresholds being considered are personnel injuries that result in payments in excess of $5,000 and material damage that results in payments in excess of $25,000. These reporting requirements are separate from the casualty notification requirements of 46 CFR Part 4, which also require submission of accident information. Delegation to a third party organization of the information collection activity under these new regulations is also being considered.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.85 Instruction on Notification Relative to Seaman Incapacitation

(Notification procedures would be specified. The posting of a placard as required by the Act will be included.)

(Applicability: 4502(a), 4502(b), 4502(c)).

Section 28.90 Operations

Section 28.90.1 Preparations for Emergencies

(Consideration is being given to requiring the person in charge of the vessel to provide vessel familiarization briefings for crew and to conduct periodic emergency fire and lifesaving equipment drills.)

(Applicability: 4502(b), 4502(c)).

PART 29—FISH PROCESSING VESSELS

Section 29.01 Application

(All uninspected fish processing vessels. Those over 5000 gross tons are required to be inspected under 46 USC 3301(11). Regulations addressing those vessels will be published under a separate docket (GGD 86–026).)

Section 29.05 Definitions

Section 29.10 Vessel Examination

(The Act requires an examination of all fish processing vessels by the Coast Guard at least every two years. Examination is limited to checking compliance with the requirements of Pub. L. 100–424.)

Section 29.15 Certification of Classification

(Certification of classification by American Bureau of Shipping or another similarly qualified organization is required by the Act for all fish processing vessels built or converted after July 27, 1990. Which organizations should be qualified is being considered.)

Preliminary Economic Analysis and Certification

Although the regulations being developed are considered to be non-major under Executive Order 12291, they are considered to be significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The regulations being developed are considered significant because of the potential for substantial public interest and the substantial expansion of the regulatory program applicable to commercial fishing industry vessels. The regulations being developed are considered non-major because the economic data at this time does not warrant a conclusion that the program is likely to result in an annual effect on the economy of $100 million or more, a major increase in the costs or prices for the affected industry or public, or significant adverse effects on competition, employment, or other market-place factors. One of the purposes of this ANPRM is to generate additional cost data with which, if warranted, a full regulatory evaluation can be made.

The regulations being developed would impact owners and operators of

uninspected fishing, fish processing and fish tender vessels and marine underwriters of those vessels. There may be certain of these vessels that can be classified as small entities. There may also be a significant economic impact on certain of these entities as a result of the costs associated with compliance with new equipment requirements being considered. The Coast Guard encourages specific comments describing in detail the size of entities to be affected by the regulations outlined above, including information regarding the number of vessels owned or operated and the number of individuals employed. The Coast Guard also encourages comments estimating the expected cost of complying with the outlined regulations. The information received will assist the Coast Guard in determining whether the regulations being developed will have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations being developed will require the submission of data concerning marine casualties by persons underwriting primary insurance for fishing, fish processing and fish tender vessels. The submission of this data is required by the Act. Information collection requirements will be submitted to the Office of Management and Budget for review under the Paperwork Management Act (44 U.S.C. 3501 et seq.)

Federalism

The regulations being developed will affect commercial fishing industry vessels and their underwriters. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the regulations being developed do not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed on the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

October 27, 1988.

Clyde T. Lusk, Jr.,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 88-29919 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-571, RM-6460]

Radio Broadcasting Services; Plainview, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Adams-Shelton Communications, licensee of Station KKYN-FM, Channel 280C1, Plainview, Texas, proposing the substitution of Channel 280C1 for Channel 280A and modification of its license to specify operation on the higher class co-channel. The channel substitution can be made consistent with the Commission's minimum distance separation requirements at the station's current transmitter site at coordinates 34-13-05 and 101-42-02.

DATES: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas J. Hutton, Esquire, Dow, Lohnes & 1255 Twenty Third Street NW., Suite 500, Washington, DC (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rowlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-571, adopted November 30, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29863 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-563, RM-6441]

Radio Broadcasting Services; Russell Springs, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P&G Communications-Kentucky which proposed to allot Channel 300A to Russell Springs, Kentucky, as its first FM service, at coordinates 37-03-00 and 85-05-00.

DATES: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Paul H. Reynolds, Amerimedia, Inc., 415 N. College Street, Greenville, AL 36037, (Consultant for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-563, adopted November 29, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29866 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-573, RM-95]

Radio Broadcasting Services; Tawas City and Wurtsmith, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tawas City Broadcasting, Inc. requesting the substitution of FM Channel 235A for Channel 269A at Tawas City, Michigan, and modification of its license for Station WDBI(FM) to specify operation on Channel 235A. Channel 235A can be allotted to Tawas City in compliance with the Commission's spacing requirements at petitioners specified site (44-16-27 and 83-39-42) provided Channel 235A is deleted from Wurtsmith, Michigan. Channel 235A was allotted to Wurtsmith in MM Docket No. 84-231 and made available for application from May 12, 1988 until June 16 1988. Currently there are no applications on file at the Commission for this channel. Canadian concurrence is required for the allotment of Channel 235A at Tawas City.

DATE: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036-5337.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-573, adopted November 18, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-29869 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-574, RM-6478]

Radio Broadcasting Services; Kirksville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KIRX, Inc., licensee of Station KRXL(FM), Kirksville, Missouri, requesting the substitution of Channel 233C for Channel 233C1 at Kirksville. The coordinates for Channel 233C are 40-14-34 and 92-25-42.

DATES: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David L. Nelson, President, KIRX, Inc., 4321 West College Avenue, Suite 402, Appleton, Wisconsin 54914.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-574, adopted November 18, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29868 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-575; RM-6405]

Radio Broadcasting Services; Englewood, Ohio

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by LC Communications seeking the allotment of Channel 233A to Englewood, Ohio, as the community's first local FM service. Channel 233A can be allotted to Englewood in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.2 miles) north to avoid a short-spacing to Station WLAP-FM, Lexington, Kentucky, and Station WLLT, Fairfield, Ohio. The coordinates for this allotment are North Latitude 39-54-34 and West Longitude 84-17-37. Canadian concurrence is required since Englewood is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lewis Gibbs, 23010 Harding Drive, Oak Park, Michigan 48237 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-575, adopted November 15, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29864 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-572, RM-6564]

Radio Broadcasting Services; Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Myrtle Beach Broadcasting Limited Partnership seeking the substitution of Channel 221C2 for Channel 221A at Myrtle Beach, SC, and the modification of its license for Station WJYR-FM to specify operation on the higher powered channel. Channel 221C2 can be allotted to Myrtle Beach in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site, if the application of Station WFSS for noncommercial educational Channel *220C1 at Fayetteville, North Carolina, is not granted. The coordinates for this allotment are North Latitude 33-42-56 and West Longitude 78-52-56. Petitioner is requested to furnish additional information concerning the impact of the Channel 221C2 allotment on noncommercial educational allocations in the area.

DATES: Comments must be filed on or before February 17, 1989, and reply comments on or before March 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James F. Rogers, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, NW., Suite 1300, Washington, DC 20004-2505 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-572, adopted November 18, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29862 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 88-140; RM 5416 and 5472]

FM Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Order reopening docket for additional comment.

SUMMARY: Action taken herein reopens the record in MM Docket No. 88-140 (53 FR 22035, June 13, 1988) [1] to afford parties an opportunity to comment on additional information submitted by the National Association of Broadcasters after the closing of the comment period. This *Notice of Inquiry* initiated a study of the role of FM translators in the radio broadcast service.

[1] The document published on June 13, 1988, linked this action to 47 CFR Part 73. The correct citation is 47 CFR Part 74.

DATES: Comments due January 23, 1989; Replies due February 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio broadcasting.

[MM Docket No. 88-140; RM-5416, RM-5472]

Order Reopening the Period for Filing Comments

Adopted: December 5, 1988.
Released: December 14, 1988.

By the Chief, Mass Media Bureau

1. By this *Order*, we are reopening the above-captioned proceeding to afford parties an opportunity to comment on a study of radio listening behavior submitted by the National Association of Braodcasters (NAB) on November 4, 1988. In its reply comments in this proceeding, NAB contended that an empirical analysis included in the initial comments filed by the staff of the Bureau of Economics of the Federal Trade Commission (FTC) used misleading data and did not address the relevant issues. It also indicated that it intended to further respond to the FTC study by undertaking its own study. However, because access to the detailed data needed to conduct such a study would not be available until after the deadline for filing reply comments, NAB stated that it would subsequently submit a supplment to the record. It now has filed its study and a motion requesting that the Commission accept its supplemental submission. MHS Holdings, Ltd., has filed an oposition to the request for acceptance of NAB's supplement on the grounds that the Commission denied its earlier request for an extension of time for filing reply comments.[1] An opposition to the request for acceptance of NAB's supplement also was submitted by John S. La Tour who contends that this submission is merely a late-filed comment.

2. While we indicated at the outset of this proceeding that we would be disinclined to extend the time period for filing comments at this stage,[2] we believe that it is appropriate to permit interested parties to comment on the NAB study. Unlike MHS Holdings' request for additional time to respond to arguments presented in the initial comments, NAB's supplemental submission includes information that was unavailable during the original comment period. Thus, we believe that acceptance of this study and any additional comments we receive in response to it will further our objective to develop the most complete factual record possible in order to determine our general FM translator policy. Therefore, we are reopening the comment period in the proceeding. Parties are requested to limit their comments and submissions to the empirical evidence in the studies before us and any other recent data.

3. Accordingly, *It is ordered*, pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, That the period for filing comments in the above-captioned proceeding is REOPENED and interested parties may file comments on or before January 23, 1989, and reply comments on or before February 7, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

4. Accordingly, *It is ordered* that the Motion for Acceptance of National Association of Broadcasters Supplement to Reply Comments is granted.

5. Accordingly, *It is orderd* that the Opposition to Motion for Acceptance of National Association of Broadcasters Supplement to Reply Comments filed by MHS Holdings, Ltd., and John S. La Tour *Are Denied.*

6. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-29867 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

[1] *See Order Denying Extension of Time* in MM Docket No. 8-140, DA 88-1444, adopted September 15, 1988.

[2] *See Notice of Inquiry* in MM Docket No. 88-140, 3 FCC Rcd 3664 (1988) at para. 63.

47 CFR Part 90

[PR Docket No. 88-576, FCC 88-409]

Private Land Mobile Radio Services, Secondary Fixed Tone Signaling

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making that proposes to extend tone signaling capability to all Part 90 radio services. Licensees would be permitted to use their base/mobile frequencies for fixed tone signaling operations on a secondary basis for any use consistent with the Rules and essential to the activities of the licensee. A signaling message would be limited to two seconds duration and could not be repeated more than three times. Automatic transmitter deactivation is also required when an r.f. carrier remains on for more than three minutes or if a transmission for the same signaling function is repeated more than five times.

DATES: Comments are due on or before February 13, 1989, and reply comments on or before February 28, 1989.

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 Notice of Proposed Rule Making, PR Docket No. 88-576, adopted December 12, 1988, and released December 22, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC, telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. This proceeding was initiated by separate petitions for rule making filed by Forest Industries Telecommunications (FIT), and the Manufacturers Radio Frequency Advisory Committee (MRFAC). Both petitioners requested that licensees in their respective radio services be permitted to conduct secondary fixed tone signaling and alarm operations similar to those now permitted in the Public Safety and the Power and

Petroleum Radio Services under § 90.235 of the Commission's Rules.

2. Over the years, the Commission has authorized tone signaling capability in a number of Part 90 radio services to provide various point-to-point alarm and operational functions. Since the Commission can find no basis for distinguishing the tone signaling needs of any one radio service from another, it now proposes that the benefits of tone signaling operations be made available to all Part 90 radio services.

3. Presently, the Rules permit a tone signaling message length of two seconds which may be repeated at any interval three times in the Public Safety and Petroleum Radio Services and five times in the Power Radio Service. The Commission is proposing to retain the two second message length and to standardize the number of message repetitions to three in all radio services. Additionally, to prevent a "stuck" tone signaling transmitter from disrupting voice communications, automatic transmitter deactivation would be required after an r.f. carrer remains on for more than three minutes or after five tone signaling transmissions for the same event.

Regulatory Flexibility Act Initial Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as a part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

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

Radio, Private land mobile radio services.

Amendatory Text

47 CFR Part 90 is proposed to be amended as follows:

PART 90—[AMENDED]

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

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

2. 47 CFR 90.235 is revised in its entirety as follows:

§ 90.235 Secondary fixed signaling operations.

Fixed operations may, subject to the following conditions, be authorized on a secondary basis for voice, tone or impulse signaling on mobile service frequencies above 25 MHz within the area normally covered by the Licensee's mobile system. Voice signaling will be permitted only in the Police Radio Service.

(a) The bandwidth shall not exceed that authorized to the licensee for the primary operations on the frequency concerned.

(b) The output power shall not exceed 30 watts at the remote site.

(c) A1D, A2D, F1D, F2D, G1D and G2D emissions may be authorized. In the Police Radio Service, A3E, F1E, F2E, F3E, G1E, G2E, or G3E emissions may also be authorized.

(d) Except for those systems covered under subparagraph (e) of this section, the maximum duration of any non-voice signaling transmission shall not exceed 2 seconds and shall not be repeated more than 3 times. Tone signaling transmissions may be staggered or continuous. In the Police Radio Service, the maximum duration of any voice signaling transmission shall not exceed 6 seconds and shall not be repeated more than 3 times.

(e) For systems in the Public Safety Radio Services authorized prior to June 20, 1975, and in the Power and Petroleum Radio Services authorized prior to June 1, 1976, the maximum duration of any signaling transmission shall not exceed 6 seconds and shall not be repeated more than 5 times.

(f) Systems employing automatic interrogation shall be limited to non-voice techniques and shall not be activated for this purpose more than 10 seconds out of any 60 second period. This 10 second timeframe includes both transmit and response times.

(g) Automatic means shall be provided to deactivate the transmitter in the event the carrier remains on for a period in excess of 3 minutes or if the transmission for the same signaling function is repeated more than five times.

(h) Operational fixed stations authorized pursuant to the provisions of this section are exempt from the requirements of §§ 90.137(b), 90.425, and 90.429.

(i) Base, mobile, or mobile relay stations may transmit secondary tone or impulse signals to receivers at fixed locations subject to the conditions set forth in this section.

(j) Under the provisions of this section, a mobile service frequency may not be used exclusively for secondary signaling.

(k) The use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in a licensee's land mobile radio system.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29874 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; Mandatory Code of Conduct Program

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Defense is considering revisions to the DFARS which will make mandatory the voluntary Code of Conduct Program at DFARS 203.7000. A new solicitation provision is also being considered.

DATE: Comments on the proposed changes should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before January 30, 1989, to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-148 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense has determined to issue a proposed rule revising DFARS 203.7000, adding 209.104-1(d), and adding a solicitation provision at 252.203-7004 making the current voluntary Code of Conduct Program a mandatory requirement in the contracting officer's determination of responsibility of a bidder or offeror.

B. Regulatory Flexibility Act

The proposed rule may have significant economic impact upon a substantial number of small businesses, within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., and an Initial Regulatory Flexibility Analysis is deemed necessary. However, the DoD has determined that it is necessary to delay preparation of an analysis, under authority of 5 U.S.C. 608, in order to ascertain the extent of the impact on small businesses in the transition from a voluntary program to a mandatory one. The impact of the proposed coverage has been minimized by excluding contracts under $25,000 and by providing a tailoring process to adjust the program to the size, nature and extent of the company's government contracting, but at this time the overall effect on small business has not been determined. The initial analysis will be provided to the Chief Counsel for Advocacy, U.S. Small Business Administration at a later date. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88-610D in correspondence.

C. Paperwork Reduction Act

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq. While the initial burden associated with establishing a Code of Conduct Program may be high, the Department expects the on-going burden, once the Code of Conduct Programs are in place, to be minimal. A request for an information collection requirement has been submitted to OMB for review and approval.

List of Subjects in 48 CFR Parts 203, 209 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 203, 209 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 203, 209 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.7000 [Amended]

2. Section 203.7000 is amended by inserting in the second sentence of 203.7000 Policy, between the word "contractors" and the word "have" the word "must" in lieu of the word "should" and by modifying the third sentence by deleting the words "For example" from the beginning of the sentence and replacing "a" with "A" at the beginning of the sentence.

203.7002 [Amended]

3. Section 203.7002 is revised by adding between the words "Contract" and "Clause" in the title, the words "Provision and" and by adding a new sentence before the existing first sentence, "The contracting officer shall insert the provision at 252.203-7004, Mandatory Code of Conduct Program, in solicitations where the resulting contract is expected to equal or exceed $25,000."

PART 209—CONTRACTORS QUALIFICATIONS

4. Subsection 209.104-1 is added to read as follows:

209.104-1 General standards.

(d) In this regard, contractors shall have a written code of conduct program that includes those management controls (see 203.700) that are suitable to the size of the company, the nature of the entity, and the extent of its involvement in government contracting.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.203-7004 is added to read as follows:

252.203-7004 Mandatory Code of Conduct Program.

As prescribed in 203.7002, insert the following provision in all solicitations where the resulting contract is expected to equal or exceed $25,000.

Mandatory Code of Conduct Progam (xxx 1988)

The Contractor must have a Code of Conduct Program established and in effect prior to award of any contract resulting from this solicitation. Such a program will be tailored to be suitable to the size of the company, the nature of the entity, and the extent of its involvement in government contracting. Elements of the program should include, as appropriate:

(a) A written code of business ethics and conduct and an ethics training program for all employees;

(b) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(c) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports (but see 203.7001);

(d) Internal and/or external audits as appropriate;

(e) Disciplinary action for improper conduct;

(f) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

Failure to comply with the requirements of this provision will render the contractor nonresponsible in regard to this solicitation.

(End of Provision)

[FR Doc. 88-30026 Filed 12-28-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petitions To List an Ozark Cave Crayfish and an Idaho Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petitions and initiation of status review

SUMMARY: The U.S. Fish and Wildlife Service announces 90-day petition findings for two petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Substantial information has not been presented that a petition to list the cave-dwelling crayfish *Cambarus aculabrum* may be warranted. Substantial information has been presented that a petition to list the Idaho springsnail *Fontelicella idahoensis* may be warranted.

DATES: The findings announced in this notice were made in July 1988 and in October 1988 for the snail and for the crayfish, respectively. Comments and information in respect to the snail should be submitted by February 13, 1989. Other comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the crayfish petition may be submitted to the Jackson Field

Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213 (telephone 601/965-4900, FTS 490-4900). Information, comments, or questions regarding the snail petition may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 (telephone 208/334-1931 or FTS 554-1931). The petitions, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart at the Jackson, Mississippi, Field Office listed above, or Mr. Charles Lobdell at the Boise, Idaho, Field Office listed above.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 19073, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a 90-day finding on the following petition from Dr. Arthur Brown. It was dated July 15, 1988, and was receivedc by the Service on July 21, 1988. It requested the Service to list the troglobitic (cave dwelling) crayfish *Cambarus aculabrum* as an endangered species. The petition cited known distribution of the species as limikted to two caves in Benton County, Arkansas. It claimed that the caves receive moderate to heavy abuse from spelunkers and are threatened in a variety of other ways. The data was gathered incidental to status work conducted by the petitoner and his students for the Ozark cavefish, *Amblyopsis rosae*.

The Service has reviewed the petition, including a report on the Ozard cavefish by Lawrence D. Willis and Arthur V. Brown, and has communicated with Mr. Willis and examined data on the subject provided by the Missouri Department of Conservation. Both caves where this species is known to occur ared in the Springfield Plateau, which lies in the tri-State area of Missouri, Oklahoma, and Arkansas. The Springfield Plateau is considered isolated in terms of cave crayfish distribution. It has 29 caves known to contain cave crayfish, 20 in Missouri, 6 in Oklahoma, and 3 in Arkansas. For these 29 caves the species of the cave crayfish has been verified in only 7 caves (24 percent of the total.) Our distributional knowledge about the subject species therefore appears to be in a very early stage. Candidate status and formal status review for the species would be premature at this time.

On the basis of the best scientific and commercial information presently available, the Service determined that this petition has not presented substantial information indicating that the action requested may be warranted. The Service will remain very interested, however, in any additional information about this species as it may become available.

The Service received a petition from Dr. Peter Bowler of the University of California, Irvine, on November 12, 1987. The petition requested the Service to list the freshwater snail *Fontelicella idahoensis* (Idaho springsnail) as an endangered species. The species has also been called the Homedale Creek springsnail. Data provided by the petitioner indicates that the species has been eliminated from about 80 percent of its historic range by impoundments in the mainstem Snake River, and that it remains only in an approximately 28 river mile stretch between Bancroft Springs and the C.J. Strike Reservoir. Primary threats cited are pollution and impoundment.

The Service found that substantial information has been presented that the action requested may be warranted.

Review of the status of the Idaho springsnail *Fontelicella idahoensis*, is initiated herewith. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any interested party concerning this species.

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1975 or FTS 235-1975).

Authority

The authority for this action is the Endangered Species At of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 20, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-29944 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The Service announces its findings on pending petitions to add to and revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within 1 year of either the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 1, 1987, to September 30, 1988.

DATES: The findings announced in this notice were made between July 25, 1988, and October 25, 1988. The description of the Service's progress in revising the lists is current as of October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions of the Endangered Species Act Amendments of 1982 required that such petitions pending on the date of enactment of the Amendments be treated as having been filed on that date, i.e. October 13, 1982. Section 4(b)(3)(C)(i) of the Act requires

that any petition for which a 12-month finding of "warranted but precluded" is made should be treated as having been resubmitted, with substantial scientific or commercial information that the petitioned action may be warranted, on the date of such a finding, i.e. requiring an additional finding to be made within 12 months. This notice reports findings made on or before October 29, 1988, in respect to pending petitions for which such additional findings were due, and describes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the sixth year following the enactment of the 1982 Amendments.

The initial (90-day) findings for petitions considered here were announced in the **Federal Register** on January 16, 1984 (49 FR 1919), December 18, 1984 (49 FR 49118), April 2, 1985 (50 FR 13054), May 2, 1986 (51 FR 16363), January 21, 1987 (52 FR 2239), or July 1, 1987 (52 FR 24485).

All but one of the plant species involved in these petition findings were listed individually in a comprehensive notice of review for plants first published in the **Federal Register** on December 15, 1980 (45 FR 82480), and most recently updated as a notice of review published September 27, 1985 (50 FR 39526). The animal species mentioned below, but not named individually, were identified individually in the first announcement of 12-month petition findings published in the **Federal Register** on January 20, 1984 (49 FR 2485), and again in the second annual announcement published on May 10, 1985 (50 FR 19761).

Findings

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Petitioned actions found to be warranted are the subjects of proposals that will be published promptly or have already been published in the **Federal Register**. Therefore only findings of "not warranted" and "warranted but precluded" for pending petitions are reported here.

"Not warranted" and "warranted but precluded" findings for pending plant petitions repeat the findings made in October 1987 and announced in the **Federal Register** of July 7, 1988 (53 FR 25511), except for the removal of 17 plant species proposed for listing as threatened or endangered during fiscal year 1988. Findings on the plants are made by notice of review categories; application of these to individual taxa is published in a notice of review for plants published September 27, 1985 (50 FR 39526). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted but precluded" are reported by the designation of category 1, 1*, 1**, 2, 2*, or 2** for such subject taxa. The complete definitions of these category numbers are described on pages 39526 and 39527 in the 1985 general plant notice of review (50 FR 39526). A finding of "warranted but precluded" was also made for a petition to list the plant *Talinum humile* (the Pinos Altos fame flower) received October 15, 1985, from Mr. Paul R. Neal. This plant is being treated as a category 2 candidate species.

The Service's 12-month findings of "not warranted" and "warranted but precluded" on pending animal petitions are presented in Table 1. Each petition mentioned in Table 1 has had one or more previous findings of "warranted but precluded" reported in the **Federal Register**. The word "Yes" in the "Warranted?" column indicates petitions to list, delist, or reclassify species for which the principal findings are "warranted but precluded" from immediate proposal by other efforts to revise the lists. Note in the "Description" column that at least some species mentioned in the original petitions have been individually found to be not warranted. The species so noted were named in previous notices of petition findings. Four of the species (noted by the word "No" in the "Warranted" column) have new 1988 findings of "not warranted" announced here.

TABLE 1.—12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS

Description	Petitioner	Date received	Warranted?*
5 species of sponges (2 others not warranted)	Mr. Ronald M. Cowden	June 17, 1974	Yes.
37 species of cave crustaceans (1 species listed, 12 others not warranted).	National Speleological Society	Sept. 9, 1974	Yes.
6 species of cave amphipods (1 other not warranted)	Dr. John Holsinger	July 12, 1974	Yes.
Uncompahgre fritillary butterfly	Dr. Lawrence F. Gall	Nov. 5, 1979	Yes.
Columbia River tiger beetle	Mr. Gary Shook	Dec. 15, 1979	No.
Shoshone sculpin	Dr. Peter A. Bowler	Dec. 3, 1979	No.
Bonneville cutthroat trout	Desert Fishes Council	Oct. 23, 1979	Yes.
Silver rice rat	Center for Action on Endangered Species	Mar. 12, 1980	No.
Bliss Rapids snail and Snake River physa snail	Dr. Peter A. Bowler	Feb. 7, 1980	Yes.
10 U.S. and 60 foreign species of birds (4 others listed, 5 not warranted).	International Council for Bird Preservation	Nov. 24, 1980	Yes.
Orangefin madtom	Mr. Noel M. Burkhead	Oct. 6 1983	Yes.
Barbara Anne's tiger beetle and Guadaloupe Mountains tiger beetle.	W.D. Sumlin III and Christopher D. Nagano	July 24, 1984	Yes.
Spiny River Snail	American Malacological Union	Aug. 13, 1984	Yes.
Desert tortoise in remainder of its range	Dr. Martha L. Stout, Dr. Faith T. Campbell, and Mr. Michael J. Bean.	Sept. 14, 1984	Yes.
Lower (Florida) Keys marsh rabbit	Ms. Joel L. Beardsley	Apr. 27, 1985	Yes.
Henne's eucosman moth	Mr. Bruce S. Mannheim, Jr	May 21, 1985	Yes.
Western yellow-billed cuckoo	Dr. Tim Manolis and coalition of groups	May 20, 1986	No.
Appalachian Bewick's wren	Mr. Rodney Bartgis and Mr. D. Daniel Boone	Aug. 13, 1986	Yes.
White-necked crow	Mr. Alexander R. Brash	July 25, 1986	Yes.

*But precluded by other actions to revise the List of Endangered and Threatened Wildlife.

The four findings of "not warranted" in Table 1 require explanation. The Service was requested by Mr. Gary Shook to list the Columbia River tiger beetle in a petition received by the Service December 15, 1979. Information presented in the petition and a status survey conducted by the petitioner indicated that about 15 populations of this species are found in the lower reaches of the Salmon River in Idaho. The construction of dams, resulting in the inundation and destruction of the species' sandbar habitat, has extirpated this beetle from its former range along the Columbia and Snake Rivers. At the time of the petitioning, potential damming of the Salmon River posed a threat to the continued existence of this species.

Current review of the available data indicates that the damming of the Salmon River is no longer being proposed and the species is substantially less subject to the previously identified threats. Therefore, based on the best scientific and commercial information available, the action requested by this petition is considered not warranted at this time and the status of this species is to be reclassified from 2 to 3C in the next animal notice of review.

A second finding of "not warranted" was made for a petition to list the Shoshone sculpin (*Cottus greenei*). This petition came from Dr. Peter A. Bowler and was received by the Service on December 3, 1979. Current review of the status shows that the Idaho State University and the Idaho Department of Fish and Game have found additional populations of the species. They have also transplanted approximately 30,000 fish to widely distributed spring habitats. Two of the larger spring complexes are now managed under the protection of the Nature Conservancy. Therefore, based on the best scientific and commercial information available, the action requested by this petition is considered not warranted at this time. The species is to be reclassified from category 1 to subcategory 3C in the next animal notice of review.

The third "not warranted" finding in Table 1 concerns the silver rice rat (*Oryzomys argentatus*). The Service was petitioned to list the species by the Center For Action On Endangered Species on March 12, 1980. In a recent (unpublished MS, in press) thorough study of geographic variation in rice rats of the United States, Drs. Steven Humphrey and Henry Setzer of the Florida Museum of Natural History concluded that no good evidence for the taxonomic recognition of *Oryzomys argentatus* exists. The Service has therefore determined on the best scientific and commercial information available that the action requested by this petitioner is not warranted, and it therefore is to be relegated to Category 3B.

In a petition received May 20, 1986, the Service was requested to list the western yellow-billed cuckoo, *Coccyzus americanus occidentalis*, as an endangered species in the State of California, Oregon, Washington, Idaho, and Nevada. The petition was submitted by Dr. Tim Manolis, Acting President, Western Field Ornithologists, and was co-signed by representatives of the Animal Protection Institute, Defenders of Wildlife, Sacramento River Preservation Trust, Friends of the River, Planning and Conservation League, Davis Audubon Society, Sacramento Audubon Society, and Sierra Club. The Service determined that the petition presented substantial information indicating that the requested action may be warranted and announced the finding January 21, 1987 (52 FR 2239). At that time the Service acknowledged that difficulties existed in defining separate biologically defensible populations of the western yellow-billed cuckoo for possible listing, and that gaps remained in our knowledge of its status in certain portions of its range. Additional information on the status of the yellow-billed cuckoo in Arizona, California, and New Mexico was obtained as the result of the review.

The American Ornithologists' Union *Checklist of North American Birds* (1957) recognized two subspecies of yellow-billed cuckoo: *Coccyzus americanus americanus* in eastern North America and *C. a. occidentalis* in western North America. This classification was first proposed by Ridgeway in 1887. A recent analysis of the geographic variation in this species was conducted by Banks (Condor 90:473–477). On the basis of bill size (length and upper mandible depth), wing length, and plumage color, Banks concluded that the eastern and western birds are not distinguishable and that subspecific recognition is not warranted. Since the Banks investigation is the most current published work on the taxonomic question the Service has accepted his interpretation.

Section 3 of the Act defines "endangered species" as, "* * * a species that is in danger of extinction throughout all or a significant portion of its range" and "species" to include "any subspecies of fish or wildlife or plants, and any distinction population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Apparently no data exist (such as banding studies or electrophoretic information) regarding the degree of genetic difference between the eastern and western birds to indicate that they form separate subspecies. Based on Banks' (1988) findings regarding morphometrics and plumage color, yellow-billed cuckoos in the petitioned area do not constitute a subspecies, as eastern and western birds are not taxonomically distinct. Therefore, yellow-billed cuckoos in the West do not qualify for listing as a subspecies.

Moreover, there is not indication that yellow-billed cuckoos in the petitioned area constitute a distinct population segment of a species that interbreeds when mature. Cuckoos immediately across the State line from the area referenced in the petition (e.g., such as those along the Arizona border across from California) are part of the same population and often interbreed. Yellow-billed cuckoos in the petitioned states cannot be regarded as a population separate from adjoining states that were not included in the petition. Therefore, the petitioned action is not warranted, because the yellow-billed cuckoos in the petitioned states do not constitute a subspecies or a distinct population segment.

The information in previous 12-month finding notices is current for the species indicated by "Yes" in the "Warranted" column of Table 1. In the case of the desert tortoise the Service has some information to add to the finding announced on July 7, 1988 (52 FR 24485). In an updated review of the species, the Service has documented an accelerated declining trend in tortoise population, especially north and west of the Colorado River. The primary factors causing a threat and resulting in the decline are considered to be as follows: (1) Loss of habitat due to housing developments, pipeline construction and operation, transmission line construction, solar facility development, mining, grazing, a proposed racetrack project, and highway projects; (2) predation of young tortoises by ravens; (3) illegal collecting; and (4) disease. The threats in Nevada have remained similar to earlier reports. The populations north and west of the Colorado River will be placed in Category 1 status in the next animal notice of review.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious

progress in revising the lists. The Service's progress in revising the lists in the year following October 1, 1987, the cutoff date of the previous report, is described below. For simplification in reporting, the 12-month period described actually coincides with the 1988 fiscal year; activity during the last 12 days preceding the anniversary of the Amendments will be described in a subsequent notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service's progress in revising the lists during fiscal year 1988 is represented by the publication in the **Federal Register** of final listing actions on 60 species, and proposed listing actions on 39 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2.—LISTING ACTIONS DURING THE PERIOD OCTOBER 1, 1987, THROUGH SEPTEMBER 30, 1988

Type of action	Number of species affected
Final endangered status	39
Final threatened status	18
Final reclassification threatened to endangered	1
Final reclassification endangered to threatened	1
Final delisting	1
Proposed endangered status	26
Proposed threatened status	12
Proposed reclassification from threatened to endangered	1

As of October 1, 1988, the Service's Division of Endangered Species and Habitat Conservation was also reviewing documents that would propose or make final listing actions on 27 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 1, 1988

Type of action	Number of species affected
Final endangered status	8
Final threatened status	1
Final critical habitat	6
Final reclassification from endangered to threatened	1
Final experimental population	1
Proposed endangered status	6
Proposed threatened status	2
Proposed delisting	1

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 1, 1988—Continued

Type of action	Number of species affected
Proposed experimental population	1

The general plant and animal notices of review are important tools for gathering data on species that are candidates for listing and for informing interested parties on the Service's general views on the status of present and past candidate species. The Service is currently preparing a general notice of review for animals, to include both vertebrate and invertebrate species. The most recent previous general notices were for plants on September 27, 1985 (50 FR 39526), for vertebrate animals on September 18, 1985 (50 FR 37958), and for invertebrate animals on May 22, 1984 (49 FR 21664).

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1975 or FTS 235-1975).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 21, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-29945 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

King and Tanner Crab Fisheries

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

ACTION: Notice of availability and request for comments on a draft environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), and a draft fishery management plan (FMP).

SUMMARY: The North Pacific Fishery Management Council (Council) has prepared a new draft EA/RIR/IRFA dated December 1, 1988, in conjunction with a new draft FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands dated November 28, 1988. The purpose of this notice is to solicit public comments on the new draft EA/RIR/IRFA and the new draft FMP which focuses specifically on the management role of Federal and State agencies when making preseason and inseason decisions.

DATE: Comments on the new draft EA/RIR/IRFA and the new draft FMP are due by 5:00 p.m., on January 17, 1989.

ADDRESSES: Comments should be addressed to Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

Copies of the new draft EA/RIR/IRFA and the new draft FMP are available upon request by calling 907-271-2809 or at one of the following locations: (1) Alaska Crab Coalition, 3901 Leary NW., Suite 6, Seattle, WA; (2) Alaska Department of Fish and Game, Unisea Building, Dutch Harbor, AK; (3) North Pacific Fishing Vessel Owner's Association, Fishermen's Terminal C-3, Room 218, Seattle, WA; and (4) United Fishermen's Marketing Association, Fishermen's Hall, Kodiak, AK.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Council directed its crab plan team to prepare an FMP for king and Tanner crab fisheries in the Bering Sea and Aleutian Islands area in December 1986. A committee of Council members and industry representatives was established to work with the plan team during the development process. The plan team reviewed the issues and identified and analyzed the biological, socioeconomic, and management impacts of various alternative solutions for public and Council consideration based on all available information. Public comments were received on a draft EA/RIR/IRFA dated June 1, 1988, and a draft FMP dated June 30, 1988 (53 FR 29931, dated August 9, 1988). Based on the comments received on these documents, the Council decided to make

revisions to the documents and include options for three of the proposed management measures. The Council is asking the fishing community and other affected individuals which alternatives or options should be approved. It is hoped that the draft EA/RIR/IRFA will help the public provide constructive comments to aid the Council in its deliberations. At its January 17–20, 1989, meeting in Anchorage, the Council will make its final decision and, if approved, submit the FMP and supporting documentation to the Secretary of Commerce for implementation. The Council will accept oral testimony at the January meeting; however, such testimony should be limited to clarification of earlier written comments and recommendations about the Council's choice rather than submission of new information.

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

Dated: December 23, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-30010 Filed 12-23-88; 3:42 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 250
Thursday, December 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 23, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible

Revision

• Packers and Stockyards Administration
Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Act
P&SA-5, 116, 116-1, 122, 124, 124-1, 125, 125-1, 125-3, 125-4, 126, 126-2, 126-3, 130, 131, 132, 134, 135, 202, 212, 215, 216, 218, 315, and 316
On occasion; Semi-annually Annually; Recordkeeping
Business or other for-profit; 31,273 responses; 361,479 hours; not applicable under section 3504(h)
Tommy Morris (202) 447-5877

New Collection

• Food Safety and Inspection Service
Processing Procedures and Cooking Instruction for Cooked, Uncured, Comminuted Meat Patties (9 CFR Parts 318 and 320)
None
Recordkeeping
Businesses or other for-profit; 680 responses; 115 hours; not applicable under section 3504(h)
Roy Purdie, Jr. (202) 447-5372
• Forest Service
36 CFR Subpart E—Oil and Gas
None
Recordkeeping; on Occasion
Businesses or other for-profit; 2,250 responses; 1,250 hours; not applicable under section 3504(h)
Stanley W. Kurcaba (703) 235-9715

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 88-29975 Filed 12-28-88; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Lower Brule Sioux Tribe Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Lower Brule Sioux Tribe Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the the Lower Brule Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon January 1, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on December 23, 1988.

Vern Neppl,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-29974 Filed 12-28-88; 8:45 am]
BILLING CODE 3410-05-M

Feed Grain Donations for the Turtle Mountain Band of Chippewa Indians in North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Turtle Mountain Band of Chippewa Indians Reservation in North Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the the Turtle Mountain Band of Chippewa Indians for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC)

for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon January 1, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on December 23, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-29973 Filed 12-28-88; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Southern Maryland Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*), The Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 70–100 megawatt (MW) combustion turbine generating unit and associated facilities at the Chalk Point Generating Station in southeastern Prince George's County, Maryland by Southern Maryland Electric Cooperative, Inc. (SMECO).

FOR FURTHER INFORMATION CONTACT: Joseph R. Binder, Director, Northeast Area—Electric, Room 0241, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-1420.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from SMECO, required that SMECO develop environmental support information reflecting the potential environmental impacts of the project. The information supplied by SMECO is contained in a Environmental Analysis (EVAL) which was a primary source document used by REA to develop its Environmental Assessment (EA). REA concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The proposed project consists of constructing a 70–100 MW combustion turbine generating unit with a 23 meter (75 ft) high stack, a water treatment facility, a 113.6 cubic meter (30,000 gal) above-ground water storage tank, one 4,731 cubic meter (1,250,000 gal) above ground fuel oil storage tank, a 66 kilovolt (kV) substation, two 107 meter (350 ft) 66 kV transmission lines and a 137 meter (450 ft) long natural gas pipeline. The facilities would be located on a 1.2 hectare (ha) (3 acre (ac)) site which is located within the property boundaries of the Potomac Electric Power Company (PEPCO) 485.6 ha (1200 ac) Chalk Point site. Both the transmission lines and natural gas pipeline would be connected to existing facilities on site. The unit would operate a maximum of 1000 hours per year.

REA has concluded that the proposed project will have no effect on prime forest land or rangeland, wetlands, or floodplains, threatened or endangered species or critical habitat, and properties listed or eligible for listing in the *National Register of Historic Places.* Less than 0.4 ha (1 ac) of important farmland would be impacted. When the facility is operating it would withdraw approximately 4.7 liter/sec (75 gallons per minute (gpm)) of groundwater, discharge approximately 0.6 liter/sec. (10 gpm) of wastewater, produce some noise, and emit combustion by products. These impacts will be minimal for the unit operating independently and will not contribute significantly to the total impact of the combined generation facilities at Chalk Point. No other matters of environmental concern have come to REA's attention.

Alternatives examined for the proposed project included no action, energy conservation, purchased power or participation in the projects of other utilities, self generation, and alternative sites. REA determined that there is a need for the proposed project and that constructing the facilities as recommended is an environmentally acceptable alternative for SMECO to furnish its system with a reliable long-term supply of peaking power which will reduce SMECO's purchased power requirements and meet a portion of its future load growth.

Based upon the environmental support information provided, REA prepared an EA concerning the proposed project and its impacts. As a result of its independent evaluation, REA has concluded that approval for SMECO to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary

Copies of REA's EA and FONSI and SMECO's EVAL can be obtained from; or reviewed at the offices of REA in the South Agriculture Building, Room 0250, 14th and Independence Avenue, SW., Washington, DC 20250; or at the office of Southern Maryland Electric Cooperative, Inc. (Walter H. Smith, Executive Vice President and General Manager), Hughesville, Maryland 20637, during regular business hours. Copies of the documents are also available for review at the public libraries in La Plata, Oxon Hill, Prince Frederick and Upper Marlboro. REA welcomes comments from the general public, Federal, State of Maryland, and local governmental bodies, and other interested parties. All comments should be sent to REA at the address given above. REA will take no final action with respect to SMECO's approval request for at least thirty (30) days after the publication of this notice in the **Federal Register** and in newspapers of general circulation in Calvert, Charles, Prince George's and St. Mary's Counties.

Date: December 22, 1988.

John H. Arnesen,

Assistant Administrator—Electric

[FR Doc. 88-29911 Filed 12-28-88; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 9:00 p.m., on January 25, 1989, at the Best Western Starlite Village, 929 Third Street, Des Moines, Iowa. The purpose of the meeting is to receive information on State educational policies and to determine to what extent discrimination based on race or national origin is taking place in the talented and gifted programs.

Persons desiring additional information should contact Committee

Chairperson, Dr. Lenola Allen-Sommerville, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1988.

Melvin L. Jenkin,

Acting Staff Director.

[FR Doc. 88-29925 Filed 12-28-88; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m., on January 12, 1989, at the Providence Marriott Hotel, the Washington Room, Charles & Orms Streets, Providence, R.I. 02904. The purpose of the meeting is (1) to receive a briefing on Eastern Regional Conference of SAC chairs, and (2) to plan a community forum on "Police-Community Relations in Selected Cities" to be held some time in April 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David H. Sholes, (401/463-5600) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1988.

Melvin L. Jenkin,

Acting Staff Director.

[FR Doc. 88-29926 Filed 12-28-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 7114-01, 7114-02]

Actions Affecting Export Privileges; Martin Coyle, Individually and Doing Business As DATAGON, GMBH

Summary

Pursuant to the November 23, 1988 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Martin Coyle, individually and doing business as DATAGON, GMBH, with addresses of Swerther Strasse 195, D-5050 Bruehl, Federal Republic of Germany, and the Respondent are collectively, denied for a period of five (5) years from the date hereof, all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (14 CFR Parts 768 through 700); provided, however, that said five year denial period is suspended for the five year period provided that the Respondents, or either of them, commit no further violations of the Act, the Regulations, or this final Order during the suspension period.

Order

On November 23, 1988, the ALJ entered his recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. I hereby affirm the recommended Decision and Order of the ALJ subject only to the modification of the last sentence of paragraph III on page 29 of the ALJ's recommended Decision and Order. That sentence is changed to read as follows: "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

December 23, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: F. Gordon Lee, Esq., O'Connor & Hannan, 1919 Pennsylvania Ave., NW., Suite 800, Washington, DC 20006.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th and Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Martin Coyle, individually and doing business as Respondent Datagon, GmbH, began with the issuance September 21, 1987 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration,[1] U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C.App. 2401-2420) (the Act), and the Export Administration Regulations ("the Regulations").[2]

The letter charged that Respondent Coyle had violated Section 387.6 of the Regulations by reexporting, on or about September 1, 1982, a U.S.-origin computer system from the Federal Republic of Germany through the United Kingdom to Bulgaria without the required U.S. reexport authorization. The letter charged further that in connection with such reexport, in violation of §387.12 of the Regulations, Respondent Coyle had participated in transactions with Bryan Williamson, a person then denied U.S. export privileges, without Respondent Coyle's having obtained the required U.S. authorization for such participation.

Respondent Coyle filed a December 30, 1987 answer denying the charges and requesting a hearing. The hearing was held April 15 and July 7, 1988 in Washington, DC; Respondent Coyle testified at the hearing by telephone from the Federal Republic of Germany. The final posthearing filings were made September 26, 1988.

Facts

Certain facts that underlie this case are without serious dispute. In 1979 Respondent Coyle established Respondent Datagon, GmbH in the Federal Republic of Germany, and served as managing director of the company. Respondent Datagon, GmbH bought and sold computer equipment,

[1] When the Office of Export Enforcement issued the charging letter September 21, 1987, it was part of an organization within the U.S. Department of Commerce titled the International Trade Administration. As of October 1, 1987, however, it became part of an organization within the Department now titled the Bureau of Export Administration.

[2] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, Sept. 28, 1988).

sometimes assembling purchased pieces of equipment into complete computer systems that it then sold. In June-July 1982 Respondent Coyle ordered, from a U.S. firm, a U.S.-origin computer that he intended to sell to Datalec, Ltd., a U.K. company controlled by Bryan Williamson.

Sometime during August-September 1982 this computer was shipped from the United States to Respondent Datagon, GmbH in the Federal Republic of Germany, reshipped from there to Datalec, Ltd. in the United Kingdom, and reshipped from there to Bulgaria. A U.S. export license was obtained for the shipment from the United States to the Federal Republic of Germany, but no U.S. reexport authorizations were obtained for the subsequent reshipments. The computer was controlled for national security reasons. A reexport authorization for Bulgaria, had one been requested, would not have been issued. As for Bryan Williamson, he was a person denied U.S. export privileges throughout 1982 and thereafter up through present times.

Positions of Parties

Respondent Coyle argued that he had no part in the unlawful reshipment of the computer to Bulgaria because he had been in Barbados on vacation from mid-August 1982 to mid-September 1982, when the computer was sent from the United States to the FRG and from there to the United Kingdom. He claimed to have known nothing of the subsequent reshipment to Bulgaria, or of any intention for such subsequent reshipment, until after that reshipment had already been made. Finally, he stated that he had been unaware that Williamson was on the U.S. denial list.

Essentially, Respondent Coyle contended that we was the innocent victim of a scheme masterminded by Williamson to divert the computer to Bulgaria. Williamson was able to implement his scheme, according to Respondent Coyle, both through his control of Datalec, Ltd. and also through his having gained an interest in Respondent Datagon, GmbH in 1980–81 by taking advantage of financial difficulties then experienced by that company. Respondent Coyle testified that he had been deliberately deceived by Williamson into believing that Williamson was not a denied person.

The Agency's case consisted of various documents and the testimony of three U.S. Government officials who had investigated this matter. As to the shipment of the computer from the United States to the FRG, one of these witnesses testified as to interviews he had conducted with two members of the U.S. freight forwarding firm that had handled the shipment. The thrust of the testimony was that in June-July 1982 Respondent Coyle and arranged to purchase the computer from the U.S. company for shipment initially to the FRG and then reshipment to the United Kingdom. Certain Agency documentary exhibits also were cited to make this point, and to put the date of the U.S.-FRG shipment as the end of August 1982.

As for the subsequent reshipment of the computer from the FRG to the United Kingdom and from there to Bulgaria, the Agency presented especially the testimony of one of its witnesses and the 1983 written statements of four former employees of Respondent Datagon, GmbH. According to this Agency witness, these statements were the English language versions of sworn statements, in German, based on interviews of these four former employees by FRG authorities. The thrust of these statements was that Respondent Coyle knew that Bryan Williamson was a denied person under U.S. law and that he nonetheless collaborated with Williamson to ship the computer from the United States through the FRG and the United Kingdom to Bulgaria. In terms of dates, the Agency suggested that the FRG-U.K. reshipment occurred in the first part of September 1982, and the reshipment to Bulgaria in the last part of September or early part of October 1982.

In urging his position in defense, Respondent Coyle attacked the Agency's evidence as lacking credibility especially because he had been deprived of any meaningful chance to test it by cross examination. Further, he argued that the Agency's charges are barred by the statute of limitations, and finally that the Agency's case should be dismissed for reason of prosecutorial misconduct. The Agency, on a procedural point, protested the suppression of six of its hearing documents.

Discussion

Unauthorized Reexports

The Agency's presentation of its case focused particularly on the charge that Respondent Coyle participated in the unauthorized reexport of the computer system from the United Kingdom to Bulgaria. The Agency's essential evidence to support this charge was the written statements of the four former employees of Respondent Datagon, GmbH, each of which, in one way or another, indicated that Respondent Coyle had a role in the reexport to Bulgaria.

Respondent Coyle denied any such role, claiming that Williamson was the one who had arranged the reexport to Bulgaria and that he, Coyle, had learned of the reexport only after it had been made. The contrary 1983 statements of the four former Datagon, GmbH employees were dismissed by Respondent Coyle as unworthy of belief. Thus he argued that, since all four in their statements admitted some personal knowledge of or participation in the reexport to Bulgaria, each had a motive to shift responsibility for the reexport to him. Additionally, he said that all four had established a company that, when they gave their statements, was competing with Datagon, GmbH, and accordingly they had an interest in provoking sanctions for Respondent Datagon, GmbH that would free their company of its competition. Finally, Respondent Coyle asserted that two of them omitted from their statements that he had fired them from Respondent Datagon, GmbH.

More basically, Respondent Coyle argued that none of these four 1983 statements should be accorded any weight because none has been tested by cross examination. Neither Respondent Coyle nor any representative of him was present at the 1983 interviews in the FRG where each of these statements was given. Nor did the Agency produce any of the four former Datagon, GmbH employees at the hearing. The witness who did testify for the Agency at the hearing regarding the reexport to Bulgaria was a U.S. Government official whose testimony simply described the circumstances in which the statements were obtained and summarized their contents.

On this issue, Respondent Coyle's argument has force. Both his version of events—that he had no part in the reexport to Bulgaria—and the four former employees' version—that he did—are consistent with the other evidence in this case. But the Agency has the burden of proof. Although hearsay evidence is admissible under § 388.13(b) of the Regulations, the Agency failed to meet its burden of proof in this case with these four written statements. None of the four people who gave the statements was made available at any time, either in 1983 when they gave the statements or during the 1987–88 pendency of this case, for cross examination. Nor did the Agency advance any reason for such lack of availability.

Respondent Coyle offered plausible arguments as to why each of the four may have been motivated to give statements inaccurately adverse to him.

Subjection to cross examination is a fundamental method of establishing the credibility of what somebody says. Without the chance for cross examination of any of these four former employees, their statements lack sufficient credibility to sustain the Agency's charge. The absence of meaningful cross examination was not solved by the presence at the hearing of that one of the Agency witnesses who testified as to the circumstances and contents of the statements. Even though this witness, a U.S. Government official, was present at some of the 1983 interviews, he could not speak with any authority, for example, as to the motivations of the four former employees that were challenged by Respondent Coyle.

In terms of opportunity for cross examination, the contrast is marked between the cases presented by Respondent Coyle and by the Agency. Respondent Coyle was available for cross examination at the hearing; and the Agency in fact asked him nothing significant that challenged his version of the reexport to Bulgaria.

One further element remains, however, in the Agency's charge that Respondent Coyle participated in the reexport to Bulgaria. Respondent Coyle testified that, after he learned from Williamson that the computer had been shipped to Bulgaria, Respondent Datagon, GmbH was still unpaid by Williamson for the computer, and needed the money to avert threatened insolvency. Respondent Coyle described the situation as follows (Direct Testimony, April 13, 1988, at 16).

At this point, Mr. Coyle believed that he was the victim of Mr. Williamson's extortion scheme and he had no alternative but to have the computer repaired if there was to be any hope of salvaging Datagon.

The question raised by this statement is whether Respondent Coyle's admitted participation in repair of the computer means that he participated in any way in its reexport from the United Kingdom to Bulgaria. More precisely, the section of the Regulations under which Respondent's reexport is charged, § 387.6, prohibits certain acts subject to the Regulations. These acts are to "export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data" without proper authorization. Did Respondent Coyle's repair of the computer constitute a reexport of it within the meaning of any of these prohibited acts?

The answer to this question is in the negative. "Reexport" is defined in § 370.2 of the Regulations, and "export" is defined in section 16(5) of the Act (50 U.S.C. App. 2415(5)). From these definitions, it is clear that repair of the computer after its reexport to Bulgaria was an act distinct from the reexport of the computer charged to Respondent Coyle under § 387.6. Respondent Coyle's role in repairing an unlawfully reexported computer may well have violated one or more sections of the Regulations. But this behavior did not constitute reexporting a computer in violation of § 387.6 as charged in this proceeding.

Still another aspect of the charging letter's allegation regarding the reexport, nonetheless, needs attention. The letter charged that Respondent Coyle reexported the computer without the required U.S. authorization "from the Federal Republic of Germany through the United Kingdom to Bulgaria." Did Respondent Coyle violate the Regulations in connection with the FRG–U.K. reexport?

Respondent Coyle testified that he was out of the FRG, on vacation in Barbados, from mid-August to mid-September when first the U.S.–FRG export and then this FRG–U.K. reexport occurred, and that the actual reexport was handled by Williamson. Nevertheless, it is evident from Respondent Coyle's own testimony that he negotiated Respondent Datagon, GmbH's purchase of the computer in the United States specifically to bring it to the FRG and then to sell it to Williamson's company in the United Kingdom. Respondent Coyle further testified that, to implement this plan, Datagon, GmbH obtained an FRG export license for the shipment to the United Kingdom. Finally, Respondent Coyle was managing director of Respondent Datagon, GmbH.

On the basis of Respondent Coyle's position in Respondent Datagon, GmbH and his personal participation in setting up the U.S.–FRG–U.K. transaction, he can fairly be held responsible for it even though he may have been out of the FRG when the physical shipments of the computer actually occurred. As noted above, the U.S. seller obtained a U.S. export license for the U.S.–FRG shipment, and Respondent Coyle testified that Datagon, GmbH obtained an FRG export license for the FRG–U.K. shipment. But the Agency apparently argued that the Regulations required also a U.S. authorization for the FRG–U.K. reshipment, that this authorization was not obtained, and that the requirement was not met by the obtaining of the FRG license (Agency Post-Hearing Brief, August 22, 1988, at 8 n.10). Thus the question is whether Respondent Coyle is liable for this failure to obtain the U.S. reexport authorization.

Statute of Limitations

Here Respondent Coyle's statute of limitations defense becomes relevant. Both parties agreed that the applicable period is five years (28 U.S.C. 2842). Respondent Coyle made two arguments based on the statute. First, he argued that this case is time barred because it was begun by the issuance of the charging letter on September 21, 1987, exactly five years after the date on which the Agency claimed that the unauthorized reexport occurred. The statute requires, contended Respondent Coyle, that within the five-year period the administrative proceeding must be completed and any judicial action to enforce a civil penalty be initiated, citing *United States* v. *Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir. 1985). Hence this case is barred, concluded Respondent Coyle, since completion of this administrative proceeding and initiation of any ensuing judicial action must obviously come after the five-year period that ended on the day the charging letter was issued.

On this first statute of limitations defense, the Agency's position prevails. The agency cited *United States v. Meyer*, 808 F.2d 912 (1st Cir. 1987), which held, contrary to *Core Laboratories*, that the Government has five years from the date a civil penalty is imposed, but not paid, to initiate the judicial enforcement action. More to the point, in this situation of conflicting courts of appeals decisions, the Agency cited a Commerce Department ruling that it is not for this Tribunal to decide which decision will control the judicial action in any case (*Linotype Company, a Subsidiary of Allied Corporation*, Docket No. ITA–AB–6–84 (April 10, 1987)). The Agency further cited two decisions of this Tribunal in which this Departmental ruling has been followed (*Safeway Stores, Inc.*, Docket No. AB–1–87 (Order of February 10, 1988); *Sara Lee Corporation*, Docket No. AB–2–87 (Order of March 22, 1988)).

As stated, the Agency's position on this point is correct: the Department has held that this Tribunal is not to dismiss cases on the basis of the *Core Laboratories* decision. Therefore the pertinent inquiry becomes, as suggested by the Agency and as argued by Respondent Coyle as his second statute of limitations defense, whether this administrative action was initiated within the five-year period.

As applied to the reexport of the computer from the FRG to the United Kingdom, the question is when that

reexport occurred. According to Respondent Coyle, the record establishes that date as on or about September 2, 1982 (memorandum of Points and Authorities, August 22, 1988, at 31). According to the Agency, the date of the subsequent reexport of the computer from the United Kingdom to Bulgaria, as reflected by the record of this case, was sometime after September 13, 1982 (Post-Hearing Brief, August 22, 1988, at 17). By this Agency reasoning, then, the reexport from the FRG to the United Kingdom must have taken place before September 13, 1982.

On the basis of either Respondent Coyle's date of approximately September 2, 1982, or the Agency's date of sometime before September 13, 1982, the five-year statute of limitations period for this FRG-U.K. reexport had expired before the Agency issued its September 21, 1987 charging letter. Thus any Agency action focused on that reexport is time barred. Furthermore, the Agency may not avoid this conclusion by arguing that the FRG-U.K. reexport was part of a continuous transaction that culminated in the U.K.-Bulgaria reexport after September 21, 1982, because it has been held above that the record fails to prove that Respondent Coyle participated in that second reexport.

As to that U.K.-Bulgaria reexport of the computer, Respondent Coyle naturally asserted his statute of limitations defense against it also. In addition to the failure on the merits of the Agency charge regarding that reexport, is that Agency charge also time barred? Here the Agency claimed that the date of the U.K.-Bulgaria reexport, as shown by the record, is sometime after September 13 and before October 5, 1982 (*id.*). If the date were September 21, 1982 or later in that month or the next, it would come within the five-year period that the Agency had to issue the charging letter. Respondent Coyle offered no particular date for this U.K.-Bulgaria reexport, other than noting Agency evidence that the date was September 21, 1982 (Memorandum of Points and Authorities, August 22, 1988, at 31).

On this issue of the statute of limitations, Respondent Coyle has the burden of proof. Consequently, his failure to establish that the U.K.-Bulgaria reexport occurred before September 21, 1982 means that this Agency charge is not barred by the statute of limitations. This Agency charge was, however, as set forth above, found on its merits not to be sustained by the record.

Transactions with a Denied Person

The Agency's second charge against Respondent Coyle was that he participated with a denied person in transactions subject to the Regulations without having obtained the U.S. authorization required for such transactions. That Respondent Coyle did in fact participate with Williamson in transactions subject to the Regulations is evident from Respondent Coyle's own testimony. Thus Respondent Coyle described how he arranged the purchase of the computer in the United States in order that he could take delivery of it in the FRG and then resell it to Williamson's company in the United Kingdom, and how Respondent Datagon, GmbH had obtained an FRG export license for that FRG-U.K. shipment. Further Respondent Coyle outlined how, after learning that the computer had been reshipped to Bulgaria, he assisted in repair of the computer in a continuing effort to obtain payment for the computer from Williamson.

Respondent Coyle denied, however, that he should be found in this proceeding to have engaged unlawfully in transactions with a denied person. He made essentially three arguments. First, he contended that he had no knowledge of Williamson's denied status. On this point Respondent Coyle testified that, apparently at some time during the course of the events underlying this case, he heard a rumor that Williamson was a denied person. When he confronted Williamson with this rumor, according to Respondent Coyle, Williamson claimed it to be untrue, and showed Respondent Coyle a page from the Export Administration Regulations dated October 1, 1980 (Respondent's exhibit A). This page listed Williamson as a denied person whose denial period was to expire May 31, 1981. Respondent Coyle testified that he accordingly concluded that Williamson's U.S. export privileges had been restored.

What in fact happened was that, shortly after May 31, 1981, Williamson's U.S. export privileges were again denied by an Order of June 4, 1981 (46 FR 30676 (June 10, 1981)), and they remained denied throughout all times relevant to this proceeding. Respondent Coyle noted, nevertheless, that the Export Administration Bulletin did not report this June 4, 1981 denial until issuance of the Bulletin dated August 9, 1982, over fourteen months later. Respondent Coyle evidently claimed to having been unaware of either the June 1981 **Federal Register** publication or the August 1982 Export Administration Bulletin.

The Agency's position was that whether or not Respondent Coyle knew that Williamson was returned to the denial list on June 4, 1981 is irrelevant. All that counts, according to the Agency, is that Williamson was a denied person during 1982 when Respondent Coyle dealt with him regarding the export and reexport of this U.S.-origin computer. The Agency argued that publication in the **Federal Register** of the June 4, 1981 order constituted legal notice to Respondent Coyle of Williamson's renewed denial status. Further, dealing with a denied person without obtaining the required authorization violates the Regulations, asserted the Agency, regardless of whether one is aware of the person's denied status.

On this first defense by Respondent Coyle against the charge that he engaged in transactions with a denied person, the Agency's basic position is correct. Publication in the **Federal Register** of the Order of June 4, 1981 was effective as legal notice to Respondent Coyle that Williamson was again a denied person. Section 387.12 of the Regulations prohibits engaging in transactions subject to the Regulations with such a person "[w]ithout prior disclosure of the facts to and specific authorization" from the Department. Knowledge of a denied person's status as such is not required to violate this section by dealing with Williamson regardless of whether he knew of Williamson's denied status.

Respondent Coyle's second defense against the charge of dealing with a denied person centered on the wording of the charging letter. It charged that Respondent Coyle had these unauthorized dealings "[i]n connection with the reexport of the * * * [computer] described above." The reexport described above was that Respondent "Coyle reexported or caused to be reexported, from the Federal Republic of Germany through the United Kingdom to Bulgaria" a computer without the required authorization. If he were found not to have committed the unauthorized reexport, Respondent Coyle argued, he then also could not be found to have dealt unauthorizedly with Williamson in connection with the reexport, since the charging letter linked the two charges. The Agency, for its part, argued that no indissoluble link exists between the two charges, but that rather the cited reexport comprised a number of actions, in at least some of which Respondent Coyle dealt with Williamson.

On Respondent Coyle's second defense also, the Agency's position prevails. It has been concluded above that the record establishes a participation by Respondent Coyle in

the FRG-U.K. reexport, although not in the U.K.-Bulgaria reexport. From Respondent Coyle's own testimony, it is clear that he engaged in transactions with Williamson in connection with that FRG-U.K. reexport. Respondent Coyle had arranged purchase of the computer by Respondent Datagon, GmbH specifically so that it could be resold to Williamson's company in the United Kingdom.

The manner in which Respondent Coyle testified that Respondent Datagon, GmbH obtained an FRG export license for the reexport to the United Kingdom leaves it uncertain whether he himself was involved in obtaining it (Direct Testimony, April 13, 1988, at 11); but he was aware at the time that the license had been obtained, and as managing director he would bear responsibility for such company actions. Furthermore, again by Respondent Coyle's own testimony, after he learned that the computer had been reexported to Bulgaria, he engaged in repair servicing of it and continued to pursue payment for it.

Consequently, Respondent Coyle did participate in transactions with Williamson in connection with the FRG-U.K.-Bulgaria sequence of reexports, even though the record does not establish that Respondent Coyle participated in the U.K.-Bulgaria reexport. The phrase "in connection with" legitimately encompasses actions related to the reexport, in addition to those actions that actually constitute the reexports.

Respondent Coyle's third and final defense is the statute of limitations. This defense also fails. The date of the charging letter, as noted, was September 21, 1987. The FRG-U.K. reexport occurred before September 13, 1982, and accordingly those actions done by Respondent Coyle before that reexport fall outside the statutory five-year period. But he did have dealings with Williamson in connection with the reexports within the five-year period. His efforts to work out with Williamson the payment for the computer, for example, continued into October 1982 and beyond (see, *e.g.*, Agency Exhibit 10), as apparently did his repair efforts to make the computer properly functional so that payment could be obtained. This payment is reasonably connected with the FRG-U.K. reexport for which Respondent Coyle did have a responsibility. Consequently, Respondent Coyle engaged, as charged, in some transactions with Williamson within the statutory five-year period.

Prosecutorial Misconduct

Respondent Coyle moved that this case be dismissed for reason of prosecutorial misconduct (Motion, April 18, 1988; Motion, September 6, 1988). He cited the Agency's refusal, at the April 15, 1988 hearing, to make available to him portions of an investigative report without having time beyond that day's hearing to review the report. He cited further a series of inaccurate statements by the Agency, particularly in its Post-Hearing Brief. He cited also the attempted introduction into the record by that Brief of additional evidence, primarily in the form of a copy of a judgment and probation/commitment order in a U.S. District Court for an individual connected with the events underlying this case. These actions by the Agency, contended Respondent Coyle, warrant dismissal of the case, referral of the matter to an appropriate Departmental office for investigation and the possible imposition of sanctions, and striking from the record of the Agency's Post-Hearing Brief.

In its reply regarding the alleged inaccurate statements, the Agency acknowledged some of the inaccuracies, but attributed them to inadvertent oversight (Reply, September 15, 1988). The Agency accordingly opposed dismissal of the case or the seeking of sanctions against it.

As for the problem with the investigative report, the Agency did comply with the Order of April 18, 1988. In view of that compliance, the sensitivity that the Agency ascribed to the report, its length, and the briefness of time before the hearing when it became an issue, the Agency's actions do not warrant dismissal of this case. As to the Agency's inaccurate statements, this Tribunal accepts the Agency's representation that they were the product of inadvertence.

Respondent Coyle's motion for dismissal of this case and referral of the alleged prosecutional misconduct to an appropriate Departmental office for investigation is *denied*. As for Respondent Coyle's objection to the Agency's attempted introduction of additional evidence as part of it Post-Hearing Brief, that objection is well founded; and accordingly the judgment and commitment/probation order is not considered in this Decision. It will be additionally stated, however, that even were this document to be admitted as evidence, the conclusions of this Decision as to Respondents would remain unchanged.

Suppressed Agency Exhibits

The Agency protested the suppression of six of its exhibits offered for the hearing. To preserve this issue for review beyond this Tribunal, the Agency was directed to submit the suppressed exhibits together with an offer of proof. Should such subsequent review modify this Tribunal's suppression of these exhibits, rulings are stated below regarding the significance of each of these exhibits. Each exhibit is identified below based on the description of it in the Agency's submission (Offer of Proof, September 15, 1988).

Exhibit 17 is a July 12, 1982 letter to Respondent Coyle from an official of the U.S. freight forwarding firm that handled the shipment of the computer from the United States to the FRG. According to the Agency, this letter "shows that Coyle had reason to know the requirements of the 'U.S. Export Regulation' " (*id.* 1). Respondent Coyle's knowledge of the Regulations, as distinguished from his awareness of Williamson's denied status, was not a contested issue in this case. Consequently admission of this Exhibit would cause no change in this Decision.

Exhibit 18 consists of handwritten notes made by another member of that freight forwarding firm regarding telephone calls she had with various people, including Respondent Coyle. The Agency claimed that these notes show that Respondent Coyle remained involved with the export of the computer from the United States to the FRG even while he was in Barbados. This Decision has stated above that Respondent Coyle's own testimony establishes his involvement in that export, though not necessarily during the time that he was in Barbados. But whether that involvement occurred while Respondent Coyle was in Barbados has no meaning for any of the rulings in this Decision. Therefore admission of this Exhibit would produce no change in this Decision.

Exhibit 19 is a May 14, 1984 letter from Williamson to a U.S. Government official that, according to the Agency, implicates Respondent Coyle in the reexport of the computer to Bulgaria. It also suggests that Respondent Coyle when dealing with Williamson knew that he was a denied person. Respondent Coyle vigorously disputed those statements in this letter adverse to him (Response, September 26, 1988), since his position throughout this case has been that it was Williamson who deceived him and masterminded the diversion of the computer to Bulgaria. If this letter were to be declared

admissable, it would be accorded little weight, because Respondent Coyle was afforded no chance to cross examine Williamson, who on the record of this proceeding might well have a self interest in shifting some responsibility for the diversion to somebody other than himself. Thus admission of this Exhibit would not change this Decision.

Exhibit 21 is a June 25, 1982 telex from Respondent Coyle to the U.S. firm from which the computer was purchased, and Exhibit 22 is an August 19, 1982 invoice addressed to that firm from the U.S. manufacturer of the computer. These Exhibits were offered by the Agency to establish various aspects of the purchase in the United States of the computer that was ultimately diverted to Bulgaria; but none of these aspects became a disputed issue in this case. Consequently admission of these Exhibits would work no change in this Decision.

Exhibit 23 comprises a bill of lading, an invoice, and several telexes that together, according to the Agency, establish that on September 21, 1982 the computer was shipped from the United Kingdom and that on September 23, 1982 it arrived in Bulgaria. If admitted, this Exhibit would show that the U.K.-Bulgaria export occurred within five years of the September 21, 1987 issuance of the charging letter. It was concluded above, however, that the Agency charge based on the U.K.-Bulgaria reexport is not barred by the statute of limitations because Respondent Coyle failed to prove that it occurred beyond the statutory five years. Therefore admission of this Exhibit would not change this Decision.

In sum, admission of all of these Exhibits would not change any of the conclusions of this Decision. Respondent Coyle objected to a review in this Decision of these Exhibits on three grounds (Motion for Reconsideration and Vacating, September 9, 1988; Response, September 26, 1988). He contended that their authenticity had not been established, that he was unable to challenge them effectively since the hearing has been completed and witnesses are no longer available, and that their review in these circumstances could prejudice him. As it has turned out, however, the review has concluded that, even were all the Exhibits to be authenticated and admitted and no challenge to them effectively made other than the challenge to Exhibit 19 noted above, this Decision would remain unchanged in its conclusions.

Conclusion

The charge that Respondent Coyle violated § 387.6 of the Regulations by reexporting a U.S.-origin computer from the FRG through the United Kingdom to Bulgaria in 1982 is *dismissed*. The charge that Respondent Coyle violated § 387.12 in 1982 by engaging in transactions subject to the Regulations with Bryan Williamson, a denied person, is *sustained* by the record.

Engaging in transactions with a denied person in violation of the Regulations is a serious offense because it undercuts the effectiveness of the denial order sanction. A denial of Respondent Coyle's U.S. export privileges for five years is therefore warranted.

In this case, however, reason exists to suspend the denial. Respondent Coyle's U.S. export privileges were actually denied during 1987 for a brief period through an administrative error by the Department. Although the Department subsequently corrected its error, Respondent Coyle claimed that it cost him customers, his job, and his shareholding interest in the company where he was then employed (Direct Testimony, April 13, 1988, at 30–31, and attached Exhibit I). In view of these claimed losses already incurred by Respondent Coyle, the entire period of this five-year denial hereby imposed will be suspended, provided that he commits no further violation of the Act or the Regulations during such five-year period.

Order

I. For a period of five years from the date of the final Agency action, as modified by the suspension set forth in paragraph II below, Respondents

Martin Coyle, individually and doing business as
Datagon, GmbH,
Swerther Strasse 195,
D–5050 Bruehl,
Federal Republic of Germany,

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the five-year period set forth in Paragraph I above, and shall be terminated at the end of such period, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of the Order shall also be suspended during the five-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving; ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization

from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Thomas W. Hoya,

Administrative Law Judge.

Date: November 26, 1988.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 88-29920 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held January 19, 1989, at 9:00 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Semiconductor equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Ruth D. Fitts at 202-377-2583.

Date: December 22, 1988.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 88-29879 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comment on Bilateral Negotiations During 1989

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcement.

SUPPLEMENTARY INFORMATION: The U.S. Government anticipates holding negotiations during 1989 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from Bangladesh (January 31, 1989, except Categories 338/339, 342/642, 638/639 and 645/646), Bulgaria (April 30, 1989), Czechoslovakia (May 31, 1989), East Germany (December 31, 1989), Egypt (December 31, 1989), El Salvador (December 31, 1989), Haiti (December 31, 1989), Japan (December 31, 1989), Korea (December 31, 1989), Peru (April 30, 1989), Poland (December 31, 1989), Romania (December 31, 1989), Taiwan (December 31, 1989), Trinidad and Tobago (December 31, 1989) and Yugoslavia (December 31, 1989). (The dates noted in parenthesis are the expiration dates of the agreements.)

Anyone who wishes to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30018 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Coverage of Certain Part-Categories for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 377-3400.

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)

To facilitate the implementation of bilateral textile agreements based upon the Harmonized Tariff Schedule, effective on January 1, 1989, the coverage of part-categories is being amended in all import control directives for countries with part-categories 359-C, 369-L, 369-S, 369-U and 659-C.

The attached directive contains HTS numbers which will be published in the third supplement to the Harmonized Tariff Schedule.

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 Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 2, 1988, December 6, 1988, December 8, 1988, December 12, 1988 and December 13, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufacturered in China, India, Japan, Korea, Malaysia, Pakistan, the Philippines and Taiwan.

Effective on January 1, 1989, you are directed to make the changes shown below in the import control directives for the aforementioned countries with part-categories 359-C, 369-L, 369-S, 369-U and 659-C:

Category	Change
359-C	Change from 6103.42.2020 to 6103.42.2025 Add 6203.42.2090 and 6211.32.0025.
369-L	Add 4202.92.3015.
369-S	Change from 6307.10.2010 to 6307.10.2005.
369-U	Change from 6406.10.7500 to 6406.10.7560.
659-C	Add 6203.43.2090, 6203.49.1090 and 6211.33.0017.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30016 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended: Section 204 of the Agricutlural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products from Taiwan are being adjusted, variously, for carryforward, swing and cancellation of special shift.

A desscription of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 4, 1988.7745, published on December 16, 1987). Also see 53 FR 62, published on January 5

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 provisons.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 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 Taiwan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 30, 1988, the directive of December 30, 1987 is being amended further to adjust the limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category	Amended twelve-month limit [1]
Sublevels in group I:	
301	489,489 pounds.
361	1,167,970 numbers.
369-L [2]	2,733,651 pounds.
611	1,380,495 square yards.
619/620	11,099,116 square yards.
625/626/627/628/629.	16,234,035 square yards.
669-P [3]	616,618 pounds.
Sublevels in group II:	
331	518,898 dozen pairs.
335	100,745 dozen.
338/339	782,233 dozen.
340	807,195 dozen.
347/348	1,089,259 dozen of which not more than 537,121 dozen shall be in Category 347 and not more than 861,490 dozen shall be in Category 348.
351	359,290 dozen.
352	1,003,635 dozen.

Category	Amended twelve-month limit [1]
444	193,691 numbers.
633/634/635	1,689,083 dozen of which not more than 1,127,845 dozen shall be in Categories 633/634 and not more than 814,601 dozen shall be in Category 635.
636	363,805 dozen.
638	1,877,793 dozen.
639	4,960,401 dozen.
642	690,639 dozen.
647	2,798,662 dozen.
648	3,278,235 dozen.
650	51,751 dozen.
659-H [4]	5,412,209 pounds.
Level not in a group:	
870	5,466,043 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369-L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.
[3] In Category 669-P, only TSUSA number 385.5300.
[4] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30017 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customer adjusting limits.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 443/643 and sublimit for Category 443 are being increased by application of swing and carryforward, reducing the limit for Category 444.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49064, published on December 29, 1987.

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.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socalist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 30, 1988, the directive of December 21, 1987 is amended further to include adjusted limits for products in the following categories, as provided under the provision of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia:

Category	Adjusted twelve-month limit [1]
443/643	299,176 numbers of which not more than 114,352 numbers shall be in Category 443.
444	86,001 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30020 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

A New Visa Stamp for Textiles and Textile Products Exported From Hong Kong

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The Government of Hong Kong has notified the United States Government that they will begin issuing a new visa stamp to accompany shipments of textiles and textile products, produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1989, pursuant to the terms of the current bilateral textile agreement between the Governments of the United States and Hong Kong.

A facsimile of the new visa stamp is published as an enclosures to the letter to the Commissioner of Customs.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on January 1, 1989, the directive of January 14, 1983, is amended further to provide for the use of a new visa stamp to accompany shipments of textiles and textile products exported from Hong Kong on and after January 1, 1989 and entered into the United States for consumption and withdrawn from warehouse for consumption on and after January 1, 1989. A facsimile of the new stamp is enclosed with this letter.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

EXPORT LICENCE (TEXTILES) FORM 5 **COPY** **Audit No.**

Exporter (Name & Address)

T.C.R No. (where applicable) Tel. No.

Consignee

Manufacturer (Name & Address)

T.C.R. No. (where applicable) Tel. No

Departure Date | Country of Final Destination

Vessel/Flight No. | C.O./Form A No

FOR CONDITIONS OF ISSUE PLEASE SEE OVERLEAF

WARNING: All alterations must be carried out by authorized officers. Heavy penalties are provided for false declaration and information, unauthorized alterations and misuse of this licence.

Date of Receipt and Receipt No.

HONG KONG GOVERNMENT
Import and Export Ordinance (Cap. 60)
Import and Export (General) Regulations

Date of Issue and Licence No.

Issue of this licence is approved.

.....
for *Director of Trade*

MANUFACTURER'S DECLARATION

Date .....

I, ...

principal official of .....

.....
(Name of Manufacturer's Co.)

hereby declare that I am the manufacturer of the goods in respect of which this application is made, that the goods are of Hong Kong origin in accordance with condition (2) overleaf and that the particulars given herein are true. **I further declare that I am supplying the quotas for the goods covered by this application in accordance with condition (3) overleaf. (** Delete if not applicable)

.....
Signature *Chop*

Mark(s) and Number(s)	No. of packages	Full Description of Goods (State Country of Origin of raw materials)	No. of Units	Value f.o.b HK$
				Total Amount

SPECIMEN

TRADE DEPT. TEXTILE LICENSING 94

Item No	Category/Sub-Category or Commodity Item Code No.	T.C.R No of Quota/ Export Authorization/ Permit Holder	Quota Reference (see * below)	Quantity Shipped in Quota Units
1				
2				
3				
4	_____ in Cat. _____			
	_____ in Cat. _____			
5	_____ in Cat. _____			

In accordance with the terms of the 1986-1991 HK/USA Textiles Agreement, the shipment made under this licence, covering the quantity(ies) and category(ies) specified below, has been approved for export to the USA. This copy is for presentation to the competent authorities in the USA.

(Miss HO Teep-yee)
Licensing Officer No. 94
for Director of Trade
Hong Kong

* Insert here:—Type of Quota: Export Authorization Number, Swing Transfer or A—Type Transfer Number or Quota Permit Number as appropriate.

EXPORTER'S DECLARATION *Date* .....

I, ...

principal official of .....

.....
(Name of Exporter's Co.)

hereby declare that I am the exporter of the goods in respect of which this application is made and that the particulars given herein are true. **I further declare that I am supplying the quotas for the goods covered by this application in accordance with condition (3) overleaf. (**Delete if not applicable)

.....
Signature *Chop*

TIC 353A (Rev. 1985)

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[FR Doc. 88-30024 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-C

Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and exempt requirements.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnonld, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

During recent consultations held between the Governments of the United States and Singapore, agreement was reached to exempt certain textile products from visa and certification requirements.

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 53 FR 44937, published on November 7, 1988). Also see 47 FR 6683, published on February 16, 1982; 47 FR 53446, published on November 26, 1982; and 51 FR 43454, published on December 12, 1986.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 10, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool and man-made fiber textiles and textile products, produced on manufactured in Singapore and exported from Singapore, for which the Government of Singapore has not issued an appropriate export visa or exempt certification.

Effective on January 1, 1989, properly marked commercial samples, valued at U.S. $250 or less, which are exported to the United States from Singapore on and after January 1, 1989, shall not require a visa or exempt certification, and shall be exempted from all quota requirements. Merchandise for the personal use of the importer and not for resale, regardless of value, shall continue to be exempt from all quota, visa and exempt certification requirements.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30019 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Bilateral Textile Agreement and Export Visa Requirements for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and exempt requirements.

EFFECTIVE DATE: January 20, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

During negotiations, the Governments of the United States and the Republic of Uruguay agreed to further amend their current Bilateral Textile Agreement and Export Visa Arrangement to cancel the exempt certification procedure and to amend the quota and visa requirements.

Copies of the current bilateral agreement and visa arrangement are available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

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 53 FR 44937, published on November 7, 1988). Also see 50 FR 6232, published on February 14, 1985; 51 FR 19244, published on May 28, 1986.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 8, 1985, as amended, which directed you to prohibit entry of certain specified categories of cotton and wool textile products, produced or manufactured in Uruguay for which the Government of the Republic of Uruguay has not issued an appropriate export visa or exempt certification.

Effective on January 20, 1989, shipments of properly marked commercial samples, valued at U.S. $250 or less, and items for the personal use of the importer, regardless of value, exported from Uruguay on and after January 20, 1989, are exempt from quota requirements and do not require an export visa.

Also effective on January 20, 1989, you are directed to cancel the exempt certification procedure for textile and apparel products exported from Uruguay on and after January 20, 1989. These goods shall be subject to quota requirements under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Uruguay.

Merchandise in Categories 334, 335, 410, 433, 434, 435 and 442 which are exported from Uruguay on and after January 20, 1989, except properly marked commercial samples, valued at U.S. $250 or less, and items for the personal use of the importer, regardless of value, shall be denied entry if not accompanied by an appropriate visa issued by the Government of Uruguay.

For goods exported from Uruguay on and after January 20, 1989, the two letter code incorporated within the standard nine digit visa number will correspond with the International Organization for Standardization (ISO) Code of Uruguay (UY). Shipments with visas containing other than "UY" will be denied entry.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30021 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations With the Government of Costa Rica

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce. (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

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)

On November 30, 1988, the Government of the United States requested consultations with the Government of Costa Rica regarding imports of cotton gloves and mittens in Category 331, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Costa Rica, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal for warehouse for consumption of cotton textile products in Categroy 331, produced or manufactured in Costa Rica and exported during the twelve-month period which began on November 30, 1988 and extended through November 29, 1989 at a level of 698,298 dozen pairs.

A summary market statement concerning Category 331 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 331, or to comment on domestic production or availability of products included in Category 331, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committeed to finding a solution concerning Category 331. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** 52 FR 47745, published on December 16, 1987). A deascription 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 Sates Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market statement

Cotton Gloves and Mittens (Category 331), Costa Rica November 1988.

Summary and Conclusions

U.S. imports of cotton gloves and mittens (Category 331) from Costa Rica reached 802,585 dozen pair during the year ending September 1988, more than three times the 244,900 dozen pair imported a year earlier. During the first nine months of 1988, imports of Category 331 from Costa Rica reached 594,505 dozen pair, nearly two and one-half times the 244,900 dozen pair imported during the same period of 1987, and 31 percent above the total imported in calendar year 1987. There were no imports of cotton gloves and mittens from Costa Rica in 1986.

The U.S. market for cotton gloves and mittens (Category 331) has been disrupted by imports. The sharp and substantial increase in imports from Costa Rica is contributing to this disruption.

U.S. Production and Market Share

U.S. production of cotton gloves and mittens has been on the decline, dropping from 16,410 thousand dozen pair in 1984 to 15,004 thousand dozen pair average during 1986 and 1987, a decline of nine percent. The domestic manufacturers' share of the market fell below 50 percent, dropping from 51 percent in 1984 to 47 percent in 1987.

U.S. Imports and Import Penetration

U.S imports of Category 331 increased 4.6 percent in 1985 then declined 3.2 percent in 1986, averaging 15,849 dozen pair annually during the three year period 1984-1986. In 1987 imports began surging, increasing nine percent in 1987 over 1986 and another 18 percent during the first nine months of 1988 over the January-September 1987 level. The ratio of imports to domestic production increased 19 percentage points, rising from 95 percent in 1984 to 114 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 96 percent of Category 331 imports from Costa Rica during the first nine months of 1988 entered under TSUSA numbers 704.4025—cotton woven gloves and glove linings, not ornamented, and 704.4506—cotton gloves and glove linings, not woven, without fourchettes or sidewalls, the lisle type, no pile, not brushed or napped, not ornamented. These gloves entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable gloves.

[FR Doc. 88-30023 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Separate Visa and Quota Reporting for Garments and Clothing Accessories Entered as Sets

December 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs requiring separate visa and quota reporting for the entry of garments and clothing accessories.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

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).

Interested persons are advised to take all necessary steps to ensure that articles of cotton, wool, man-made fiber, silk blend and other vegetable fibers affected by the accompanying letter to the Commissioner of Customs, that are exported on and after January 1, 1989, and are to be entered for consumption

or withdrawn from warehouse for consumption in the United States, will meet the requirements set forth in the letter.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended; and as established in U.S. bilateral textile agreements, all garments and clothing accessories entered as sets into the United States for consumption or withdrawn from warehouse for consumption require separate visa and separate statistical reporting for quota purposes.

Effective on January 1, 1989, you are directed to prohibit entry for consumption or withdrawal from warehouse for consumption into the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) of garments and clothing accessories or any combination of the proceeding for which classification is claimed as sets under GRI 3 HTSUSA, where separate textile or apparel categories currently exist or come into existence requiring the separate reporting of the components forming those sets.

Entry shall be permitted if separate visa and quota reporting is provided and all other visa and quota requirements are met.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30022 Filed 12-28-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Affidavit in Support of Common-Law Marriage; AF Form 3117; and OMB Control Number 0701-0094.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 12 minutes.

Frequency of Response: On occasion.

Number of Respondents: 60.

Annual Burden Hours: 12.

Annual Responses: 60.

Needs and Uses: The common law spouse of a deceased Air Force retiree uses this form to verify the common law marriage relationship to the deceased. The Air Force needs the information from the form to support a claim for an annuity for the common law spouse under the Survivor Benefit Plan (SBP)/ Retired Serviceman's Family Protection Plan (RSFPP).

Affected Public: Individuals.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 22, 1988.

[FR Doc. 88-29951 Filed 12-28-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Evaluation of Commissioning Applicants, AF Form 1145; OMB No. 0701-0104.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 20 minutes.

Frequency of Response: On occasion.

Number of Respondents: 2,712.

Annual Burden Hours: 904.

Annual Responses: 2,712.

Needs and Uses: The Air Force uses AF Form 1145 to collect information from applicants for training leading to a commission in the United States Air Force. The Air Force uses the information to determine the applicants' qualifications in terms of education, experience, goals, leadership potential, communicative skills and adaptability for military life. Air Force application processing and approval personnel need this information to evaluate and select applicants for training leading to a commission.

Affected Public: Individuals.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 22, 1988.

[FR Doc. 88-29952 Filed 12-28-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the resolutions made by the committee at the 1988 fall conference, review the subcommittee issue agendas, discuss issues relevant to women in the Services, and plan the program for the next semiannual

conference scheduled for April 16–20, 1989. All meeting sessions will be open to the public.

DATE: February 7, 1989, 9:30 a.m.–4:00 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1988.

[FR Doc. 88–29949 Filed 12–28–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: January, 18–19, 1989.

Time: 0800–1700 hours each day.

Place: Fort Hood, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its fourth meeting at Fort Hood, Texas. The panel will hold discussions and receive briefings from personnel in operational units including air and ground experience in combating human error accidents. The panel, specifically, will hold discussions with commanders from corps to company level and observe units in training/daily operations with opportunity to talk with junior leaders. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29883 Filed 12–28–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Grants; Louisiana State University, Basin Research Institute

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant with Louisiana State University, Basin Research Institute.

SUMMARY: "Development of Improved Methods for Locating Large Areas of Bypassed Oil." The U.S. Department of Energy (DOE), Idaho Operations Office intends to negotiate on a noncompetitive basis a $1.7M cost share grant with Louisiana State University, Basin Research Institute, Baton Rouge, Louisiana. This action is prompted by the consummation of Annex 1 to the Memorandum of Understanding between DOE and the State of Louisiana, which defines the research proposal and the participants, and specifies cost sharing. The grant will be to develop a predictive method for locating large areas of bypassed oil and for estimating the volume of this resource. The participant shall (1) develop systematic methods for characterizing reservoir heterogeneities for several types of Louisiana reservoirs, (2) test the proposed methods using simulators and field tests, and (3) transfer the technologies to the oil operators through publications and workshops. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(2)(i) (B), (C), and (D). The activities proposed in Annex I to the agreement between the U.S. Department of Energy and the State of Louisiana are in support of a public purpose and are as directed by the agreement. DOE support of the activity would enhance the public benefits to be derived, and DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a Governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

The applicant has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, technical expertise and other unique qualifications. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526–9519.

Date: December 16, 1988.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 88–30001 Filed 12–28–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89–132–000 et al.]

Commonwealth Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Electric Company

[Docket No. ER89–132–000]

Take notice that on December 19, 1988, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve-month period ending December 31, 1987. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E–7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate schedule No. 27.

Commonwealth states that these rate schedules have been previously been similarly supplemented for the calendar years 1972 through 1986.

Comment date: Janaury 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER89–128–000]

Take notice that Florida Power & Light Company (FPL), on December 19, 1988, tendered for filing a document entitled Amendment Number Five to Contract for Interchange Service Between Florida Power Corporation (FPC) and Flordia Power & Light Company (Rate Schedule FPC No. 81).

FPL states that under the Amendment and pursuant to the provisions of the existing Contract for Interchange

Service between FPL and FPC, the parties have: (1) abandoned an existing interconnection at FPL's East Oak Substation; (2) established a new interconnection at FPC's Suwannee Plant; and (3) have amended certain Schedules to the Interchange Agreement to allow for more flexibility in the assignment of units for a transaction.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment be made effective on December 3, 1988. FPL states that copies of the filing were served on FPC.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER89-129-000]

Take notice that on December 19, 1988, Southern California Edison Company (Edison) tendered for filing the Edison-Azusa Pasadena Firm Transmission Service Agreement, the Edison-Banning Pasadena Firm Transmission Service Agreement, and the Edison-Colton Pasadena Firm Transmission Service Agreement (Agreements) which have been executed by Edison and the Cities of (Cities) Azusa, California (Azusa), Banning, California (Banning), and Colton, California (Colton).

Under the Agreements, Edison agrees to make firm transmission service available to Azusa, Banning, and Colton until midnight, October 31, 1992, from Goodrich Substation to the Cities' point of Delivery per firm Transmission Service Agreements. These Firm Transmission Service Agreements are resource-specific. Service is provided only for the energy and capacity delivered to Edison's Sales Agreement, and may not be used by the Cities for any other purpose. The capacity will be allocated to the Cities as follows:

City:

Azusa—17 MW.
Banning—8 MW.
Colton—15 MW.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Cities of Azusa, Banning, and Colton, California.

Comment date: January 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER89-130-000]

Take notice that on December 19, 1988, Southern California Edison (Edison) tendered for filing the Edison Azusa CDWR Firm Transmission Service Agreement and the Edison-Colton CDWR firm Transmission Service Agreement (Agreements) which has been executed by Edison and the Cities (Cities) of Azusa, California (Azusa) and Colton, California (Colton).

Under the Agreements, Edison agrees to make firm transmission service available to Azusa and Colton until midnight, October 31, 1993, from Vincent Substation to the Cities' Point of Delivery per the Firm Transmission Service Agreements. These Firm Transmission Service Agreements are resource-specific. Service is provided only for the energy and capacity delivered to Edison's interconnection with CDWR at Vincent Substation per the terms of the Power Sale Agreements, and may not be used by the Cities for any other purposes. The maximum capacity to be transmitted for the Cities will be as follows:

City:

May–October
Azusa—7 MW.
Colton—8 MW.
November–April
Azusa—5 MW.
Colton—5 MW.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Cities of Azusa and Colton California.

Comment date: January 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29981 Filed 12-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10685-000, et al.]

Hydroelectric Applications, North Coast Development Co., Inc., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10685-000.

c. *Date Filed:* November 3, 1988.

3. *Applicant:* North Coast Development Co., Inc.

e. *Name of Project:* Crater Lake.

f. *Location:* At Crater Lake in Sec 11, T15W, R3W and Sec 14, T15S, R3W, Copper River Meridian near Cordova, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Howard T. Harstad, P.O. Box 98787, Des Moines, WA 98198, (206) 243-8606.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376-1936.

j. *Comment Date:* February 9, 1989.

k. *Description of Project:* The proposed project would consist of: (1) Intake No. 1, at water surface elevation 1,514 at Crater Lake, intake No. 2. on a stream from Crater Lake at elevation 340 feet, and intake No. 3 on an unnamed stream to the north of Crater Lake; (2) a 12-inch-diameter, 3,300-foot-long penstock from intake No. 1 terminating at powerhouse No. 1, and two 12-inch-diameter, 3,300-foot-long penstocks from intake No. 2 and intake No. 3 terminating at a storage tank at the powerhouse No. 1 site; (3) a 24-inch-diameter, 1,200-foot-long penstock from the storage tank to powerhouse No. 2; (4) powerhouse No. 1 at elevation 335 feet containing two generating units each with a rated capacity of 500 kW, and powerhouse No. 2 at elevation 27 feet containing two generating units each with a rated capacity of 300 kW; and (5) approximately 1,500 feet of transmission line. Applicant estimates the average annual energy production to be 4 MWh and the cost of the work to be performed under the preliminary permit to be $52,000.

l. *Purpose of Project:* The power produced will be sold to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

2a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10686-000.

c. *Date Filed:* November 3, 1988.

3. *Applicant:* North Coast Development Co., Inc.

e. *Name of Project:* Lake Redfield.

f. *Location:* At Lake Redfield within the Tongass National Forest in sec 8, 16, 17, 19, 20, 21, 29, 31, and 32, T26S, R35E and Sec 6, 7, 18, T27S, R35E, Copper River Meridian near Yakutat, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Howard T. Harstad, P.O. Box 98787, Des Moines, WA 98198, (206) 243–8606.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* February 9, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at water surface elevation 150 feet at the west end of Lake Redfield; (2) a 2,000-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing 2 generating units each with a rated capacity of 1,000 kW; and (4) a 12-mile-long transmission line. Applicant estimates the average annual energy production to be 10 GWh and the cost of the work to be performed under the preliminary permit to be $72,000.

l. *Purpose of Project:* The power produced will be sold to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

3a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10687–000.

c. *Date Filed:* November 3, 1988.

d. *Applicant:* North Coast Development Co., Inc.

e. *Name of Project:* Haines Hydroelectric Project.

f. *Location:* On an unnamed lake at elevation 2,270 feet connected by an unnamed stream into the Chilkoot River partially on BLM land in secs. 23, 24, 25, 26, 27, and 34, T28S, R57E, Copper River Meridian near Haines, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Howard T. Harstad, P.O. Box 98787, Des Moines, WA 98198, (206) 243–8606.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* February 13, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at elevation 2,260 feet; (2) a 4,600-foot-long, 20-inch-diameter penstock; (3) a powerhouse containing two generating units each with a rated capacity of 1,500 kW; and (4) a 14-mile-long transmission line. Applicant estimates the average annual energy production to be 26 GWh and the cost of the work to be performed under the preliminary permit to be $72,000.

l. *Purpose of Project:* The power produced will be sold to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

4a. *Type of Application:* Declaration of Intention.

b. *Project No.:* EL89–8–000.

c. *Date Filed:* November 25, 1988.

d. *Applicant:* North American Hydro, Inc.

e. *Name of Project:* Delhi Project.

f. *Location:* Located on the Maquoketa River within Delhi Township, Delaware County, IA.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Charles Alsberg, Secretary/Treasurer; Loyal Gake, Senior Engineer, North American Hydro, Inc., Post Office Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. *FERC Contact:* Diane M. Scire, (202) 376–1758.

j. *Comment Date:* February 2, 1989

k. *Description of Project:* The proposed project would consist of: (1) An existing reservoir with a surface area of 50 acres; (2) an existing dam, 630 feet long and 58.5 feet high; (3) an existing powerhouse with two identical turbine units, with an installed capacity of approximately 1,500 kilowatts; and (4) appurtenant facilities. The powerplant will be reconditioned and refurbished to replace antiquated and unsafe electrical switchgear and controls with modern equipment, and to install a computerized automation operating system. The County Highway X31 runs along the crest of the dam which serves as a bridge. According to the applicant, the dam is in good condition, as reported by the Iowa Department of Natural Resources during their annual inspections. The powerhouse has not been operating since 1973. The original equipment was installed between the years of 1927 and 1928.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre–1935 design or operation.

l. *Purpose of Project:* To sell power to the Iowa Electric Light and Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

5a. *Type of Application:* Major License (5MW or less).

b. *Project No.:* 8747–004.

c. *Date Filed:* May 31, 1988.

d. *Applicant:* Power Resources Development Corporation.

e. *Name of Project:* Sullivan Island.

f. *Location:* Oswegatchie River in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Roger P. Swanson, President, Power Resources Development Corporation, 120 East First Street, Oswego, NY 13126, (315) 343–1954.

i. *FERC Contact:* Steven H. Rossi—(202) 376–9814.

j. *Comment Date:* February 21, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A new 12-foot-high, 200-foot-long concrete dam (north) and a new 15-foot-high, 50-foot-long concrete dam (south); (2) a reservoir with a surface area of 50 acres, a gross storage capacity of 568 acre-feet, and a normal water surface elevation of 610 feet m.s.l.; (3) a new intake structure located at the north dam; (4) a new powerhouse located at the north dam containing two generating units with a capacity of 1,250 kW each for a total installed capacity of 2,500 kW; (5) two new 28-foot-long tailraces; (6) a new transmission line, 1,200 feet long; (7) two new access roads; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 11,600,000 kWh. This license application was filed pursuant to a preliminary permit held by the applicant.

l. *Purpose of Project:* Project power would be sold to Niagara Mohawk Power Corporation.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

6a. *Type of Application:* License (less than 5 MW).

b. *Project No.:* 9673–003.

c. *Date Filed:* May 2, 1988.

d. *Applicant:* WV Hydro, Inc.

e. *Name of Project:* Elk River.

f. *Location:* On the Elk River near Tullahoma, Franklin County, Tennessee.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* February 21, 1989.

k. *Description of Project:* The proposed project would utilize the existing U.S. Air Force's Elk River Dam and reservoir and would consist of: (1) a vacuum pump; (2) an intake at the reservoir; (3) a 7-foot-diameter penstock; (4) a powerhouse; (5) a 1500-kW horizontal Kaplan turbine; (6) a 1600-kW, 4.16-kV induction generator; (7) a tailrace; (8) a 150 foot long transmission line connected to the TVA 46-kV line; and (9) appurtenances. The proposed hydropower plant will operate in a run-of-river mode operating at a minimum flow of 80 cfs and a maximum flow of 470 cfs. An estimated total of 6,927,000 kWh of energy will be generated each year.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 9679–000.

c. *Date Filed:* December 10, 1985.

d. *Applicant:* Winooski Two Inc.

e. *Name of Project:* Winnooski Two Hydroelectric Facility.

f. *Location:* On the Winooski River in the Cities of Burlington and Winooski, Chittenden County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dermot A. McGuigan, c/o Vermont Hydroelectric, Inc., Chace Mill, 1 Mill Street, Burlington, VT 05401, (802) 658–5110.

i. *FERC Contact:* Charles T. Raabe—(202) 376–9778.

j. *Comment Date:* February 21, 1989.

k. Description of Project: The proposed project would consist of: (1) A rebuilt 6-foot-high and 170-foot-long timber crib or concrete dam; (2) a recreated reservoir having a surface area of less than 50 acres at water surface elevation 154 feet m.s.l.; (3) an existing intake; (4) two new 20-foot-long, 10- foot-diameter steel penstocks; (5) a new concrete powerhouse containing two turbine/generators each rated at 1,500-kW operated at a 15-foot head; (6) a 10-foot-deep, 100-foot-wide, 75-foot-long tailrace having water surface elevation 136 feet NGVD; (7) a new 500-foot-long 4,160 volt transmission line, and (8) appurtenant facilities. The applicant estimates that the average annual generation would be 9,000,000 kWh and that the cost of the studies under the terms of the permit would be $300,000. Project energy would be sold to Vermont Power Exchange, Inc. A portion of the proposed project boundary for Project No. 9679 lies within the approved project boundary for licensed Project No. 2756. However the proposed project facilities are mutually compatible.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10694–000.

c. *Date Filed:* November 18, 1988.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Willow Falls Hydro Project.

f. *Location:* On the Willow River in St. Croix County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacted:* Mr. Thomas Reiss, P.O. Box 553, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Ed Lee—(202) 376–5786.

j. *Comment Date:* February 21, 1989.

k. Description of Project: The proposed project would consist of: (1) An existing 160-foot-long and 60-foot-high concrete dam; (2) an existing 122-acre reservoir with a maximum storage of 1,295 acre-feet at pool elevation 874 U.S.G.S.; (3) an intake structure at the base of the dam; (4) a powerhouse which is to be located on the left bank of the river and containing a single 1-MW generating unit; (5) a new 1-mile-long, 115-kV transmission line, and (6) appurtenant facilities. The applicant estimates that the average annual generatio would be 3.4 GWh. The cost of the work to be performed under the permit by the applicant would be $30,000. The existing dam is owned by the Wisconsin Department of natural Resources, 4610 University Avenue, Madison, WI 53711.

l. *Purpose of Project:* The applicant anticipates that the power generated will be sold to a nearby utility company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10696–000.

c. *Date filed:* November 18, 1988.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Mound Dam Hydro Project.

f. *Location:* On the Willow River in St. Croix County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Reiss, P.O. Box 553, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Ed Lee—(202) 376–5786.

j. *Comment Date:* February 21, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An Existing 430-foot-long and 49-foot-high concrete dam; (2) an existing 60-acre reservoir with a maximum storage of 770 acre-feet at pool elevation 897 U.S.G.S.; (3) a powerhouse which is integral to the dam and containing a single 400-kW generating unit; (4) a new 1-mile-long, 115-kV transmission line, and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 1.6 GWh. The cost of the work to be performed under the permit by the applicant would be $25,000. The existing dam is owned by the Wisconsin Department of Natural Resources, 4610 University Avenue, Madison, WI 53711.

l. *Purpose of Project:* The applicant anticipates that the power generated will be sold to a nearby utility company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10698–000.

c. *Date filed:* November 30, 1988.

d. *Applicant:* W. M. Lewis & Associates, Inc.

e. *Name of Project:* Green River Reservoir Dam Project.

f. *Location:* On the Green River in Taylor and Adair Counties, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. James S. Sigg, W. M. Lewis & Associates, Inc., P.O. Box 1383, Portsmouth, OH 45662, (614) 354–3238.

or

Kirk H. Betts, Esq., Dickinson, Wright, Moon, Van Dusen & Freeman, 1901 L Street, NW., Suite 800, Washington, DC 20036, (202) 457–0160.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* February 21, 1989.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers Green River Reservoir Dam and would consist of: (1) A new 140-foot-high intake structure; (2) a new 1,300-foot-long steel-lined tunnel 162 inches in diameter; (3) a new powerhouse approximately 1,300 feet downstream of the dam, containing four generating units, two each for 4.75 MW, and two of .75 MW capacity, for a total capacity of 11.0 MW; (4) a new trapezoidal discharge channel,

approximately 800 feet long leading to the existing discharge channel to the Green River; (5) a new 69-kV transmission line, approximately 6-miles-long; interconnecting with the Taylor County Rural Electric Cooperative system; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 40,300,000 kWh. The applicant estimates that the cost of the studies under permit would be $15,000.

l. *Purpose of Project:* Project power would be sold to either the Tennessee Valley Authority or the City of Glasgow, Kentucky.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10699–000.

c. *Date filed:* November 30, 1988.

d. *Applicant:* W. M. Lewis & Associates, Inc.

e. *Name of Project:* Nolin River Reservoir Dam Project.

f. *Location:* On the Nolin River in Edmonson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kirk H. Betts, Esq., Dickinson, Wright, Moon, Van Dusen & Freeman, 1901 L Street, NW., Suite 800, Washington, DC 20036, (202) 457–0160.

or

Mr. James S. Sigg, W. M. Lewis & Associates, Inc., P.O. Box 1383, Portsmouth, OH 45662, (614) 354–3238.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* February 21, 1989.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers Nolin River Reservoir Dam and would consist of: (1) A new 66-foot-high intake structure; (2) a new 900-foot-long, 164-inch-diameter steel-lined tunnel; (3) a new turbine house containing three generating units, two each for 4.25 MW, and one of 1.5 MW for a total capacity of 10 MW, and located downstream of the existing dam on the right bank of the Nolin River; (4) a new 145-foot-long stilling basin; (5) a new trapezoidal discharge channel about 900 feet long, and leading to the Nolin River; (6) a new 69-kV transmission line, approximately 2 miles long; interconnecting with the Warren Rural Electric Cooperative system; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 39,000,000 kWh. The applicant estimates that the cost of the studies under permit would be $15,000.

l. *Purpose of Project:* Project power would be sold to either the Tennessee Valley Authority or the City of Glasgow, Kentucky.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commisison, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of

the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the Application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, if will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 23, 1988.

Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29982 Filed 12-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-351-000 et al.]

Northern Natural Gas Co. et al., Division of Enron Corp.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-351-000]

December 22, 1988.

Take notice that on December 7, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-351-000, an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of GasTrak Corporation, a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 15,000 MMBtu/day for GasTrak Corporation. Northern states that transportation service for GasTrak Corporation commenced on October 19, 1988, for a 120-day period, as reported in Docket No. ST89-549-000, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86-435-000. Northern proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Company

[Docket No. CP89-462-000]

December 22, 1988.

Take notice that on December 20, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-462-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of CITGO Petroleum Corporation (CITGO), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 8,240 MMBtu of natural gas per day for CITGO from receipt points located in Louisiana to delivery points located in Louisiana. United anticipates transporting, on an average day 8,240 MMBtu and an annual volume of 3,007,600 MMBtu.

United states that the transportation of natural gas for CITGO commenced November 24, 1988, as reported in Docket No. ST89-1182-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-455-000]

December 22, 1988.

Take notice that on December 20, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-455-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-006-000 pursuant to section 7 of the Natural Gas Act for Superior Natural Gas Company (Superior), all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Superior, a marketer. United explains that service commenced October 20, 1988, under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1067. United further explains that the peak day quantity would be 20,600 MMBtu, the average daily quantity would be 20,600 MMBtu, and the annual quantity would be 7,519,000 MMBtu. United explains that it would receive natural gas for Superior's account from Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana. United further explains that, it would redeliver natural gas for Superior's account to Tennessee Gas Pipeline Company near West Monroe, Quachita Parish, Louisiana.

Comment date: February 7, 1989, in accordance with standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-443-000]

December 22, 1988.

Take notice that on December 16, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-443-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Houston Gas Exchange Corporation (Houston Gas), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transportation Agreement dated October 1, 1988, as amended on October 18, 1988, it would transport a maximum daily quantity of 103,000 MMBtu per day of natural gas for Houston Gas. United further states that the average day and annual transportation volumes would be 103,000 MMBtu and 37,595,000 MMBtu, respectively. United indicates that it would utilize existing facilities to provide the proposed transportation service.

United states that it commenced the transportation of natural gas for Houston Gas on December 1, 1988, at Docket No. ST89-1066-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89-424-000]

December 22, 1988.

Take notice that on December 15, 1988 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-424-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 50 Dt. per day, on an interruptible basis, on behalf of Amgas, pursuant to a transportation agreement dated October 19, 1988. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt located in the States of Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois and to transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in Tazewell County, Illinois. Amgas states that the estimated daily and annual quantities would be 13 Dt. and 4750 Dt., respectively. Panhandle advises that the transportation service commenced on November 21, 1988, under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1262.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Pipeline Company

[Docket No. CP89-441-000]

December 22, 1988.

Take notice that on December 16, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-441-000 a request pursuant to §157.205 of the Federal Energy Regulatory Commission's Regulations, (18 CFR 157.205) for authorization to provide a transportation service for Anadarko Trading Company (Anadarko), a marketer, under its blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

ANR states the transportation service would be provided pursuant to a transportation agreement dated October 21, 1988, wherein ANR proposes to transport up to 50,000 dekatherms per day of natural gas on an interruptible basis for Anadarko. ANR states it would receive the gas at an existing point of receipt in the Ship Shoal Area Offshore Louisiana and redeliver the gas for the account of Anadarko at existing interconnections located in the state of Louisiana.

ANR states it commenced service for Anadarko under § 284.223(a) on November 8, 1988, as reported in Docket No. ST89-1232-000.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89-450-000]

December 22, 1988.

Take notice that on December 16, 1988, Southern Natural Gas Company (Southern) Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-450-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Shell Gas Trading Company (Shell Gas), a marketer, under Southern's blanket transportation certificate authorization which was issued by Commission order on May 5, 1988, in Docket No. CP88-316-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states it will receive the gas at various existing points on its system in the offshore area of Louisiana and Livingston Parish, and redeliver the gas in Yazoo County, Mississippi. Southern will transport the gas under its interruptible Rate Schedule IT.

Southern proposes to transport up to 55,000 Mcf of gas on a peak day, approximately 25,000 Mcf and 9,125,000 Mcf on an average day and annually respectively. Southern states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on October 19, 1988, pursuant a transportation agreement dated September 20, 1988. Southern notified the Commission of the commencement of the transportation service in Docket No. ST89-786-000 on November 18, 1988.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-442-000]

December 23, 1988.

Take notice that on December 16, 1988, Transcontinental Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-442-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Phillips Petroleum Company (Phillips) under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport for Phillips on an interruptible basis up to 120,000 dt equivalent of natural gas on a peak day, 5,000 dt equivalent on an average day, and 1,825,000 dt equivalent on an annual basis. It is stated that Transco would receive the gas at Ship Shoal Block 28/28D, offshore Louisiana and deliver the gas at an existing point of interconnection between Transco and Texas Gas Transmission Corporation in Evangeline Parish, Louisiana. It is indicated that Transco would charge Phillips the applicable rate under Transco's Rate Schedule IT.

It is explained that the service commenced November 22, 1988, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations as reported in Docket No. ST89-1207. Transco states that no new

facilities are necessary for the subject transportation serivce.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-459-000]

December 23, 1988.

Take notice that on December 19, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-459-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to provide a transportation service for FRM, Inc. (FRM), under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that pursuant to an agreement dated October 26, 1988, it proposes to transport up to 5,000 dt equivalent of natural gas per day on an interruptible basis. Transco indicates that it will receive the gas at Jones County, Mississippi and deliver the gas at an existing point of interconnection between Transco and FRM in Jefferson Davis County, Mississippi.

Transco also states that no construction of facilities would be required to provide this service. Transco further states that the maximum day, average day, and annual volumes would be 5,000 dt equivalent of natural gas, 500 dt equivalent of natural gas, and 182,500 dt equivalent of natural gas, respectively. Transco indicates that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule IT.

Transco indicates that it would provide the service until terminated by either party upon at least 30 days' written notice. It is indicated that Transco may discontinue service if FRM in Transco's reasonable judgement fails to demonstrate credit worthiness and FRM fails to provide adequate security in accordance with section 9.4 of Transco's Rate Schedule IT.

Transco advises that service under § 284.223(a) of the Commission's Regulations commenced on November 17, 1988, as reported in Docket No. ST89-1176.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP89-431-000]

December 23, 1988.

Take notice that on December 15, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-431-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for MidCon Marketing Corp. (MidCon), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it would transport, on an interruptible basis, up to a maximum of 10,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), for MidCon. Natural states that the receipt point would be located in Beaver, Oklahoma and the delivery point would be located in Ford, Kansas. Natural indicates that the total volume of gas to be transported for MidCon on a peak day would be 10,000 MMBtu; on an average day would be 5,000 MMBtu; and on an annual basis would be 1,825,000 MMBtu. Natural indicates it would perform the proposed transportation service for MidCon pursuant to a service agreement dated October 18, 1988, between Natural and MidCon.

Natural states that it commenced the transportation of natural gas for American on October 24, 1988, at Docket No. ST89-1300-000 for a 120-day period ending February 21, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 284.223(b). Natural states that no new facilities are proposed in order to provide this transportation service.

Natural also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of MidCon is to receive natural gas on behalf of MidCon, and that it has no and is not aware of other applications that are related to this transaction.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. ANR Pipeline Company

[Docket No. CP89-449-000]

December 23, 1988.

Take notice that on December 16, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-449-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a natural gas transportation service for Northern Intrastate Pipeline Company (NIPCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that ANR and NIPCO entered into an agreement dated October 7, 1985, which provided for ANR to transport for NIPCO, on an interruptible basis, up to 15,000 dekatherm equivalent of natural gas per day which NIPCO caused its seller, Huffco Petroleum Corporation, to tender to ANR in South March Island Area Block 260, offshore Louisiana. ANR was authorized to transport and deliver the gas for NIPCO's account to Columbia Gulf Transmission Company at the Pecan Island Plant located in Vermilion Parish, Louisiana. ANR received certificate authorization to provide the transportation service in Docket No. CP86-270-000, 35 FERC ¶61,270 (1986). The transportation service was authorized for an initial period ending October 31, 1986. The agreeement was not extended beyond that term.

ANR requests the issuance of an order permitting and approving the abandonment of the transportation service it was authorized to provide pursuant to the October 7, 1985 agreement.

Comment date: January 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89-454-000]

December 23, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-454-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total), a producer of natural gas, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

Tennessee states that it proposes to transport natural gas for Total from numerous points of receipt located in offshore Louisiana, Louisiana, Mississippi, Texas, New York, New Jersey, West Virginia, Ohio, Kentucky, Tennessee and Alabama to numerous points of delivery located in multiple states.

Tennessee further states that the maximum daily, average and annual quantities that it would transport for Total would be 330,000 dt equivalent of natural gas, 330,000 dt equivalent of natural gas and 1,825,000 dt of natural gas, respectively.

Tennessee indicates that in Docket No. ST89-1082, filed with the Commission on December 1, 1988, it reported that transportation service for Total began on November 1, 1988, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89-456-000]

December 23, 1988.

Take notice that on December 19, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-456-000 a request pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Texaco from numerous points of receipt in Louisiana, Mississippi and Texas to numerous points of delivery in Louisiana, Mississippi and Texas.

United further states that the maximum daily, average and annual quantities that it would transport for Texaco would be 360,500 MMBtu equivalent of natural gas, 360,500 MMBtu equivalent of natural gas and 131,582,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-1065, filed with the Commission on December 1, 1988, it reported that transportation service for Texaco began on October 31, 1988, under the 120-day automatic authorization provisions of § 284.223 (a).

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP89-461-000]

December 23, 1988.

Take notice that on December 20, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-461-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport natural gas on an interruptible basis for Tejas Power Corp. (Tejas), a marketer of natural gas, pursuant to an interruptible transportation service agreement dated June 22, 1988 (# IGP-1239). Natural proposes to transport on a peak day up to 65,000 MMBtu per day; on an average day up to 40,000 MMBtu; and on an annual basis 14,600,000 MMBtu of natural gas for Tejas. Natural proposes to receive the gas for Tejas' account at Eugene Island Area, Block 57, Offshore Louisiana and deliver the gas to United Gas Pipeline Company for Tejas' account at Eugene Island Area, Block 32, Offshore Louisiana.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89-1394-000.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 385.211 and 385.214) 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 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 filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National 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. 88-29983 Filed 12-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-415-000 et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-415-000]

December 22, 1988.

Take notice that on December 14, 1988, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900, filed in Docket No. CP89-415-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Seattle Steam Corporation (Seattle Steam), an end user of natural gas, under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated September 21, 1988, as amended November 3, 1988, under Rate Schedule TI-1, it would transport up to 10,000 MMBtu per day of natural gas for Seattle Steam from various existing receipt points on Northwest's system to the North Seattle Meter Station to Washington Natural Gas Company located in King County, Washington. Northwest further states that the maximum day, average day and annual transportation volumes would be approximately 10,000 MMBtu, 50 MMBtu and 18,000 MMBtu, respectively. Northwest indicates that no construction of new facilities would be required to provide the proposed transportation service.

Northwest states that it commenced the transportation of natural gas for Seattle Steam on November 11, 1988, at Docket No. ST89-1096-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a).

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP89-404-000]

December 22, 1988.

Take notice that on December 13, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-404-000 a request as supplemented December 19, 1988, pursuant to section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Amoco Production Company (Amoco), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport on an interruptible basis, up to a maximum of 3,000 dekatherms of natural gas per day for Amoco from Eugene Island Block 77, offshore Louisiana, to various delivery points in St. Mary, St. Landry, Acadia and Cameron Parishes, Louisiana. ANR anticipates transporting, on an average day 3,000 dekatherms and an annual volume of 1,095,000 dekatherms.

ANR states that that transportation of natural gas for Amoco commenced November 1, 1988, as reported in Docket No. ST89-1061-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: February 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket Nos. CP89-386-000; CP89-387-000]

December 23, 1988.

Take notice that on December 12, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89-386-000 and CP89-387-000,[1] requests pursuant to §§ 157.205 and 284.223 of the Commisson's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for the City of Mulberry, Kansas (Mulberry) and Mesa Operating Limited Partnership (Mesa), all as more fully set forth in the requests on file with the Commission and open to public inspection.

Williams proposes to transport up to a maximum of 55,000 MMBtu of natural gas per day for Mesa and up to 756 MMBtu of natural gas per day for Mulbery, from various receipt points in Kansas, Missouri, Oklahoma, and Wyoming to various delivery points on Williams' pipeline system located in Kansas and Missouri. Williams anticipates transporting up to 55,000 MMBtu on a peak day, 30,000 MMBtu on an average day and 20,075 MMBtu annually for Mesa; and up to 756 MMBtu on a peak day, 165 MMBtu on an average day and 275,940 MMBtu annually for Mulberry. Williams explains that service commenced October 20, 1988, and October 11, 1988, respectively, under § 284.223(a) of the Commission's Regulations, as reported in Docket Nos. ST89-726-000 and ST89-725-000, respectively.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP89-448-000]

December 23, 1989.

Take notice that on December 16, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-448-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Consolidated Fuel Corporation (Consolidated) pursuant to Rate Schedule IT. Southern explains that service commenced October 16, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-785. Southern explains that the peak day quantity would be 2,600 MMBtu, the average daily quantity would be 2,600 MMBtu, and that the annual quantity would be 949,000 MMBtu. Southern explains that it would receive natural gas for Consolidated's account at existing receipt points in Louisiana, offshore Louisiana, Texas, Georgia, Mississippi, offshore Texas, and Alabama for delivery at delivery points in Georgia.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89-419-000]

December 23, 1988.

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-419-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Dayton Power and Light Company (Dayton), a shipper of natural gas and local distribution company, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

[1] These dockets are not consolidated.

Panhandle proposes to transport on a firm basis up to 15,000 dt equivalent of natural gas on a peak day for Dayton, 15,000 dt equivalent on an average day and 5,475,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Dayton's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Columbia Gas Transmission Corporation in Darke County, Ohio. It is explained that the service commenced November 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-816.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-445-000]

December 23, 1988.

Take notice that on December 16, 1988, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP89-445-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 850 feet of pipeline and remove a meter station previously used to serve Entex, Inc., a local distribution company, at the Tyler City Gate #4 line, under its blanket authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. United states that the installation of the above facilities was authorized under Docket No. G-232 and that such facilities are located in the George Myers Survey, Smith County, Texas.

United states that Entex, Inc. has consented to this proposed authorization request and that removal of the metering facilities and the abandonment of United's pipeline will be accomplished without detriment or disadvantage to its other existing customers. It is stated that the proposed activity is in compliance with Subpart F of Part 157 of the Commission's Regulations, and that United has complied with the procedures in Part 157, Subpart F, Appendix I, as it relates to environmental compliance. United further states that it will consolidate delivery quantities to Entex, Inc. at an existing delivery point, being Tyler City Gate #1, thereby avoiding any loss of service.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89-427-000]

December 23, 1988.

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-427-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Amgas, Inc. (Amgas), a shipper and marketer of natural gas acting as agent for Certified Equipment & Mfg. Co., under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport for Amgas on an interruptible basis up to 160 dt equivalent of natural gas on a peak day, 30 dt equivalent on an average day, and 10,950 dt equivalent on an annual basis. It is stated that Panhandle would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois for delivery to Central Illinois Light Company in Sangamon County, Illinois. Panhandle states that the transportation service would have a primary term of one month from the date of first delivery and continue on a monthly basis thereafter. It is indicated that Panhandle would charge Amgas the applicable rate under Panhandle's Rate Schedule PT.

It is explained that the service commenced November 21, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations. Panhandle states that no new facilities are necessary for the subject transportation.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89-425-000]

December 23, 1988.

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-425-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport for Amgas on an interruptible basis up to 50,000 dt equivalent of natural gas on a peak day, 25,000 dt equivalent on an average day, and 9,125,000 dt equivalent on an annual basis. It is stated that Panhandle would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois for delivery to Illinois Power Company in Macon County, Illinois. Panhandle states that the transportation service would have a primary term of one month from the date of first delivery and continue on a monthly basis thereafter. It is indicated that Panhandle would charge Amgas the applicable rate under Panhandle's Rate Schedule PT.

It is explained that the service commenced November 3, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations. Panhandle states that no new facilities are necessary for the subject transportation.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

United Gas Pipe Line Company

[Docket No. CP89-444-000]

December 23, 1988.

Take notice that on December 16, 1988, United Gas Pipeline Company (United), P. O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-444-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for KM Gas Company (KM Gas). United explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-967. United explains

that the peak day quantity would be 69,536 MMBtu, the average daily quantity would be 69,536 MMBtu, and that the annual quantity would be 25,380,640 MMBtu. United explains that it would receive natural gas for KM Gas' account at existing interconnections in the states of Texas and Louisiana. United states that it would redeliver the gas for KM Gas' at existing interterconnections in the states of Louisiana, Florida, and Mississippi.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-439-000]

December 23, 1988.

Take notice that on December 16, 1988 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-439-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for General Motors Corporation (General Motors) a shipper and end-user of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 4,690 Dt. per day on an interruptible basis on behalf of General Motors pursuant to a Transportation Agreement dated November 14, 1988 between Panhandle and General Motors (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to General Motors-Central Foundry in Saginaw County, Michigan.

The Shipper states that the estimated daily and estimated annual quantities would be 3,170 Dt. and 1,157,050 Dt., respectively. Transportation service for Shipper is proposed to commence immediately upon completion of construction of the proposed facilities.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-421-000]

December 23, 1988.

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-421-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on a firm basis up to 20,000 dt equivalent of natural gas on a peak day for Mobil, 10,000 dt equivalent on an average day and 3,650,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Mobil's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Gas Service Company in Marion, Anderson, Lyon, Miami, Coffey, and Franklin Counties, Kansas. It is explained that the transportation service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: February 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 88-29984 Filed 12-28-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 25 Through December 2, 1988

During the Week of November 25 through December 2, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 25 through December 2, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 28, 1988	Earth Resources/E.L. Morgan Co., Jackson, TN	RR239-1	Request for Modification/Rescission. If granted: The April 1, 1988 Decision and Order issued to E. L. Morgan Company (Case No. RF239-7) would be modified regarding the firm's application in the Earth Resources refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of November 25 through December 2, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 28, 1988	Earth Resources/E.L. Morgan Co., Jackson, TN	RS239-1	Request for Stay. If granted: The Office of Hearings and Appeals would stay the distribution of any escrowed funds involved in the Earth Resources refund proceeding pending a final determination on E. L. Morgan's request for modification.
Nov. 28, 1988	Herbert L. Tanner & PAD, Inc., Memphis, TN	KFX-0058	Supplemental Order. If granted: The Office of Hearings and Appeals would review the information submitted by Herbert L. Tanner & PAD, Inc. in response to the October 26, 1988 Decision and Order to Show Cause issued to them (Case No. KFX-0056).
Dec. 1, 1988	James R. Hutton, Kingston, TN	KFA-0234	Appeal of an Information Request Denial. If granted: The November 4, 1988 Freedom of Information Request Denial issued by the DOE Oak Ridge Operations Office would be rescinded and Mr. Hutton would receive access to his employee performance appraisal and any proposals for awards made at the Branch Chief level for the past four years.
Dec. 2, 1988	Brown Oil Co., Blue Mound, IL	KEE-0168	Exception to the Reporting Requirements. If granted: Brown Oil Company would no longer be requried to file Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Dec. 2, 1988	Walbridge J. Powell, Mercer Island, WA	KFA-0235	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the DOE Richland Operations Office would be rescinded and Walbridge J. Powell would receive access to studies made of N-Reactor Facts and Equipment Degradation, Hanford Operations.

REFUND APPLICATIONS RECEIVED

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/09/88	Lenkerbrook Farms.	RF300-10618
10/05/88	Luczan & Ramsoozingh.	RF300-10620
10/07/88	Ethelene Coludrovich.	RF300-10619
11/21/88	George's Service Station.	RF310-324
11/25/88	U.S.A. Gas, Inc.	RF300-10613
11/25/88	Peh, Inc.	RF300-10614
11/28/88	Pride Terminals, Inc.	RF314-1
11/28/88	Costa Auto Repair.	RC272-1
11/28/88	Duane Hemmah	RC272-2
11/28/88	Robert Anderson	RC272-3
11/28/88	John Sullivan	RC272-4
11/28/88	Jim's Gulf Service Station.	RF300-10615
11/30/88	Richard Kor	RC272-5
11/30/88	Unified School District #46.	RC272-6
11/30/88	Meade USD #226.	RC272-7
11/30/88	Leo M. Bollin	RC272-9
11/30/88	Larry Rinderer	RC272-10
11/30/88	Wilbur W. Benroth.	RC272-11
11/30/88	Waste Management of OH-Lima.	RC272-12
11/30/88	Clausen Ranch Company.	RC272-8
12/01/88	Cohoes Auto Service, Inc.	RF300-10621
12/01/88	Welltech, Inc.	RD272-63692
12/01/88	Squibb Corporation.	RD272-66560
12/01/88	Reliable Contracting Company.	RD272-61324

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	Gohmann Asphalt & Const.	RD272-73790
12/01/88	C.A. Rasmussen, Inc.	RD272-72077
12/01/88	L.H. Bossier	RD272-72085
12/01/88	S.C. Johnson & Son, Inc.	RD272-70908
12/01/88	Wyandot Blacktop Company.	RD272-62609
12/01/88	Green Bay Packaging, Inc.	RD272-63419
12/01/88	Starrett City Associates.	RD272-63905
12/01/88	Federated Department Stores.	RD272-66432
12/01/88	Dunn Construction.	RD272-67239
12/01/88	Gardner Industries.	RD272-67920
12/01/88	Sun Enterprises Ltd.	RD272-64407
12/01/88	The Great Eastern Shipping Co.	RD272-65378
12/01/88	M.B. Troy	RD272-69111
12/01/88	Iberia Lineas Aereas De Espana.	RD272-66563
12/01/88	Antares Shipping Co., Ltd.	RD272-67006
12/01/88	Ashmore Bros.	RD272-67016
12/01/88	Reichhold Chemicals, Inc.	RD272-67161
12/01/88	The Holland Corporation.	RD272-67236
12/01/88	Westvaco Corporation.	RD272-67316
12/01/88	Patricia R. Kellam	RD272-67703

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	P.J. Keating Company.	RD272-67862
12/01/88	The Henley Lundgren Company.	RD272-67893
12/01/88	Roofing Wholesale.	RD272-67965
12/01/88	The Dow Chemical Company.	RD272-68020
12/01/88	Burrell Const.	RD272-68915
12/01/88	Sterling Paving Company.	RD272-68993
12/01/88	Passaic Crushed Stone Comapny.	RD272-69025
12/01/88	Witco Corporation.	RD272-69165
12/01/88	Rogers Dye & Finishing.	RD272-69198
12/01/88	U.S. Borax & Chemical Corp.	RD272-69319
12/01/88	Lebeouf Bros. Towing Co., Inc.	RD272-69366
12/01/88	City-Wide Asphalt	RD272-69546
12/01/88	Compania Sub-Americana De Vapo.	RD272-69666
12/01/88	Great Lakes Dredge & Dock Co.	RD272-69694
12/01/88	East Kentucky Paving Corp.	RD272-69695
12/01/88	Caribbean Marine Serv. Co.	RD272-69699
12/01/88	Greer Steel Company.	RD272-69790
12/01/88	Riedel International, Inc.	RD272-69843

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	The Schloss Paving Company.	RD272-69946
12/01/88	J.T. Baker, Inc.	RD272-70116
12/01/88	A & B Transportation.	RD272-70289
12/01/88	H.P. Hood, Inc.	RD272-70478
12/01/88	Earl C. Smith, Inc.	RD272-70618
12/01/88	Lionmark, Inc.	RD272-70853
12/01/88	Frota Oceanica Brasileira.	RD272-71305
12/01/88	American Diesel Service.	RD272-72271
12/01/88	Transport Desgagnes, Inc.	RD272-73778
12/01/88	Bouchard Transportation Co.	RD272-74311
12/01/88	Old Fort Finishing Plant.	RD272-74447
12/01/88	Sqan Industires	RD272-74580
12/01/88	T.L. James & Company.	RD272-64814
12/01/88	The Asphalt Services Co.	RD272-64890
12/01/88	United Piece Dye Works, Inc.	RD272-64974
12/01/88	Aviritt Express	RD272-64979
12/01/88	Sun Chemical—Pigments Div.	RD272-64994
12/01/88	Palm Shipping, Inc..	RD272-65042
12/01/88	Pre Fab Transit	RD272-65097
12/01/88	Eaton Asphalt Paving Company.	RD272-65206
12/01/88	Kronos Maritime Agency.	RD272-65352
12/01/88	Prometheus Maritime Corp.	RD272-65355
12/01/88	Thenamaris, Inc.	RD272-65357
12/01/88	A. Halcoussis Shipping Ltd.	RD272-65361
12/01/88	Gourdomichalis Maritime S.A.	RD272-65366
12/01/88	N.J. Goulandris (Agencies).	RD272-65373
12/01/88	Royal Bank of Scotland.	RD272-65374
12/01/88	Johnson Shipmanagement AB.	RD272-65375
12/01/88	Arkla Chemical Corporation.	RD272-65429
12/01/88	Guiley Trucking, Inc.	RD272-65827
12/01/88	Banks Construction Company.	RD272-66087
12/01/88	Petra Cruise Lines, Inc.	RD272-66368
12/01/88	Mead Corporation.	RD272-66380
12/01/88	Dixie Pavers, Inc.	RD272-63800
12/01/88	Holmes Transportation, Inc.	RD272-63845
12/01/88	Skaarup Shipping Corporation.	RD272-63888
12/01/88	Cenac Towing Company, Inc.	RD272-63963

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	Orion & Global Chartering Co.	RD272-64069
12/01/88	Essex Group, Inc.	RD272-64208
12/01/88	Interplastic Corporation.	RD272-64290
12/01/88	Ciba-Geigy Corporation.	RD272-64327
12/01/88	Great Lakes Chemical Corp.	RD272-64360
12/01/88	Rogers Group	RD272-64369
12/01/88	Scott Paper Company.	RD272-64408
12/01/88	Parkchester Management Corp.	RD272-64604
12/01/88	Allied Corporation	RD272-66433
12/01/88	Rochdale Village, Inc.	RD272-66448
12/01/88	Folk Construction	RD272-66473
12/01/88	Sandoz Chemicals Corp.	RD272-66502
12/01/88	CPM, Inc.	RD272-66548
12/01/88	Lot Polish Airlines.	RD272-61176
12/01/88	Dillingham Const. Corporation.	RD272-61305
12/01/88	Brostroms Redert AB.	RD272-61368
12/01/88	Occidental International Oil.	RD272-61369
12/01/88	Vergottis (London) Ltd.	RD272-61370
12/01/88	Companhia De Navegacao.	RD272-61506
12/01/88	Broderick & Gibbons.	RD272-61526
12/01/88	Ameripol Synpol Company.	RD272-61725
12/01/88	Pope Companies	RD272-62127
12/01/88	Orders & Haynes Paving.	RD272-62559
12/01/88	Kestrel (Australia) Pty. Ltd.	RD272-62588
12/01/88	Beverage Management, Inc.	RD272-62593
12/01/88	Globe Industries	RD272-62887
12/01/88	Navios Corporation.	RD272-63390
12/01/88	Inland Asphalt Company.	RD272-63401
12/01/88	Gallagher Asphalt Corporation.	RD272-63552
12/01/88	Crowell Constructors.	RD272-63794
12/01/88	General Foods Corporation.	RD272-61989
12/01/88	Luhr Bros	RD272-63109
12/01/88	Nereus Shipping S.A.	RD272-63207
12/01/88	Liberty Mutual	RD272-63350
12/01/88	Mansfield Asphalt Paving.	RD272-63828
12/01/88	Lee Hy Paving	RD272-64964
12/01/88	Grand Packing Company, Inc.	RD272-65441
12/01/88	Pepsi-Cola Company.	RD272-65883
12/01/88	Frehner Construction.	RD272-66378

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	Empresa De Transporte Aereo.	RD272-66562
12/01/88	Ferguson Bros. Const.	RD272-67071
12/01/88	Lone Star Industries.	RD272-67281
12/01/88	A.H. Smith Assoc.	RD272-67329
12/01/88	C.J. Langenfelder & Son.	RD272-67566
12/01/88	DBJ Equipment Corporation.	RD272-67759
12/01/88	Emulsion Products.	RD272-67919
12/01/88	Martin Marietta Corporation.	RD272-69633
12/01/88	The Arundel Corporation.	RD272-72080
12/01/88	Vernon Paving	RD272-73273
12/01/88	Jack B. Parson Company.	RD272-73734
12/01/88	Hung-Wesson Foods, Inc.	RD272-73865
12/01/88	Genstar Store Products.	RD272-74240
12/01/88	Lykes Pasco, Inc.	RD272-67598
12/01/88	John P. Weyer, Inc.	RD272-68275
12/01/88	Hofferber Truck Lines, Inc.	RD272-68846
12/01/88	Liberty Corporation.	RD272-69043
12/01/88	Ploof Truck Lines	RD272-69229
12/01/88	Asphalt Products Corporation.	RD272-69293
12/01/88	The Pillsbury Company.	RD272-69342
12/01/88	Pennsy Supply	RD272-69635
12/01/88	R.B. Pond Construction.	RD272-69703
12/01/88	Westminster Hide & Tallow Co.	RD272-69835
12/01/88	Westside Transport, Inc.	RD272-70286
12/01/88	Mississippi Chemical Corp.	RD272-71308
12/01/88	Rein, Schultz & Dahl of IL.	RD272-71311
12/01/88	B/J Delivery Service, Inc..	RD272-71321
12/01/88	H.B. Fuller Company.	RD272-71336
12/01/88	Western Atlas International.	RD272-72078
12/01/88	Amcon Products	RD272-72416
12/01/88	Pendleton Construction Corp.	RD272-73256
12/01/88	Syar Industries	RD272-73595
12/01/88	Elliott Company	RD272-73784
12/01/88	Cummins Construction Company.	RD272-73883
12/01/88	Vons Grocery Company.	RD272-74026
12/01/88	B.J. McAdams Trucking.	RD272-74249
12/01/88	W.J. Runyon and Son, Inc.	RD272-61189
12/01/88	Consolidated Freightways, Inc.	RD272-61630
12/01/88	Lorillard, Inc.	RD272-61905

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 25 to Dec. 2, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/88	Carolina Packers, Inc.	RD272-62260
12/01/88	NDH, Inc.	RD272-62846
12/01/88	Lilly Industrial Coatings, Inc.	RD272-63021
12/01/88	River Bend Corporation.	RD272-63096
12/01/88	Nekoosa Packaging Corporation.	RD272-63251
12/01/88	Fibreboard Corporation.	RD272-63877
12/01/88	Admiral Cruises, Inc.	RD272-63889
12/01/88	American Asphalt Paving.	RD272-63941
12/01/88	Wells Cargo, Inc.	RD272-63966
12/01/88	Canteen Company.	RD272-64283
12/01/88	McDonnell Douglas Corporation.	RD272-64663
12/01/88	Republic Industries Liquidating.	RD272-64984
12/01/88	Mallory Transportation.	RD272-65048
12/01/88	Lykes Bros. Steamship Co., Inc.	RD272-65096
12/01/88	Monarch Cruise Lines, Inc.	RD272-65436
12/01/88	Ward Foods, Inc.	RD272-65435
12/01/88	Stafford Construction.	RD272-65862
12/01/88	Tomahawk Services, Inc.	RD272-66027
12/01/88	Coast Leasing Company.	RD272-66046
12/01/88	Dart Container Corporation.	RD272-66874
12/01/88	The Dwo Chemical Company.	RD272-67009
12/01/88	E & B Paving, Inc..	RD272-67026
12/01/88	Boise Cascade Corporation.	RD272-67314
12/01/88	Long Manufacturing Co. N.C..	RD272-67368
12/02/88	Vic Meline Company.	RF308-5
12/05/88	Ag Company, Inc. ET AL..	RF225-11053
12/05/88	Ag Company, Inc. ET AL..	RF225-11091
12/05/88	Walsh Propane, Inc..	RF308-6
11/25/88 thru 12/02/88.	Exxon Refund Applications Received.	RF307-6883 thru RF307-6973
11/25/88 thru 12/02/88.	Crude Oil Refund Applications Received.	RF272-75132 thru RF272-75139
11/25/88 thru 12/02/88.	Atlantic Richfield Refund Applications Received.	RF304-7350 thru RF304-7404
11/25/88 thru 12/02/88.	Murphy Oil Refund Applications Received.	RF309-603 RF309-624

[FR Doc. 88-30003 Filed 12-28-88; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Loveland Area Projects; Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project; Proposed Initial Blended Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed initial rate, Loveland Area Projects (LAP)—Pick-Sloan Missouri Basin Program—Western Division (P-SMBP-WD) and Fryingpan-Arkansas Project (Fry-Ark).

SUMMARY: The final "Post 1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project" (Criteria) were published in the **Federal Register** on January 31, 1986 (51 FR 4024). The Criteria operationally and contractually integrated the resources of the P-SMBP-WD and Fry-Ark, which is referred to as the LAP, and called for the establishment of a blended rate for the LAP firm power sales.

To establish the LAP firm power rate, the Western Area Power Administration's (Western) Loveland Area Office (LAO) developed the revenue requirements for the LAP from separate fiscal year 1987 power repayment studies for the Pick-Sloan Missouri Basin Program and the Fry-Ark. To meet the LAP revenue requirements, the proposed initial rate for firm power is $2.26 kW-month and 5.5 mills/kWh. This rate is to become effective on an interim basis on the first day of the October 1989 billing period.

At the present time, the LAO is performing a study relating to transmission service on the LAP system. Because of the ongoing nature of this study, the LAO will not change the existing transmission service rate at this time.

FURTHER INFORMATION: A brochure explaining the background for the LAP firm power rate and the power rate design will be distributed to all LAP customers and other interested parties. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR Part 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rate and submit it to the Deputy Secretary to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission.

Data, studies, reports, and other documents used in the development of the proposed initial LAP rate are available for inspection and/or duplication in Western's LAO. Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539.

DATES: The consultation and comment period will begin on the date of publication of this notice and will end on April 11, 1989.

The public information forum, during which Western will explain the need for the development of the initial blended rate and answer questions, will be held on January 31, 1989, at 9:30 a.m. at the Holiday Inn, Northglenn, Colorado.

The public comment forum will be held on March 7, 1989, at 9:30 a.m. at the Holiday Inn, Northglenn, Colorado.

Persons planning to speak at the public comment forum are requested to send their name and organization to the address noted above so that they are received by February 28, 1989. Other persons may also be allowed to comment as time permits.

SUPPLEMENTAL INFORMATION: The power rate for the LAP will be established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887; and the other acts specifically applicable to the project system involved.

By Delegation Order No. 0204-108, published on December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegated to the Deputy Secretary, on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. The delegation order was amended on May 30, 1986 (51 FR 19744), to delegate the above authority to the Under Secretary rather than to the Deputy Secretary of the Department of Energy (DOE). This authority was subsequently reassigned to the Deputy Secretary by DOE Notice 1110.29 dated October 27, 1988. Existing

DOE procedures for public participation in power and transmission rate adjustments (10 CFR 903) became effective on September 18, 1985 (50 FR 37835, September 18, 1985). Power rate adjustments for the LAP are conducted consistent with 10 CFR Part 903.

ENVIRONMENTAL COMPLIANCE: In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulation (40 CFR Parts 1500 through 1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western is conducting an environmental evaluation on the establishment of the proposed initial rate.

REGULATORY FLEXIBILITY ANALYSIS: Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the initial rate for LAP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of this Act. Since the rate for LAP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the LAP rate. There is no requirement that members of the public participating in the development of the LAP rate supply information about themselves to the Government. It follows that the LAP rates are exempt from the Paperwork Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, December 19, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-30002 Filed 12-28-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3499-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202-382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Recordkeeping Requirements for Producers of Pesticides (EPA ICR #0143). This is a previously approved collection.

Abstract: This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

Burden Statement: The estimated public recordkeeping burden for this collection of information is 2 hours per pesticide producer.

Respondents: Pesticide producers

Estimated No. of Respondents: 13,918

Estimated Total Annual Burden on Respondents: 27,836

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: December 20, 1988.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 88-29964 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3498-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Reports for States to Make SARA Capacity Assurances (EPA ICR # 1343). This is a new collection.

Abstract: States will provide data and program information biennially to assure EPA that they have (1) an adequate understanding of their current hazardous waste treatment and disposal system, and future capacity needs, and (2) realistic plans for meeting long term needs. EPA will use information to evaluate adequacy of SARA 104(k) assurances.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is 3000 hours per respondent biennially. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, and submitting the capacity assurance materials.

Respondents: States and territories
Estimated No. of Respondents: 56
Estimated Total Annual Burden on Respondents: 168,000
Frequency of Collection: Biennially

Office of Solid Waste and Emergency Response

Title: National Survey of Solid Waste from Mineral Processing Facilities (EPA ICR #1349). This is a new collection.

Abstract: EPA seeks approval from OMB to collect from approximately 180 mineral processing facilities additional information that the Agency needs to respond to the study factors identified in RCRA 8002(p), which requires EPA to prepare and submit a Report to Congress on mineral processing wastes.

Burden Statement: EPA estimates that the public reporting burden for this collection of information will range between 40 and 80 hours per respondent. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering the data, and completing and reviewing the questionnaire.

Dates: EPA is requesting that OMB expedite their review of this survey and provide an approval decision by January 31, 1989. Therefore, all comments are due to OMB by January 27, 1989.

Respondents: Owners and Operators of Mineral Processing Facilities
Estimated No. of Respondents: 180
Estimated Total Annual Burden on Respondents: 10,800
Frequency of Collection: Once

Office of Solid Waste and Emergency Response

Title: Uniform Hazardous Waste Manifest (EPA ICR # 0801; OMB # 2050-0039). This is a request to use the previously approved form.

Abstract: EPA is requesting OMB approval to use existing manifest forms that display the expiration date of September 30, 1988, until June 30, 1989. The regulated community needs the additional time to revise the manifest form to comply with OMB's regulations requiring a burden box statement.

After June 30, 1989, the following burden disclosure statement must be included with the manifest form:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This statement can be included with the form in any of three ways to comply with OMB's requirement:

1. The statement can be printed directly on the face of the form.
2. The statement can be printed on the back of the form, either in the instructions, with other material, or by itself.
3. The statement can be printed on a separate detachable sheet.

In addition, after June 30, 1989, "old" manifest forms, that have a September 30, 1988 expiration date, may be used if: (1) The new date of September 30, 1991, is overprinted on the form, and (2) the burden disclosure statement is included as discussed previously.

Burden Statement: The estimated average reporting and recordkeeping burden for this notice is zero, since this is only extending the use of the previously approved form.

Respondents: Generators, Transporters and Handlers of Hazardous Waste
Estimated No. of Respondents: 149,360
Estimated Total Annual Burden on Respondents: 0
Frequency of Collection: As needed

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460
and

Tim Hunt (ICR # 0559) and Marcus Peacock (ICR #s 0801, 1343, and 1349), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0370.08; Underground Injection Control Program Information; OMB # 2040-00421; was approved 11/30/88; expires 9/30/91.

EPA ICR # 0270.11; Public Water System Program Information; OMB # 2040-0090; was approved 11/29/88; expires 9/30/90.

EPA ICR # 1355; Underground Storage Tanks—State Program Application; OMB # 2050-0067; was approved 11/28/88; expires 10/31/91.

EPA ICR # 1360; Underground Storage Tanks—Technical Reporting and Recordkeeping; OMB # 2050-0068; was approved 11/28/88; expires 10/31/91.

EPA ICR # 1063; NSPS For Sewage Treatment Plant Incineration—Reporting and Recordkeeping Requirements; OMB # 2060-0035; was approved 11/28/88; expires 11/30/91.

EPA ICR # 1325; TSCA Section 8(A) Comprehensive Assessment Information Rule (CAIR); OMB # 2010-0019; was approved 12/5/88; expires 12/31/89.

EPA ICR # 1426; Worker Protection Standards Pursuant to Section 125(F) of the Superfund Amendments and Reauthorization Act; was disapproved 11/28/88.

Date: December 20, 1988.

Paul Lapsley,
Information and Regulatory Systems Division.

[FR Doc. 88-29965 Filed 12-28-88; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3499-2]

Assurance of Hazardous Waste Capacity, Guidance to State Officials

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance.

SUMMARY: This document supplies guidance to state officials on providing assurances required by section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA" or "Superfund"). This section of CERCLA requires states in which remedial actions may be taken to provide assurances, prior to EPA taking or funding such actions, of the availability of hazardous waste treatment or disposal facilities which have adequate capacity to manage the hazardous wastes expected to be generated within the states over twenty years. These assurances must be provided in a contract or cooperative agreement entered into between the state and the Administrator. After October 17, 1989, no Superfund remedial actions can be provided unless the state first enters into such a contract or cooperative agreement providing assurances that the Administrator deems adequate.

This guidance document reflects EPA's current understanding of the statutory requirements and describes how EPA currently suggests that states implement these requirements. In addition, the guidance provides substantial information to states, including suggested language for the contracts and cooperative agreements to be signed, instructions on the preparateion state Capacity Assurances Plans (CAPs) that can form a basis for the assurances, and a model for the interstate agreements or regional

agreement or authority required when addressing access to capacity in other states.

ADDRESS: For copies of the Document, contact the Cross-Media Analysis staff, Mail Code OS-110, Office of Solid Waste and Emergency Response, Cross-Media Analysis Staff, U.S. Environmental Protecion Agency, 401 M Street, SW, Washington, DC 20460, (Phone #: 202-475-9829).

FOR FURTHER INFORMATION CONTACT: T. Michael Taimi, Director, Cross-Media Analysis Staff at (202) 475-9829.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-29963 Filed 12-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Steering Committee Meeting

The fifth meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 9:00 a.m. on February 9, 1989, in Room 856 at the FCC's offices at 1919 M Street, NW., in Washington, DC.

The agenda for the meeting will consist of:

1. Introductory Remarks—Irwin Dorros.

—Review of Systems Subcommittee charter, organization and operating procedures

—Description of work flow and general inputs from the Planning Subcommittee

2. Report by Working Part 1 (Systems Analysis)—Birney Dayton.

—Charter and organization

—Review of November "marathon" session

—Schedule of activities

3. Report by Working Part 2 (System Evaluation and Testing)—Ben Crutchfield.

—Charter and organization

—Status of the overall test plan

—Discussion of inputs from the Planning Subcommittee

—Discussion of availability of ATV testing facilities

—Schedule of activities

4. Report by Working Party 3 (Economic Assessment)—Larry Thorpe.

—Charter and organization

—Work plan/status

—Schedule of activities

5. Report by Working Party 4 (System Standard)—Robert Hopkins.

—Charter and organization

—Work plan/status

—Schedule of activities

6. Discussion of Second Interim Report

7. Subcommittee meeting schedule

8. Open discussion

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632-7060.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29875 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

Applications For Consolidated Proceeding; Broadcast Facilities Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I

Applicant, city, and State	File No.	MM Docket No.
A. Broadcast Facilities Corp., Frankfort, NY.	BPH-851204MD	88-547
B. Frank E. Penny & Dean Aubol, Frankfort, NY.	BPH-851205MF	
C. Frankfort Associates, Frankfort, NY.	BPH-851205MG	
D. WTMK Broadcasting Corp., Frankfort, NY.	BPH-851205MI	
E. Edward F. & Pamela J. Levine, Joint Tenants, Frankfort, NY.	BPH-851205MJ	

Issue Heading and Applicants

1. Environmental D
2. Air Hazard, C, E
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

II

Applicant, city State	File No.	MM Docket No.
A. West Mechlenburg Broadcasting, Chase City VA	BPH-880107MS	88-546
B. Patricia B. Wagstaff, Chase City VA	BPH-880107NH	

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

III

Applicant, city, State	File No.	MM Docket No.
A. Winton Broadcasting Co., Winton, Ca.	BPH-880126ND	88-553
B TGR Broadcasting, inc., Winton, Ca	BPH-880126NJ	

Issue Heading and Applicants

1. Air Hazard, A & B
2. Comparative, All Applicants
3. Ultimate, All Applicants

IV

Applicant, city, State	File No.	MM Docket No.
A. Blountville Education Association, Inc., Blountville, Tn.	BPED-840404IA	88-564
B. Family Stations, Inc., Bristol, Tn.	BPED-840629IK	

Issue Heading and Applicants

1. Air Hazard, A,B
2. 307(b)-Noncommercial Educational, A,B
3. Contingent Comparative-Noncommercial Educational FM, A,B
4. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FRM Doc. 88-29865 Filed 12-28-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-758]

First Federal Savings and Loan Association of Elgin, Elgin, Illinois; Final Action Approval of Conversion and Holding Company Applications

Date: December 16, 1988.

Notice is hereby given that on December 9, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Elgin, Elgin, Illinois, (the "Association") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of University Financial Corporation, Chicago, Illinois to acquire control of the Association.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-29979 Filed 12-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Second Report on Tariff Automation Inquiry

December 23, 1988.

The original Notice of Inquiry on Tariff Automation was published in the **Federal Register** on December 22, 1987 (52 FR 48504). Written comments in response to the notice were received and the Commission's "Report on Tariff Automation Inquiry" was published in the **Federal Register** on April 20, 1988 (53 FR 13066).

On June 13, 1988 (53 FR 22048), a further notice was published, entitled: "Inquiry on Tariff Automation; Delay in Issuance of Request for Proposals." In this most recent notice, the Commission indicated that it would reassess the proposed ATFI system and issue a Request for Proposals (RFP) later than originally scheduled. The Commission explained:

> Issues raised by the House Subcommittee on Information, Justice, and Agriculture (Subcommittee) and by the Office of Management and Budget (OMB) have prompted the delay.
>
> * * * * *
>
> The concerns expressed by the Subcommittee and OMB center on the 'remote retrieval' feature in the proposed system. This feature would allow the shipping public to dial for access to an individual tariff of a carrier or conference and would give access to one tariff at a time. However, it would not provide for sophisticated searches.
>
> Questions concerning the 'remote retrieval' feature are based on perceptions that the Commission would compete with existing or intended value-added services offered by private sector firms. The Commission, however, does not intend to provide these value-added services.

Since June, 1988, the Commission has been reassessing the functionality of the ATFI system, especially in the area of remote retrieval. This process has involved a dialogue with officials from Congress and the Executive-branch.

During the same period, technical revisions were made to the RFP to reflect new funding exigencies and legal requirements. In October, 1988, the Commission issued a second draft RFP for comment to some 200 potential offerors on the technical revisions made. However, the Commission remained concerned about the questions on remote retrieval and stated in the letter transmitting the second draft RFP:

> The remote retrieval issue has not been finally decided. Accordingly, this draft RFP is issued with the remote retrieval question still open. That issue will be decided in the final RFP.

The letter of transmittal further cautioned potential bidders that the original RFP language providing for "remote retrieval" could be substantially changed in the final RFP to be issued in January, 1989.

The Commission intends to issue the final RFP as scheduled and is herein resolving the remote retrieval issue for inclusion in the RFP. The Commission understands that meaningful proposals in response to the RFP cannot be submitted with this critical issue left unanswered.

After much analysis and reconsideration, the Commission has decided to retain the functionality of its proposed Automated Tariff Filing and information System ("ATFI") as currently described in the second draft RFP. It will, accordingly, be repeated in the final RFP. This will include access functions which have been commonly referred to as "remote retrieval" or "dial-up access." The Commission recognizes, however, that these terms do not begin to accurately describe the functions as set forth in the RFP specifications and believes that the issue thus far may have been obscured by the use of such technological catch-words. The specifications should, therefore, be carefully read for a full understanding. *See* especially Attachment J-1 to the RFP.

The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.

In October, 1986, a year before the Commission heard of any complaints about "remote retrieval," its private-sector contractor issued "A Comprehensive Study of the Feasibility of an Automated Tariff System." This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to "remote retrieval." Most of the functionality language of this report is adopted in attachment J-1 of the present RFP.

More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility Study Report suboptimized ATFI's public retrieval functions as an accommodation to private-sector information firms:

> FMC does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. Page IV-8.

Accordingly, the self-imposed restrictions would allow the general public to perform only "relatively rudimentary" retrievals of tariffs, and essentially no analysis of the data.

In consideration of the statutory duties of the Commission and the available technology required for it to properly perform these functions, the

1986 accommodation appeared reasonable. It still does.

The shipping public should also benefit from this modern technology by being allowed to obtain basic, raw tariff data on a limited basis. For more sophisticated services, the utilization of third-party vendors, both for filing and retrieval, is continued to be encouraged. An efficient tariff filing and retrieval network will promote fair competition and facilitate trade.

Accordingly and after further analysis, the Commission believes that it has sufficiently considered all policies and conflicting interests involved in the proposed system and has struck a proper balance in retaining the functionality of ATFI as originally devised in the Feasibility Study, and as further refined in the RFP. The final RFP will be issued in early January, 1989.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 89-29930 Filed 12-28-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

Agency Forms Under Review

December 22, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before January 13, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Fred Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

Report title: Report of Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2029B.

OMB Docket number: 7100-0064.

Frequency: Semiannually.

Reporters: U.S. branches and agencies of foreign banks.

Annual reporting hours: 330.

Estimated average hours per response: 3.

Estimated number of respondents: 55.

Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

U.S. branches and agencies of foreign banks report their claims on foreign countries semiannually. The Federal Reserve System provides the data to the Bank for International Settlements for the semi-annual survey of the maturity of bank lending.

Board of Governors of the Federal Reserve System, December 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29881 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 22, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before January 13, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Fred Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority a revision to the following report:

Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities.

Agency form number: FR 2248.

OMB Docket number: 7100-0005.

Frequency: Monthly.

Reporters: Domestic finance companies.

Annual reporting hours: 2,045.

Estimated average hours per response: 1.1 hours, except 1.4 hours in March, June, September, and December.

Estimated number of respondents: 142.

Small businesses are affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects information on major categories of consumer and business credit extended by domestic finance companies and on major short-term liabilities outstanding. The key revision is the addition of five supplemental items that seek data on securitized financing receivables. Specifically the new items request the outstanding balances of installment credit extended by the finance company that have been packaged and sold and included as collateral for an asset-backed security. The data on the report are used by the Federal Reserve for assessing aggregate credit market activity.

Board of Governors of the Federal Reserve System, December 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29882 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 23, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommenndations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before January 30, 1989.

ADDRESS: Comments, which should refer to the Agency form number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m., and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Martha Bethea, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3181).

Proposal To Implement Under OMB Delegated Authority the Following Report

1. *Report title:* Report of Foreign (Non-U.S.) Currency Deposits.

Agency form number: FR 2915.

OMB Docket Number: 7100-0237.

Frequency: Monthly or quarterly.

Reporters: Depository institutions.

Annual reporting hours: 600.

Number of Respondents: 100.

Average Hours per Response: 5.

Small businesses are not affected.

General description of report:

The Board of Governors of the Federal Reserve System has decided, in response to an inquiry forwarded to it by the Federal Reserve Bank of Chicago, not to object to issuance of foreign currency deposits at depository institutions in the United States after December 31, 1989. The Board does not expect such deposits to increase rapidly, or ultimately to accumulate to a large amount, given the existing availablity of effectively similar instruments. However, to the extent that depository institutions issue foreign currency deposits, a procedure for converting the value of such deposits into dollars for reporting purposes and some limited additional reporting are necessary. The proposed new reporting form will enable the Federal Reserve to exclude foreign currency deposits from measures of the monetary aggregates.

This report is authorized by Federal law (12 U.S.C. 248(a)). Data reported will be given confidential treatment (5 U.S.C. 552(b)(4)).

Board of governors of the Federal Reserve System, December 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29976 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Gerald E. Gunderson, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 12, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gerald E. Gunderson,* Doug Johnson, Rodney E. Banks, Richard L. Tollefson, LaVon Johnson, Gene Johnson, Adrian H. Frevert, Charles R. Carlson, Swanson Brothers (Partnership) Ronald, Jerry & Dennis, principals, Harold V. Johnson, Marian Carlson, Dwain Kumm, Elwin F. Banks, and Lowell C. Erickson, Russell Johnson, all of Wausa, Nebraska; Mark J. Behm, Hartington, Nebraska, Robert H. and Randal Meyer, Randolph, Nebraska, and Lowell Koehn, Osmond, Nebraska; to acquire an additional 61.94 percent of the voting shares of Wausa Banchares, Inc., Wausa, Nebraska, and thereby indirectly acquire Commercial State Bank, Wausa, Nebraska.

2. *Garold, Brenda, Jenifer and Allison Pryor,* all of Denver, Colorado; to acquire 50.3 percent of the voting shares of First Investco., Inc., and thereby indirectly acquire The First State Bank of Wiggins, Wiggins Colorado.

3. *Jack R. Yoakum,* Locust Grove, Oklahoma; to acquire an additional 41.53 percent of the voting shares of Locust Grove Banshares, Inc., Locust Grove, Oklahoma, and thereby indirectly acquire Bank of Commerce, Chouteau, Oklahoma, and Bank of Locust Grove, Locust Grove, Oklahoma.

B. **Federal Reserve Bank of Chicago.** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *George and Ruth Pingrey;* to acquire 62 percent of the voting shares of Aurelia FT & S Bankshares, Inc., Aurelia, Iowa, and thereby indirectly acquire First Trust & Savings Bank, Aurelia, Iowa.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *William W. and Joan T. Becker,* Kingman, Arizona; to acquire an additional 1.75 percent of the voting shares of The Stockmen's Bancorp, Kingman, Arizona, and thereby indirectly acquire The Stockmen's Bank, Kingman, Arizona.

2. *Antonio Grimalda,* Cottonwood, Arizona; to acquire 22.4 percent of the voting shares of Verde Valley Bancorp, Cottonwood, Arizona.

Board of Governors of the Federal Reserve System, December 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29859 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

Brunswick Bancorp et al; Applications to Engage de Novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-28437) published at page 49924 of the issue for Monday, December 12, 1988.

Under the Federal Reserve Bank of Philadelphia, the entry for Keystone Financial, Inc. is amended to read as follows:

1. *Keystone Financial, Inc.,* Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Keystone Brokerage, Inc., Williamsport, Pennsylvania, in the provision of brokerage services restricted to buying and selling securities soley as agent for the account of customers and the purchase and redemption of shares of mutual funds and unit investment trusts as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the states of Pennsylvania, Virginia, New York and Florida.

Comments on this application must be received by January 12, 1989.

Board of Governors of the Federal Reserve System, December 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29878 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

National Bank of Canada et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada,* Montreal, Canada; to engage *de novo* through its subsidiary, National Canada Corporation, Chicago, Illinois, in real estate lending and general corporate lending pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by January 11, 1989.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Waskom Bancshares, Inc.,* Waskom, Texas; to engage *de novo* in providing accident health and life insurance that is directly related to the extension of credit by an institution within the bank holding company organization pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, December 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29860 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

The National Bancorp of Kentucky, 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 January 19, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The National Bancorp of Kentucky,* Lexington, Kentucky; to acquire 100 percent of the voting shares of National Bank & Trust Company of Paris, Paris, Kentucky.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *O.A.K. Financial Corporation,* Byron Center, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Byron Center State Bank, Byron Center, Michigan. Comments on this application must be received by January 16, 1989.

2. *Tompkins Bancorp, Inc.,* Avon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Tompkins State Bank, Avon, Illinois.

3. *Veedersburg Bank Corporation,* Veedersburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Veedersburg State Bank, Veedersburg, Indiana. Comments on this application must be received by January 13, 1989.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation,* Memphis, Tennessee; to acquire 100 percent of the voting shares of Cumberland City Bank, Cumberland City, Tennessee. Comments on this application must be received by January 16, 1989.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lakeland Bancshares, Inc.,* Lyle, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Lyle, Lyle, Minnesota, a *de novo* bank.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Miami Bancshares, Inc.,* Miami, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Miami, Miami, Texas.

Board of Governors of the Federal Reserve System, December 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29861 Filed 12-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health, Board of Scientific Counselors; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors (BSC).

Date: January 19-20, 1989.

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Time and Type of Meeting: Closed—8:30 a.m.-12 noon, January 19; Open—12 noon-5 p.m., January 19; Open—8:30 a.m.-11 a.m., January 20; Closed—11 a.m.-12 noon, January 20.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: Commercial: (404) 639-3343, FTS: 236-3343.

Purpose: The Board is charged with advising the Director of NIOSH on the scientific quality and efficacy of the Institute's research.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, a report from the Director of NIOSH, a discussion of activities related to notification of individual workers associated with cohort studies, a discussion of surveillance programs, a presentation on the Health Hazard Evaluation program, a discussion of strategic research needs, and plans for future site visits of NIOSH research divisions. Beginning at 8:30 a.m. through 12 noon, January 19, and from 11 a.m. through 12 noon, January 20, the Board will discuss certain matters the public disclosure of which would constitute a violation of sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5, US Code, related to personal privacy. Therefore, pursuant to said provisions and the determination of the Director, CDC, these portions of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portions of the meeting so indicated are open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-29918 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket Nos. 87A-0098, 88A-0120, and 88A-02113]

Request for Exemption From Federal Preemption of State and Local Medical Device Requirements; Hearing Aid Devices; States of Connecticut, Vermont, and Missouri Statutes; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of responses to requests for advisory opinions concerning the applicability of the preemption provisions of the Federal Food, Drug, and Cosmetic Act (the act) to certain Connecticut, Vermont, and Missouri hearing aid statutes or bills.

ADDRESS: Individual copies of the advisory opinions may be obtained from the Office of Standards and Regulations, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: FDA is announcing that it has issued responses to three requests for advisory opinions concerning the applicability of the medical device preemption provisions under section 521 of the act (21 U.S.C. 360k) to certain State laws for hearing aid devices. FDA is now making these advisory opinions available to interested persons as follows:

Connecticut—Docket No. 87A-0098: On March 20, 1987, Stanley K. Peck, State of Connecticut Department of Health Services, requested an advisory opinion on whether section 20-396(4) of the Connecticut general statutes precluding a hearing aid dealer from selecting a hearing aid for the customer is preempted by section 521(a) of the act and 21 CFR 801.420(c)(3). FDA's advisory opinion states that Connecticut statute 20-396(4) is a licensing provision for hearing aid dealers. Therefore, it is not a requirement with respect to a device within the meaning of section 521 of the act and is not preempted.

Vermont—Docket No. 88A-0120: Greg Ziegler, 21st Century Products, Inc., also requested an advisory on March 23, 1988, regarding the enforceability of a pending Vermont Senate bill S. 269 which imposes conditions for the sale of hearing aids which differ from FDA requirements. The legislation would prohibit the waiver of a medical evaluation by an informed adult prior to the purchase of a hearing aid as provided in 21 CFR 801.421. FDA's advisory opinion states that the Vermont requirement, if enacted under Senate bill S.269, would be preempted by section 521(a) of the act, because it would be different from the Federal requirement for hearing aids.

Missouri—Docket No. 88A-0213: On May 25, 1988, Q. Russell Hatchl, representative for Clohan, Adams, and Dean, Attorneys at Law, requested an advisory opinion on whether section 346.250.1 of the Missouri statute which prohibits the sale of hearing aids directly through the mail to the consumer is preempted by section 521(a) of the act. FDA's advisory opinion states that section 346.250.1 of the Missouri statute is not directly related to the safety or the effectiveness of the device. Therefore, it is not a requirement with respect to a device within the meaning of section 521 of the act and is not preempted.

Each of the three advisory opinions is available for public examination under the docket number assigned to the respective requests in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Although there is no requirement to publish advisory opinions issued under 21 CFR 10.85, FDA has decided to do so in this instance.

Dated: December 21, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29988 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces the forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

General and Plastic Surgery Devices Panel

Date, time, and place. January 26, 1989, 9 a.m., Auditorium, Wilbur J. Cohen Bldg., 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 5, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a status report on silicone mammary prostheses. The committee may also discuss a reclassification petition for suction lipectomy devices and premarket approval applications for surgical glove dusting powder and a nylon surgical suture.

Closed committee deliberations. The committee will discuss trade secret or confidential or commercial information regarding the manufacture of surgical glove dusting powder or other devices under review by the committee. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. January 26, 1989, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety, effectiveness, and suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the

contact person before January 2, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and contact lenses. The committee will also discuss general issues relating to other ophthalmic devices and requirements for PMA approval.

Closed committee deliberation. The committee may discuss trade secret or confidential commercial information relevant to PMA's for IOL's, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 30 and 31, 1989, and February 1, 1989, 8:30 a.m., Bldg. 31, Conference Rm. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, January 30, 1989, 8:30 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 3:15 p.m.; open public hearing, 3:15 p.m. to 4:15 p.m., unless public participation does not last that long; closed committee deliberations, 4:15 p.m. to 5:30 p.m.; closed committee deliberations, January 31, 1989, 8:30 a.m. to 5:30 p.m.; open committee discussion, February 1, 1989, 8:30 a.m. to 1 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 13, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 30, 1989, the committee will discuss *Haemophilus influenzae* Type B Conjugate Vaccine, and on February 1, 1989, influenza vaccine formulation for the 1989–1990 flu season.

Closed committee deliberations. On January 30 and 31, 1989, the committee will discuss trade secret or confidential commercial information relevant to pending license applications and investigational new drugs. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) and open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes, information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in

certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 18, 1988.

Frank F. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-29890 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974

AGENCY: Department of Health and Human Service (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for existing systems of records.

SUMMARY: One of the top priorities of the Department of Health and Human Services is to assure high quality and effective health care while pursuing strategies to contain or moderate health case costs. Progress in cost analysis and in assessing the quality and effectiveness of care has been hampered by the lack of comprehensive data bases that describe patterns of cost of care given to patients. The Health Care Financing Administration (HCFA) presently has routine uses in place which permit release of identifiable data to State Welfare Departments for administration of Medicaid and quality control studies, to State audit agencies to assist in the audit of Medicaid eligibility considerations, and to State Licensing Boards for review of unethical practices or nonprofessional conduct. By providing access to the wealth of data on the Medicare population, HCFA hopes to contribute to the improved methods of assessing health care cost and of measuring the quality of care and comparing the effectiveness of various forms of medical intervention. To meet this goal, HCFA intends to make available to qualified State Agencies the date elements available in our systems needed to assess the cost and quality of care. Disclosures would be subject to safeguards to preserve the confidentiality of information concerning beneficiaries from further disclosure. Therefore, HCFA is adding a new routine use that will permit us to provide Medicare data to State agencies, or agencies established under State law, for use in cost containment and in improving the quality and effectiveness of care. The new routine use would be added to the systems notices for (1) Medicare Bill File (Statistics), HHS/HCFA/BDMS No. 09-70-0005;(2) Carrier Medicare Claims Records, HHS/HCFA/BPO No. 09-70-0501; (3) Health Insurance Master Record, HHS/HCFA/BPO No. 09-70-0502; (4) Intermediary Medicare Claims Records, HHS/HCFA/BPO No. 09-70-0503; (5) End Stage Renal Disease (ESRD) Program Management and Medical Information System (Registry), HHS/HCFA/BDMS No. 09-70-0520; and (6) Common Working File, HHS/HCFA/BPO No. 09-70-0526.

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice on or before January 30, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, G-E-7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone Number (301) 966-6464.

SUPPLEMENTARY INFORMATION: System Notice 09-70-0005, Medicare Bill File (Statistics), contains records on bills for services furnished to persons enrolled in the hospital insurance or supplementary medical benefits part of the Medicare program. Also included are demographic data on beneficiaries, diagnosis and surgery data, and provider characteristics. Data in this file are used primarily for statistical and research purposes.

System Notice 09-70-0501, Carrier Medicare Claims Records, contains records on claims for Supplementary Medical Insurance Benefits including itemized bills to support payment to beneficiaries and to physicians and other suppliers of medical services.

System Notice 09-70-0502, Health Insurance Master Record, contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA).

System Notice 09-70-0503, Intermediary Medicare Claims Records, contains records on claims for Medicare benefits submitted by providers for reimbursement on a reasonable cost basis including hospital, skilled nursing facility and home health agency bills.

System notice 09-70-0520, End Stage Renal Disease (ESRD) Program Management and Medical Information System (Registry), contains records on Medicare ESRD bills, demographic enrollment and clinical data on beneficiaries, and data on ESRD facilities.

System Notice 09-70-0526, Common Working File, contains beneficiary specific Medicare entitlement, utilization and claim history information for payment of Medicare benefits to or on behalf of the beneficiary. Data in these files are used to administer the Medicare program and for research and statistical purposes related to evaluating the operation and effectiveness of the Medicare program.

The Privacy Act allows us to disclose information routinely without ar

individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. We disclose information for "routine uses" when it is necessary to carry out our programs. We may also routinely disclose information to other Federal, State or local or private agencies or individuals for purposes that are compatible with the purposes of our programs when the benefit of the proposed use outweighs the effect, or risk of any effect, on the privacy of individuals.

In complying with the technical requirements of the Privacy Act, we are proposing to add the routine use below to the above named systems of records:

To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because the addition of this new routine use will not change the purpose for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(o). Editorial changes and other administrative revisions which have occurred since the last publication of the material are being incorporated at this time. We are publishing these system notices below in their entirety for the convenience of the reader.

Note.—In addition to the above, the following system of records is being republished. System No: 09-70-2002, "HCFA Program Integrity/Program Validation Case Files" was scheduled to be transferred to the Office of the Inspector General (OIG) several years ago, but never was. During that time, HCFA has maintained control of the system but never updated it for administrative and technical corrections. Because the OIG will not be transferring this system to their office, we are taking this opportunity to rename, renumber, and republish it below in its entirety. This system will be the "HCFA Utilization Review Investigatory Files, HHS/HCFA/BPO" System No. 09-70-0527.

Date: December 20, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0005

SYSTEM NAME:

Medicare Bill File (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA DATA CENTER, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplemental medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data, demographic data on the beneficiary; diagnosis and surgery codes; provider characteristics and identifying number (including physicians).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 13950).

PURPOSE(S):

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Social Security programs.

(3) *To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when*

(a) *HHS or any component thereof; or*

(b) *Any HHS employee in his or her official capacity; or*

(c) *Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or*

(d) *The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.*

is party to litigation or has an interest in such litigation, and HHS determines

that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature of retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider, the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission.

Each of the Medicare Provider Analysis and Review (MEDPAR) files—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release. The entity must agree:

(a) Not to try to identify individual beneficiaries.

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract).

(c) Not to link this information to other beneficiary-specific records.

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified, and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) *To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.*

(7) *With respect to the QC/MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research on the quality and effectiveness of care provided in hospitals. Research using data released under this routine use must focus on the improvement of measures for determining, validating, and monitoring the quality and efectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Apendix A.*

The QC/MEDPAR file may be released to an entity if HCFA determines:

a. *That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.*

b. *That the purpose for which the disclosure is to be made:*

(1) *Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;*

(2) *Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and*

(3) *Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.*

c. *The entity must submit and HCFA must approve:*

(1) *A research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed; and*

(2) *A copy of any report by a panel of recognized experts reviewing the research plan (which such review has been performed).*

d. *The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:—*

(1) *Not to link the data to other beneficiary-specific records to use the date to identify individual beneficiaries;*

(2) *Not to use the data for purposes that are not related to research on the quality and effectiveness of hospital inpatient care, including but not limited to: marketing (identification and targeting of under: or over-served health service markets primarily for the purposes of commercial benefit), insurance (redlining areas deemed to offer bad health insurance risks), and adverse selection (identifying patients with high risk diagnoses);*

(3) *Not to disclose the data to any persons unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:*

(a) *The entity specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor; and*

(b) *The contractor has signed a confidentiality statement with HCFA;*

(4) *Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could not be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries):*

(5) *To submit a copy of any aggregation of the data intended for publication to HCFR for approval prior to publication;*

(6) *To establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;*

(7) *To return all files to HCFA, and destroy any copies that may have been made, at completion of the research plan.*

(8) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and efectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries coud be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGERS AND ADDRESS:

Director, Bureau of Data Management and Strategy, Room 2424, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-70-0501

SYSTEM NAMES:

Carrier Medicare Claims Records. HHS, HCFA, BPO.

SECURITY CLASSIFICATIONS:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration (see Appendix A. Section 4.)

Federal Records Centers.

Bureau of Quality Control, HCFA. Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland 21207.

HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries who have submitted claims for Supplementary Medical Insurance (Medicare Part B), or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for Payment: Provider Billing for Patient services by Physician; Prepayment Plan for Group Medicare Practices dealing through a Carrier, Health Insurance Claim Form, Request for Medical Payment, Patient's Request for Medicare Payment, Request for Medicare Payment—Ambulance, Explanation of Benefits, Summary Payment Voucher, Request for Claim Number Verification; Payment Record Transmittal; Statement of Person Regarding Medicare Payment for Medical Services Furnished Deceased Patient; Report of Prior Period of Entitlement; itemized bills and other similar documents from beneficiaries required to support payments to beneficiaries and to physicians and other suppliers of part B Medicare services; medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1842, 1862(b) and 1874 of title XVIII of the Social Security Act (42 U.S.C. 1395u, 1395y(b) and 1395kk).

PURPOSE:

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) Claimants, their authorized representatives or representatives payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following; the individual's eligibility to benefits under the Medicare program: the amount of reimbursement: any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices of nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of Title XIX charges and payments.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other supplies of services who are attempting to validate individual items on which the amounts include in the annual Physician/Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(21) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlements data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual on whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records maintained on paper, tape, disc, and punchcards.

RETRIEVABILITY:

System is indexed by health insurance claim number. The record is prepared by the beneficiary and is used by carriers to determine amount of Part B benefits. The bills are retained by the carriers.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. Disclosure is limited. Physical safeguards related to the transmission and reception of data

between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RETENTION AND DISPOSAL:

Records are closed at the end of the calendar year in which paid, held two additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration. Bureau of Program Operations, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Md 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance claim number and the name as shown on social security records. An individual who requests notification of or access to a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

The data contained in these records is either furnished by the individual or, in the case of some Medicare secondary payer situations, through third party contacts. In most cases, the identifying information is provided to the physician by the individual. The physician then adds the medical information and submits the bill to the carrier for payment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Galnes Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico, 00936–3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083–3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

09–70–0502

SYSTEM NAME:

Health Insurance Master Record, HHS/HCFA/BPO

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207.

Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquires from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health an Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individal, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups

providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one if its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidential to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destory the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be indentified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment, query/reply activity, and health insurance bill and payment record processing. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors), systems securities are established in accordance with DHHS ADP Systems Manual. Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements 6325 Security Boulevard, Baltimore, Md. 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

90-70-0503

SYSTEM NAME:

Intermediary Medicare Claims Records, HHS, HCFA, BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Intermediaries under contract to the Health Care Financing Administration and the Social Security Administration (See Appendix A, Section 3.)

Federal Records Centers

Bureau of Quality Control, HCFA, Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland, HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Parts A and B, or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing for Medical and Other Health Services: Uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number, address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission and discharge, other health insurance, diagnoses, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilities, hospital outpatient departments, and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name
- HI number
- Admission date to provider
- Place treatment rendered
- Number of visits since start of care
- Diagnosis
- Diagnosis requiring treatment
- Onset of condition for which treatment is being sought
- Dates of previous therapy for same diagnosis
- Other therapy outpatient is currently receiving
- Observations
- Precautions and medical equipment
- Functional status immediately prior to this therapy
- Types of treatment—modalities
- Frequency of treatment
- Expected duration of treatment
- Rehabilitation potential
- Level of communication potential
- Average time per visits
- Goals
- Statement of problem at beginning of billing period
- Changes in problem at end of billing period
- Signature of therapist
- Certification and recertification by physician that services are to be provided from an established plan of care
- Tests results
- Biopsy reports
- Methods of administration, e.g., pill vs. injection
- Physician's orders
- Procedure codes
- Charges
- Weekly progress notes

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h, 1395y(b) and 1395kk).

PURPOSE(S):

To process and pay Medicare benefits to or on behalf of eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts without the consent of the individual to whom the information pertains in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual) or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of systems activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiations of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit. or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by the provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under Section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicaid eligibility considerations.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Senior citizen volunteers working in the intermediaries' and carriers' offices to assist Medicare beneficiaries' in response to beneficiaries requests for assistance.

(17) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(18) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(19) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(20) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(21) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or

destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms, magnetic tape and microfilm.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are fowarded to the Health Care Financing Administration, Bureau of Data Management and Strategy. Baltimore, Md., where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. The file area is closed to unauthorized personnel. Physical safeguards related to the transmission and reception of the data between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration Director, Division of Provider Procedures, 6325 Security Boulevard, Baltimore, MD 21207

NOTIFICATION PROCEDURE:

Inquiries and requests for systems records should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance number and name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably indentify the record and specify the information to be contested. State the corrective action sought and the reasons for the coirrection with supporting justification.

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is entered by the provider of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCFA Central Office (see section 1 below for the address). Health insurance records of the Medicare program can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance program. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program. See section 3 below for addresses for intermediaries and section 4 addresses for carriers.

1. Central Office Addresses:

Bureau of Program Operations, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45.

Bureau of Data Management and Strategy. HCFA, Office of Health Program Systems, Room 1705, Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15-4:45.

2. HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30–5:00

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
26 Federal Plaza—Room 715, New York, New York 10007, Office Hours: 8:30–5:00

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30–5:00

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 702, Atlanta, Georgia 30223. Office Hours 8:00—4:30

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A—824, Chicago, Illinois 60604. Office Hours: 8:15—4:45

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Dallas, Texas. Office Hours: 8:30—4:30

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8:30—4:45

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8:00—4:30

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada
Federal Office Building 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8:00—4:30

SEATTLE REGION—Alaska, Idaho, Oregon, Washington
1321 Second Avenue—Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours: 8:00—4:30

3. Intermediary Addresses (Hospital Insurance):

Medicare Coordinate, Blue Cross/Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Medicare Coordinator, Blue Cross of Arizona, Inc., P.O. Box 13466, Phoenix, Arizona 85002

Medicare Coordinator, Arkansas Blue Cross/Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, Blue Cross of Southern California, P.O. Box 700000, Van Nuys, California 91470

Medicare Coordinator, Blue Cross of Northern California, 1950 Franklin Street, Oakland, California 94659

Medicare Coordinator, Kasier Foundation Health Plan, Inc., 1956 Webster Street, Room 310A Oakland, California 94612

Medicare Coordinator, Rocky Mountain Hospital and Medical Service, 700 Broadway, Denver, Colorado 80203
Medicare Administrator, Aetna Life & Casualty, 151, Farmington Avenue Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross/Blue Shield Connecticut, 370 Bassett Rd., North Haven, Connecticut 06473
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06115
Triage, Inc. 719 Middle Street, Bristol Connecticut 06019
Medicare Coordinator, Blue Cross/Blue Shield of Delaware, Inc., 201 West 14th Street, Wilmington, Delaware 19899
Medicare Coordinator, Group Hospitalization, Inc., 550 12th Street, S.W., Washington, D.C. 20024
Medicare Coordinator, Blue Cross of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32201
Medicare Coordinator, Blue Cross of Georgia/Columbus, P.O. Box 7368, Columbus, Georgia 31908
Medicare Coordinator, Blue Cross of Georgia/Atlanta, P.O. Box 4445, Atlanta, Georgia 30302
Medicare Coordinator, Hawaii Medical Service Association, P.O. Box 860, Honolulu, Hawaii 96808
Medicare Coordinator, Blue Cross of Idaho, Inc., P.O. Box 7480, Boise, Idaho 83707
Medicare Coordinator, Health Care Service Corp., 233 North Michigan Avenue, Chicago, Illinois 60601
Medicare Coordinator, Mutual Hospital Insurance, Inc., 120 West Market Street, Indianapolis, Indiana 46204
Medicare Coordinator, Blue Cross of Iowa, Ruan Building, 636 Grant Avenue, Station 28, Des Moines, Iowa 50307
Medicare Coordinator, Blue Cross of Western Iowa and S. Dakota, Third and Pierce Street, Sioux City, Iowa 51102
Medicare Administrator, Kansas Hospital Service Association, Inc., P.O. Box 239, Topeka, Kansas 66601
Medicare Coordinator, Blue Cross and Blue Shield of Kentucky, Inc., 9901 Linn Station Road, Louisville, Kentucky 40223
Medicare Coordinator, Louisiana Health Service and Indemnity Company, 2718A Wooddale Blvd., Baton Rouge, Louisiana 70805
Medicare Coordinator, Associated Hospital Service of Maine, 110 Free Street, Portland, Maine 04101
Medicare Coordinator, Maryland Blue Cross, Inc., 700 East Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator, Part A. Blue Cross of Mass., Inc., 100 Summer Street, Boston, Massachusetts 02106
Medicare Coordinator, Blue Cross of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Medicare Coordinator, Blue Cross of Minnesota, 3535 Blue Cross Road, St., Paul, Minnesota 55765
Medicare Coordinator, Blue Cross of Miss., P.O. Box 1043, Jackson, Mississippi 39205
Medicare Coordinator, Blue Cross Hospital Service of Missouri, 4444 Forest Park Boulevard, St. Louis, Missouri 63108
Medicare Coordinator, Blue Cross of Montana, P.O. Box 5017, Great Falls, Montana 59403
Medicare Coordinator, Mutual of Omaha Ins. Co., Box 456 Downtown Station, Omaha, Nebraska 68101
Medicare Coordinator, Blue Cross of Nebraska, P.O. Box 3248, Main Post Office Station, Omaha, Nebraska 68103
Medicare Coordinator, New Hampshire Vermont Health Service, 2 Pillsbury Street, Concord, New Hampshire 03306
Medicare Coordinator, Hospital Service Plan of New Jersey, 33 Washington Street, Newark, New Jersey 07102
Medicare Coordinator, Prudential Ins. Co. of America, Drawer 471, 1 Millville, New Jersey 08332
Medicare Coordinator, New Mexico Blue Cross Inc., 12800 Indiana School Rd., N.E., Albuquerque, New Mexico 87112
Medicare Coordinator, B/C–B/S of New York, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, North Caroline B/C–B/S, P.O. Box 2291, Durham, North Carolina 27702
Medicare Coordinator, Blue Cross of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare Coordinator, B/C of N.W. Ohio, P.O. Box 943, Toledo, Ohio 43601
Medicare Coordinator, B/C of N.E., Ohio, 2066 East Ninth Street, Cleveland, Ohio 44115
Medicare Coordinator, Hospital Care Corporation, 1851 William Howard Taft Road, Cincinnati, Ohio 45206
Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 1625, Columbus, Ohio 43216
Medicare Coordinator, B/C of Central Ohio, P.O. Box 16526, Columbus, Ohio 43216
Medicare Coordinator, Blue Cross of Oklahoma, 1215 South Boulder, Tulsa, Oklahoma 74119
Medicare Coordinator, Northwest Hospital Service, P.O. Box 1271, Portland, Oregon 97201
Medicare Coordinator, Blue Cross of Greater Philadelphia, 1333 Chestnut Street, Philadelphia, Pennsylvania 19107
Medicare Coordinator, Blue Cross of Western Pennsylvania. One Smithfield Street, Pittsburgh, Pennsylvania 15222
Medicare Coordinator, B/C of N.E. Pennsylvania, 70 North Main Street, Wilkes-Barre, Pennsylvania 18711
Medicare Coordinator, Hospital Service Plan of Lehigh Valley, 1221 Hamilton Street, Allentown, Pennsylvania 18102
Medicare Coordinator, Capital Blue Cross, 100 Pine Street, Harrisburg, Pennsylvania 17101
Cooperative de Seguros de Vida de Puerto Rico, G.P.O. Box 3428, San Juan, Puerto Rico 00936
Blue Cross of Rhode Island, 444 Westminister Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross of S.C., Columbia, South Carolina 29219
Medicare Coordinator, Blue Cross of Tennessee, Blue Cross Bldg., Chattanooga Tennessee 37402
Medicare Coordinator, Group Hospital Service, Inc., P.O. Box 22146, Dallas, Texas 75222
Medicare Coordinator, B/C of Utah, P.O. Box 30270, Medicare A, Salt Lake City, Utah 84130
Medicare Coordinator, B/C of S.W. Virginia, P.O. Box 13047, 3959 Electric Rd. Roanoke, Virginia 24045
Medicare Coordinator, Blue Cross of Virginia P.O. Box 27401, Richmond, Virginia 23261
Medicare Coordinator, B/C of Washington/Alaska, Inc., 15700 Dayton Avenue, North, P.O. Box 327, Seattle, Washington 89111
Medicare Coordinator, Parkersburg Hosp. Serv., Inc., P.O. Box 1948. Parkersburg, West Virginia 26101
Medicare Coordinator, Blue Cross Hospital Service Inc., P.O. Box 1353, City Center West Charleston, West Virginia 25325
Medicare Coordinator, Blue Cross of Northern West Virginia Inc., 20th and Chapline Streets, Wheeling, West Virginia 26003
Medicare Coordinator, Blue Cross/Blue Shield United of Wisconsin, Milwaukee, Wisconsin 53201
Medicare Coordinator, Blue Cross/Blue Shield of Wyoming, P.O. Box 2266, Cheyenne, Wyoming 8200
Health Care Financing Administration, Bureau of Program Operations, Office of Prepaid Operations Staff, 6325 Security Boulevard, Baltimore, Maryland 21207
Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611

Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601

Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

09-70-0520

SYSTEM NAME:

End Stage Renal Disease (ESRD) Program Management and Medical Information System (Registry) HHS, HCFA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA DATA CENTER, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with end-stage renal disease who receive Medicare benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health and medical record data; Medicare billing information including charges and amounts reimbursed; physician characteristics; demographic data on beneficiaries; survival characteristics on some successful transplant patients beyond the entitlement period; ESRD facility approval data; ESRD facility demographic characteristics; ESRD facility cost information; and ESRD facility treatment surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 226A, 1875, and 1881 of the Social Security Act (42 U.S.C. 426-1, 1395ll, and 1395rr.).

PURPOSE:

To meet and operationalize statutory requirements, of Sec. 2991, Pub. L. 92-603; to support State and local ESRD programs and legislative requirements; and to support Federal research and public service programs and effective State, local and other planning activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

(2) Organizations deemed qualified by the Health Care Financing Administration to carry out quality assessment, medical audits of utilization review.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employees in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) A record from this system of records may be disclosed as a "routine use" to a recipient for a research purpose, if the Department:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made—(1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Requires the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Secures a written statement attesting to the recipient's

understanding of, and willingness to abide by these provsions.

(5) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractor incidental to consultation, programming, operation, user assistance, or maintenance, for ADP or telecommunications systems containing or supporting records in the system.

(6) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic medium; selected hard copy backup, and microfilm.

RETRIEVABILITY:

Data indexed by Health Insurance Claim number, patient name and facility number. Individual patient and statistical data provided to Health Care Financing Administration, the National Institutes of Health and local Medical Review Boards, statistical data provided to other governmental units and the general public.

SAFEGUARDS:

Restricted access to all areas where data are maintained and processed, hard copy data stored in locked files in secured area, terminal access controlled by user ID and keywords. Access to personal data restricted to those authorized to work with those data. For computerized records, safeguards established in accordance with DHHS ADP Systems Manual, Part 6, "ADP Systems Security," (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Hard copy destroyed after 1 year by shredding; all other information maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Data Management and Strategy, Office of Statistics and Data Management, Division of Information Analysis, ESRD Systems Branch, 6325 Security Blvd., Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Same as system manager. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR 5b.6).)

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Applications for Medicare, ESRD medical evidence reports, ESRD transplant information; ESRD beneficiary selection information;" patient records at ESRD treatment facilities, death notifications, Health Care Financing Administration Medicare Master Files, aggregate ESRD facility treatment surveys; ESRD facility cost information; and ESRD facility approval characteristics.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-70-0526

SYSTEM NAME:

Common Working File (CWF).

SECURITY CLEARANCE:

None.

SYSTEM LOCATION:

Contact system manager for location of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all information on Medicare Part A and Part B beneficiary enrollment, entitlement, utilization, query and reply activity, worker's compensation, Veterans Administration (VA) entitlement, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment. The categories of records are Health Insurance Master Record, Party A intermediary Medicare Claims Record, Part B Carrier Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Section 1816 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h and 1395kk).

PURPOSE OF THE SYSTEM:

To properly pay madical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contact where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for respresenting the Secretary, and for investigating issues of fraud by agency officer or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations in connection with their review claims, or in connection with studies of other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Board for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries of carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability; or the restoration or maintenance of health, if HCFA:

(a) Determinates that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the indiviudal to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purposes of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use for disclosure of the record except for:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payment for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

(14) State audit agencies in connection with the audit of Medicare eligilility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of title XIX charges and payments.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the

Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other suppliers of services who are attempting to validate individual items on which the amounts included in the annual Physician/Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers, working in intermediarie's and carrier's offices to assit Medicare beneficiaries in response to beneficiarie's requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to coordinate benefits payable under the Medicare program with benefits payable under workers' compensation programs.

(21) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

(a) To certify that the individual on whom the information is being provided is one of its insureds;

(b) To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

(c) To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Date would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA:

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the prupose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media (Magnetic Tape, Disks, Microfiche).

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the

Department of Health and Human Services (HHS). Safeguards for automated records have been established in accordance with the HHS' Automated Data Processing Manual, Part 6, "ADP System Security".

RETENTION AND DISPOSAL:

Records are retained for an indefinite period of time dependent on individual beneficiary coverage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300, Meadows East Building, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (The procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORY:

The data contained in these records is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. The record source categories are the Health Insurance Master Record, Part A Intermediary Medical Claims Record, Part B Carrier Medicare Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-70-0527

SYSTEM NAME:

HCFA Utilization Review Investigatory Files HHS/HCFA BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons or entities alleged to have violated the provisions of the Social Security Act related to the Medicare (Title XVIII) or Medicaid (Title XIX) program or other criminal statutes as they pertain to Social Security Act programs where substantial basis for criminal prosecution exists, defendants in criminal prosecution cases, or persons or entities alleged to have abused the Medicare or Medicaid program. This last category of individuals would, for example, include persons or entities alleged to have rendered unnecessary services to medicare beneficiaries and/or Medicaid recipients, overutilized services, engaged in improper billing procedures, or breached the assignment agreement. Also included are persons or entities chosen as subjects of a validation review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information maintained in each record includes the identity of individual(s) chosen for validation review or the suspect of utilization review, the area of service under validation study or the nature of the alleged offense, documentation of the investigation into the alleged offense (including identification of beneficiaries, recipients and witnesses, statements, medical records, payment records, or complaints from beneficiaries recipients and others, correspondence and forms, documentation of complaints, and reports of medical review committees or consultants (including professional review organizations), and the disposition fo the case by the HCFA Regional Office, Office of the Inspector General, Medicaid State agency or State Medicaid Fraud Control Unit, or the U.S. Attorney.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Social Security Act. (42 U.S.C. 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a)

PURPOSE OF THE SYSTEM:

To determine if a violation of a provision of the Social Security Act of related penal or civil provision of the United States Code has been committed; to determine if HHS has made proper payments as prescribed under sections 1815 and 1833 of the Socurity Act and whether the Medicare or Medicaid programs have been abused; and to coordinate Title XVIII and Title XIX investigations and prevent duplication. HCFA discloses case file material to the HHS Office of the Inspector General when a case is referred for full fraud investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

HCFA uses material in this system as the basis for referral of the case to the HHS Office of the Inspector General or the:

(1) Department of Justice for consideration of criminal prosecution or civil action or to

(2) State or local licensing authorities (including State medical review boards), professional review organizations, peer review groups, medical consultants, or other professional associations for possible administrative action.

(3) HCFA discloses such information to officers or employees of State governments as well as the civilian health and medical program of the Uniformed Services (CHAMPUS) program for use in conducting or directing investigations of possible fraud or abuse against the Title XVIII, XIX, or CHAMPUS programs, as well as State attorneys in connection with State programs involving the Health Care Financing Administration.

(4) HCFA also uses the material to determine the direction of investigation of potential fraud or abuse situations which includes contact with third parties for the purpose of establishing or negating a violation.

(5) HCFA discloses cases involving fraudulent tax returns or forger of Medicare checks to the:

(a) Treasury Department;

(b) To the postal authorities, and to appropriate law enforcement agencies.

(6) HCFA may make disclosures to a congressional office from the record of an individual in response to an inquiry which the congressional office makes at the request of that individual.

(7) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that

litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determined that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files maintained in locked file cabinets.

RETRIEVABILITY:

The staff indexes and retrieves records by case number or by the name of the subject of the investigation.

SAFEGUARDS:

The system is maintained in accordance with the requirements of the DHHS ADP System Manual, Part 6, "Systems Security." HCFA keeps the file cabinets locked in a room that is locked after office hours. No one has access to the files room except HCFA Regional Office staff and other authorized personnel on a need to know basis.

RETENTION AND DISPOSAL:

HCFA places the records in an inactive file after final action on the case. It closes out the inactive file at the end of the calendar year in which final action was taken, holds it 2 additional years, transfers it to the Federal Records Center, who destroys it after 3 additional years.

SYSTEM MANAGER AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to an active abuse investigation or a closed fraud or abuse investigation of which the individual is/was a subject by requesting such information in writing. He or she should direct inquiries to HCFA, Bureau of Program Operations, Office of Program Validation; 6325 Security Boulevard, Baltimore, MD 21207 or the appropriate HCFA Regional Office (see app. C.2).

Under 5 U.S.C. 552a(k)(2), case files on active fraud investigation cannot determine if this system contains a record pertaining to an active fraud investigation of which the individual is a subject.

These notifications procedures are in accordance with Department regulations (45 CFR 5b.5).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents they seek. As with the notification procedure above, case files on active fraud investigations are exempt from access by the individuals who are the subjects of the investigations pursuant to 5 U.S.C. 552a(k)(2). However, access to information which is a matter of public record or documents which the individual furnished will be permitted. These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the appropriate official at the address specified under notification procedures above, reasonably identify the record and specify the information to be contested. State the corrective action sought and the reason for the correction with supporting justification. (These procedures are in accordance with Department regulations—45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The information contained in this record systems is the result of a criminal or program abuse investigation and may be derived from such sources as the suspect, beneficiaries, witnesses, professional review organizations, professional or peer view committees, medical consultants, Title XIX State agencies or State Medicaid Fraud Control Units, Social Security Administration, Health Care Financing Administration, carrier or intermediary employees with a knowledge of the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

HHS claims exemption of certain records (case files on active fraud investigations) in this system from the notification and access procedures under 5 U.S.C. 522a(k)(2) inasmuch as these records are investigatory materials complied for program (law) enforcement in anticipation of a criminal or administrative proceedings. (See Department Regulations (45 CFR 5b.11))

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCFA Central Office (see section 1 below for the address). Health insurance records of the Medicare progarm can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance program. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program. See section 3 below for addresses for intermediaries and section 4 addresses for carriers.

1. Central Office Addresses:

Bureau of Program Operations, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45.

Bureau of Data Management and Strategy, HCFA. Office of Health Program Systems, Room 1705, Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45

2. HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1211; Boston, Massachusetts 02203. Office Hours: 8:30–5:00

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
26 Federal Plaza—Room 715, New York, New York 10007, Office Hours: 8:30–5:00

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30–5:00

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours 8:00–4:30

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A—824, Chicago, Illinois 60604. Office Hours: 8:15–4:45

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Dallas, Texas. Office Hours: 8:00–4:30

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8:00–4:45

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8:00–4:30

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii Nevada
Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8:00–4:30

SEATTLE REGION—Alaska, Idaho, Oregon, Washington
1321 Second Avenue—Room 615 Mail Stos 211, Seattle, Washington 98101. Office Hours 8:00–4:30

3. Intermediary Addresses (Hospital Insurance):

Medicare Coordinate, Blue Cross/Blue Shield of Alabama, 450 Riverchase Parkway East. Birmingham, Alabama 35298

Medicare Coordinator, Blue Cross of Arizona, Inc., P.O. Box 13466, Phoenix, Arizona 85002

Medicare Coordinator, Arkansas Blue Cross/Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, Blue Cross of Southern California, P.O. Box 70000, Van Nuys, California 91470

Medicare Coordinator, Blue Cross of Northern California, 1950 Franklin Street, Oakland, California 94659

Medicare Coordinator, Kasier Foundation Health Plan, Inc., 1956 Webster Street, Room 310A Oakland, California 94612

Medicare Coordinator, Rocky Mountain Hospital and Medical Service, 700 Broadway, Denver, Colorado 80203

Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156

Medicare Coordinator, Blue Cross/Blue Shield Connecticut, 370 Bassett Rd., North Haven, Connecticut 06473

Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06115

Triage, Inc., 719 Middle Street, Bristol Connecticut 06019

Medicare Coordinator, Blue Cross/Blue Shield of Delaware, Inc., 201 West 14th Street, Wilmington, Delaware 19899

Medicare Coordinator, Group Hospitalization, Inc., 550 12th Street, SW., Washington, DC 20024

Medicare Coordinator, Blue Cross of Florida, Inc., P.O. Box 1789, Jacksonville, Florida 32201

Medicare Coordinator, Blue Cross of Georgia/Columbus, P.O. Box 7368, Columbus, Georgia 31908

Medicare Coordinator, Blue Cross of Georgia/Atlanta, P.O. Box 4445, Atlanta, Georgia 30302

Medicare Coordinator, Hawaii Medical Service Association, P.O. Box 860, Honolulu, Hawaii 96808

Medicare Coordinator, Blue Cross of Idaho, Inc., P.O. Box 7480, Boise, Idaho 83707

Medicare Coordinator, Health Care Service Corp., 233 North Michigan Avenue, Chicago, Illinois 60601

Medicare Coordinator, Mutual Hospital Insurance, Inc., 120 West Market Street, Indianapolis, Indiana 46204

Medicare Coordinator, Blue Cross of Iowa, Ruan Building, 636 Grant Avenue, Station 28, Des Moines, Iowa 50307

Medicare Coordinator, Blue Cross of Western Iowa and S. Dakota, Third and Pierce Street, Sioux City, Iowa 51102

Medicare Administrator, Kansas Hospital Service Association, Inc., P.O. Box 239, Topeka, Kansas 66601

Medicare Coordinator, Blue Cross and Blue Shield of Kentucky, Inc., 9901 Linn Station Road, Louisville, Kentucky 40223

Medicare Coordinator, Louisiana Health Service and Indemnity Company, 2718A Wooddale Blvd., Baton Rouge, Louisiana 70805

Medicare Coordinator, Associated Hospital Service of Maine, 110 Free Street, Portland, Maine 04101

Medicare Coordinator, Maryland Blue Cross, Inc., 700 East Joppa Road, Baltimore, Maryland 21204

Medicare Coordinator, Part A, Blue Cross of Mass., Inc., 100 Summer Street, Boston, Massachusetts 02106

Medicare Coordinator, Blue Cross of Michigan, 600 Lafayette East, Detroit, Michigan 48226

Medicare Coordinator, Blue Cross of Minnesota, 3535 Blue Cross Road, St. Paul, Minnesota 55765

Medicare Coordinator, Blue Cross of Miss., P.O. Box 1043, Jackson, Mississippi 39205

Medicare Coordinator, Blue Cross Hospital Service of Missouri, 4444 Forest Park Boulevard, St. Louis, Missouri 63108

Medicare Coordinator, Blue Cross of Montana, P.O. Box 5017, Great Falls, Montana 59403

Medicare Coordinator, Mutual of Omaha Ins. Co., Box 456 Downtown Station, Omaha, Nebraska 68101

Medicare Coordinator, Blue Cross of Nebraska, P.O. Box 3248, Main Post Office Station, Omaha, Nebraska 68103

Medicare Coordinator, New Hampshire Vermont Health Service, 2 Pillsbury Street, Concord, New Hampshire 03306

Medicare Coordinator, Hospital Service Plan of New Jersey, 33 Washington Street, Newark, New Jersey 07102

Medicare Coordinator, Prudential Ins. Co. of America, Drawer 471, Millville, New Jersey 08332

Medicare Coordinator, New Mexico Blue Cross Inc., 12800 Indian School Rd., N.E., Albuquerque, New Mexico 87112

Medicare Coordinator, B/C-B/S of New York, 622 Third Avenue, New York New York 10017

Medicare Coordinator, North Carolina B/C-B/S. P.O. Box 2291, Durham, North Carolina 27702

Medicare Coordinator, Blue Cross of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121

Medicare Coordinator, B/C of N.W. Ohio, P.O. Box 943, Toledo, Ohio 43601

Medicare Coordinator, B/C of N.E. Ohio, 2066 East Ninth Street, Cleveland, Ohio 44115

Medicare Coordinator, Hospital Care Corporation, 1851 William Howard Taft Road, Cincinnati, Ohio 45206

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 1625, Columbus, Ohio 43216

Medicare Coordinator, B/C of Central Ohio, P.O. Box 16526, Columbus, Ohio 43216

Medicare Coordinator, Blue Cross of Oklahoma, 1215 South Boulder, Tulsa, Oklahoma 74119

Medicare Coordinator, Northwest Hospital Service, P.O. Box 1271, Portland, Oregon 97201

Medicare Coordinator, Blue Cross of Greater Philadelphia, 1333 Chestnut Street, Philadelphia, Pennsylvania 19107

Medicare Coordinator, Blue Cross of Western Pennsylvania, One Smithfield Street, Pittsburgh, Pennsylvania 15222

Medicare Coordinator, B/C of N.E. Pennsylvania, 70 North Main Street, Wilkes-Barre, Pennsylvania 18711

Medicare Coordinator, Hospital Service Plan of Lehigh Valley, 1221 Hamilton Street, Allentown, Pennsylvania 18102

Medicare Coordinator, Capital Blue Cross, 100 Pine Street, Harrisburg, Pennsylvania 17101

Cooperative de Seguros de Vida de Puerto Rico, G.P.O. Box 3428, San Juan, Puerto Rico 00936

Blue Cross of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901

Medicare Coordinator, Blue Cross of S.C. Columbia, South Carolina 29219

Medicare Coordinator, Blue Cross of Tennessee, Blue Cross Bldg., Chattanooga, Tennessee 37402

Medicare Coordinator, Group Hospital Service, Inc., P.O. Box 22146, Dallas, Texas 75222

Medicare Coordinator, B/C of Utah, P.O. Box 30270, Medicare A, Salt Lake City, Utah 84130

Medicare Coordinator, B/C of S.W. Virginia, P.O. Box 13047, 3959 Electric Rd. Roanoke, Virginia 24045

Medicare Coordinator, Blue Cross of Virginia, P.O. Box 27401, Richmond, Virginia 23261

Medicare Coordinator, B/C of Washington/Alaska, Inc., 15700 Dayton Avenue, North, P.O. Box 327, Seattle, Washington 89111

Medicare Coordinator, Parkersburg Hosp. Serv., Inc., P.O. Box 1948, Parkersburg, West Virginia 26101

Medicare Coordinator, Blue Cross Hospital Service Inc., P.O. Box 1353, City Center, West Charleston, West Virginia 25325

Medicare Coordinator, Blue Cross of Northern West Virginia Inc., 20th and Chapline Streets, Wheeling, West Virginia 26003

Medicare Coordinator, Blue Cross/Blue Shield United at Wisconsin, Milwaukee, Wisconsin 53201

Medicare Coordinator, Blue Cross/Blue Shield of Wyoming, P.O. Box 2266, Cheyenne, Wyoming 8200

Health Care Financing Administration, Bureau of Program Operations, Office of Prepaid Operations Staff, 6325 Security Boulevard, Baltimore, Maryland 21207

Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611

Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120

Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054

Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273

Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250-0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63168
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office, Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

[FR Doc. 88-29568 Filed 12-28-88; 8:45 am]
BILLING CODE 4120-03-M

Office of Human Development Services

[Program Announcement No. 13600-883]

Administration for Children, Youth and Families; Availability of FY 1989 Funds and Request for Applications; Comprehensive Child Development Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services, (OHDS), Department of Health and Human Services (HHS).

ACTION: Announcement of the availability of financial assistance and request for applications for comprehensive child development programs.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces the availability of funds for competing planning grant and operating grant applications for a new Comprehensive Child Development Program. The purpose of this new program is to plan for and carry out projects for intensive, comprehensive, integrated and continuous supportive services for infants, toddlers and preschoolers from low-income families to enhance their intellectual, social, emotional and physical development and provide support to their parents and other family members.

This announcement contains a grant application process for both planning and operating grants. During the initial stage, up to 30 applicants will be selected competitively to receive planning grants for a three-month period, at a funding level up to $35,000 each. In the second stage, between 10 and 25 agencies will be selected to receive operating grants based on the outcome of a competitive review process.

DATES: The closing date for receipt of planning grant applications is February 15, 1989. The closing date for receipt of operating grant applications is July 14, 1989.

ADDRESS: Address applications to: Comprehensive Child Development Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW, Hubert H. Humphrey Building, Room 341-F, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Ussery (202) 755-7768 or Allen N. Smith (202) 755-7782.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Program Purpose

On April 28, 1988, the President signed the Comprehensive Child Development Act of 1988, Part E of Pub. L. 100-297 (the Act). The overall objectives of the Act are to provide intensive, comprehensive, integrated and continuous support services to low-income children from birth to entrance into elementary school that will enhance their intellectual, social, emotional and physical development and to provide needed support services to parents and other household family members that will enhance their economic and social self-sufficiency.

A third party evaluation contractor will be selected through a competitive process to assess, on a continuing basis, whether the above stated objectives are being achieved and to assess the projects' impact on related programs. The contractor will also examine the relative effectiveness of different staffing and program models for achieving desirable child and family benefits as well as the relative effectiveness of alternative structures and mechanisms for delivering needed services. It is anticipated that control or comparison groups of individuals who are not participating in the project will be compared with individuals who are participating. In addition, a management support contractor will be selected through a competitive process to provide on-going administrative support in the conduct of the project.

B. Background

Early intervention in the lives of infants and young children from low-income families is an important factor in overcoming the cognitive, social, emotional and physical risks faced by

these children. Compared with children from middle and upper income families, these children are more likely to experience poor school achievement, low test score performance, higher grade retention and more special education class placements. Intervening successfully, however, is complicated because these children are usually part of families that have many social, economic, physical and educational problems which can hinder their development and prevent their achieving the full benefits of such an intervention.

Evidence is emerging which indicates that high quality intervention programs which serve all family members increase effective and productive family functioning and contribute substantially towards children achieving their full potential. Equally important is the evidence which suggests that intervention for the most needy families should begin as soon after birth as possible, address a broad range of needs and should continue throughout the preschool years. Investing resources early gives parents more opportunity to develop needed skills and confidence for accessing resources and support systems which can facilitate a greater commitment to directly and actively involving themselves in their child's development. Also, children are able to experience growth stimulating experiences at the earliest and the most critical developmental stages of their lives.

C. Program Services

Projects funded under the Act must intervene as early as possible in the child's life; involve the whole family; provide comprehensive services to all infants and young children in the household which address their intellectual, social, emotional and physical needs; provide services to parents and other family members which enhance their ability to contribute to the child's healthy development and which enable them to achieve economic and social self sufficiency; and provide continuous services until the child enters elementary school at the kindergarten or first grade level. It is expected that successful applicants under this announcement will provide and/or arrange for all such services.

In the case of infants, toddlers and preschool children, the core services which must be provided under the Act are health services (including screening, immunization, treatment and referral); child care that meets State licensing requirements; early childhood development programs; early intervention services for children with or at-risk of developmental delay; and nutritional services.

In the case of parents and other household family members the core services which must be provided under the Act are prenatal care; education in infant and child development, health care, nutrition and parenting; referral to education, employment counselling, and vocational training as appropriate; and assistance in securing adequate income support, health care, nutritional assistance and housing.

D. Eligible Applicants

The following types of organizations are eligible to apply for planning and operating grants under this announcement:

- A Head Start agency;
- An agency that is eligible to be designated as a Head Start agency under section 641 of the Head Start Act;
- A community-based organization as defined under section 4(5) of the Job Training Partnership Act (29 U.S.C. 1503(5));
- An institution of higher education as defined under section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

A public hospital as defined under 42 U.S.C. 291o(c);

- A community development corporation as defined under section 681(a)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9910(a)(2)(A)); or
- A public or private non-profit agency or organization specializing in delivering social services to infants or young children (i.e., toddlers and preschoolers).

Eligible agencies located in rural or urban communities are encouraged to apply for planning and operating grants. Organizations can and are encouraged to collaborate with each other in submitting an application. Agencies located in rural communities must enroll a minimum of 45 eligible families for this project (although a minimum of 60 is preferred), while agencies located in urban communities must enroll a minimum of 120 eligible families. Agencies will be expected to recruit at least two times the number of eligible families to be enrolled. Of this number, one-half should be enrolled and one-half placed on a waiting list. In addition, the catchment or recruiting area for the program must contain at least four times the number of eligible families to be enrolled. These figures are needed to assure that the objectives for the comprehensive child development program can be adequately examined over the full five year project period. Agencies must provide adequate demographic data in their operating grant proposal to assure that these minimums will be met.

Families eligible to receive services from grantees funded under this announcement will only be those families with incomes at or below the poverty line when they are initially enrolled and who have a child either unborn or less than one year old at the time they are initially enrolled. The poverty line is determined in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) and is published annually by the Department in the **Federal Register.** For information purposes, the 1988 Poverty Income Guidelines are reprinted in Appendix I. The Guidelines for subsequent years will be found in the **Federal Register.**

E. Available Funds

In fiscal year 1989, ACYF expects to commit $19,500,000 to fund planning grants and operating grants. Up to $1,050,000 will be used to support up to 30 three month planning grants at a funding level of up to $35,000 each. Planning grants will be awarded only in fiscal year 1989. Between 10 and 25 operating grants will be funded. Contingent on the availability of funds and grantee performance, operating grants will also be made for the project period in subsequent years.

Agencies will be refunded only if (1) there has been documented evidence of satisfactory performance in all operational, fiscal and administrative areas; (2) adequate appropriated funds are available; and (3) refunding is in the best interest of the Government. Continuation funds will be available to serve eligible families who started with the program in fiscal year 1990 and eligible families which replaced starting families (i.e., replacement families) who left the program during any single year. Agencies should serve at least the same number of eligible families each subsequent year as was served in fiscal year 1990. Any increases in these numbers should be documented and supported by the agency in their continuation proposal.

F. Timetable

The following is an approximate schedule of major activities under this announcement:

Activity	Deadline
(1) Planning grant applications are due.	February 15, 1989.
(2) Planning grant awards will be made.	April 14, 1989.

Activity	Deadline
(3) Supplementary information kits for operating grants available.	April 14, 1989 through June 14, 1989.
(4) Operating grant applications are due.	July 14, 1989.
(5) Operating grant awards will be made.	September 30, 1989.

II. Description of the Comprehensive Child Development Program

A. Grantee Responsibilities

The Comprehensive Child Development Program is intended to enhance the intellectual, social, emotional and physical development of children from low-income families necessary for their long range success as well as to enhance the educational, parenting and vocational skills of low-income parents and other household family members necessary for effective parenting and economic/social self-sufficiency. To accomplish these goals, agencies awarded operating grants will be expected to involve the whole family and to provide comprehensive, relevant and age appropriate services as early as possible in the child's life, continuing the provision of such services to all children in the family until entrance into elementry school.

In each participating family there must either be a woman who is pregnant or a child who is less than one year old at the time the family is initially enrolled in the program. The continual development of the child will be of particular study interest as the demonstration progresses. Other infants, toddlers and preschool children in that family will also receive similar preschool services and their progress will also be of study interest. Services to parents and other household family members will be provided on an individually needed basis during this same time period and their changing economic and educational conditions will be monitored and studied as well.

No single service delivery model or design is prescribed under this announcement. The intent of the Act is to fund and evaluate programs with different structures and mechanisms for delivering services. In addition, the intensity, duration and frequency of required services would be expected to vary from grantee to grantee. Similarly, programs will vary in terms of which services they directly provide and which services they arrange to be provided in coordination with other service providers or organizations.

Also, no single program or staffing model is prescribed under this announcement. Consequently, it is expected that models with different philosophies or strategies for enhancing the intellectual, social, emotional and physical development of children will be funded and assessed across the different child and family populations served. Similarly, programs will be expected to vary with respect to the emphasis placed on center-based or combination center/home-based models and with the characteristics and intensity of their parent involvement activities.

Agencies are expected to cooperate with the third party evaluation contractor to be funded by the Administration for Children, Youth and Families which will conduct assessments of their program and service delivery models. Such cooperation will involve periodicaly furnishing needed process-oriented data as required by the evaluation contractor and allowing the contractor reasonable access to obtain child and family impact information. Examples of child impact information which might be collected include age appropriate gross and fine motor development, perceptual skills, cognitive skills, language skills, self-help skills, self-esteem, achievement motivation, social behavior and physical health. Examples of family impact information include welfare dependency, employment history, family income, parenting skills and behavior, child development knowledge, parent expectations, educational attainment, and family stability. All child and family data collected by participating programs and by the third party evaluation contractor will be kept confidential.

All funded projects must provide the core services for children, parents and other family members identified in Part I, Section C. Parents should also be given an opportunity to be involved in decision making about the nature and operation of these services. The level of these services must be consistent with acceptable developmental, health and nutritional practices for children and must meet or exceed the level reflected in the Head Start Program Performance Standards (45 CFR Subchapter B, Part 1304, Subparts B, C, D and E, excluding Appendices A and B). In addition, the requirements of 45 CFR Subchapter B, §§ 1301.11 and 1305.8 are applicable for carrying out this project.
costs shall be 20 percent of the total project costs for each grantee and may be provided in cash or in-kind, fairly evaluated, including equipment and/or services.

C. Planning Grant Proposals

We expect that both eligible agencies who have experience in conducting projects similar to the projects authorized by this announcement as well as those agencies who do not have such experience will be interested in applying for an operating grant due on July 14, 1989. To help these latter agencies plan and prepare an operating grant proposal, three month planning grants will be competitively awarded. A three month planning period is considered sufficient time to develop and design such a proposal and will enable operating grants to be funded in fiscal year 1989. The end product of a planning grant will be the design of a comprehensive child development program which will be reflected in an operating grant proposal submitted to the Department of Health and Human Services for competitive consideration. In their application for funding, eligible applicants for planning grants shall:

1. Describe the need to receive a planning grant, considering both fiscal as well as service expansion/coordination factors.

2. Describe the activities that will be carried out during the planning period.

3. Describe the capactiy to provide or ensure the availability of intensive and comprehensive services to meet the purposes of the Act and, if relevant, include a description of the capacity of the agency to expand existing services. (Section 670N(b)(2)(A).)

4. Describe the eligible infants, young children (i.e., toddlers and preschoolers), parents and other family members to be served by the project, including the number to be served and information on the population and geographic location to be served. (Section 670N(b)(2)(B).)

5. Describe how the needs of the infants, young children, parents and other family members will be met by the project. (Section 670N(b)(2)(C).)

6. Describe the intensive and comprehensive supportive (core) services that project planners intend to address in the development of the project along with a description of the mechanisms for delivering these services. (Section 670N(b)(2)(D).)

7. Describe the manner in which the project will be operated together with the involvement of other community groups and public agencies and include a description of existing linkages, if any, with these groups and agencies. (Section 670N(b)(2)(E).)

8. Specify the entities that the eligible agency intends to contact and coordinate activities with during the planning phase (Section 670N(b)(2)(F).)

9. Describe the background, experience and training of the key staff to be used during the planning phase.

10. Describe how applicant will provide for a planning phase advisory board which includes:

(a) Prospective project participants;

(b) Representatives of the community in which the project will be located; and

(c) Individuals with expertise in the services to be offered (Section 670N(b)(2)(G).)

Letters of commitment of prospective members must be furnished as part of the application for a planning grant.

11. Describe the capacity of the eligible agency to raise the non-Federal Share of the costs of the project for the full five year authorization period. (Section 670N(b)(2)(H).)

D. Operating Grant Proposals

Eligible agencies who received a planning grant as well as other eligible agencies who believe they have experience in conducting projects similar to the projects authorized by this announcement will be eligible to compete for an operating grant. To assure that agencies with the most potential for providing quality services participate in this program, applicants for operating grants shall:

1. Identify the population and geographic location to be served by the project and how the population will be recruited and selected for enrollment, assuring that the most needy families will be served, that some enrolled children will be handicapped, and that eligible families will be located at a reasonable distance to all service providing agencies. Also provide assurances by furnishing appropriate demographic data that the minimum numbers of eligible families required in this announcement are in the catchment or recruiting area and can be recruited and enrolled. (Section 670N(b)(2)(B)(i).)

2. Provide assurances and describes how core and other services to be provided are closely related to the assessed needs of the target population and that the needs to be addressed are important for successful child and family functioning and consistent with the objectives of this project. (Section 670N(b)(2)(B)(ii).)

3. Identify and describe how each project will provide directly or arrange for intensive and comprehensive core and other supportive services. Provide assurances, and identify the basis for the assurances, that the level of these services are developmentally appropriate and consistent with established Federal, State and/or local public agency standards. (Section 670N(c)(2)(B)(iii).)

4. Provide assurances and describe how intensive and comprehensive core and other supportive services will be furnished to parents beginning with prenatal care and will be furnished on a continuous basis to all infants and young children (i.e., toddlers and preschoolers in the enrolled family's household), as well as to other family members. (Section 670N(c)(2)(B)(v).)

5. Identify and describe the specific program model(s) that will be used for assuring the intellectual, social, emotional and physical development of children served, including center or center/home-based combination model configurations, educational philosophy, staffing patterns, staff qualifications, and any other information that clearly describes the model(s) and supports its use.

6. Describe how core and other supportive services will be furnished at off site locations, if appropriate. (Section 670N(c)(2)(B)(vi).)

7. Identify referral providers, agencies and organizations with which the eligible applicant will coordinate in order to carry out the project for which such operating grant is requested. Applicants should furnish relevant letters of commitment indicating which services will be provided to project participants by those provider agencies and/or organizations. Applicants should describe current or previous relationships with these agencies and/or organizations. (Section 670N(C)(2)(B)(iv).)

8. Describe the extent to which the applicant, through its project, will coordinate and expand existing services as well as provide services not available in the area to be served by the project. Applicants must explain if services are already available in the community(ies) to be served but are not considered adequate. Applicants must identify the structure and mechanisms for service delivery. (Section 670N(c)(2)(B)(vii).)

9. Describe how the project will relate to the local educational agency (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965) as well as to State and local agencies providing health, nutritional, education, social and income maintenance services. (Section 670N(c)(2)(B)(viii).)

10. Identify how the project will be administered and managed. Submit a first year timetable for implementing activities and enrolling families. Provide a description of the applicant's previous program, administrative and fiscal experience in providing direct services and in coordinating activities with State and local public or other non-profit agencies and organizations. Provide a resume which includes a description of the training and background of the key project staff, their responsibilities in connection with this project and the time they will be committing to this project. Applicatns should furnish any other staff and organizational information which illustrates their skills and capacity to deliver required services in a timely manner and to implement a quality project which can endure for the required project period.

11. Provide assurances and describe how the eligible agency will pay the non-Federal share of the cost of the project for which such operating grant is requested from non-Federal sources for the full five year authorization period. (Section 670N(c)(2)(B)(ix).)

12. Identify and describe in detail the proposed first year budget for the project and assure that the proposed costs are reasonable in view of the services to be provided.

13. Identify and describe any technical assistance services which will be utilized by the applicant to assure a smooth start-up of the project and to assure the ongoing integrity of the proposed model.

14. Provide assurances that the applicant will cooperate with a third party evaluation contractor hired by ACYF to continually evaluate the effectiveness of the Comprehensive Child Development program in achieving its stated objectives.

15. Provide assurances that, if selected for an operating grant, applicants will collect and provide data on groups of individuals and geographic areas served, including types of services to be furnished, estimated costs of providing comprehensive services on an average per user basis, types and nature of conditions and needs identified and met and such other information as may be required periodically either by ACYF or by the evluation contractor to assure a sound assessment of project impact. Applicant will address how confidentiality of user data will be maintained. (Section 670N(c)(2)(B)(x).)

16. Describe how applicant will provide for an advisory committee consisting of:

(a) Participants in the project;

(b) Individuals with expertise in furnishing services the project provides and in other aspects of child health and child development; and

(c) Representatives of the community in which the project will be located. (Section 6709N(c)(2)(B)(xi).)

Applicant should furnish letters of commitment if not previously furnished (or if changed) in its application for a planning grant.

17. Include such additional assurances and agree to submit such necessary reports as may be reasonably required.

Further information relating to the operating grant application will be provided at a later date (see Part IV-C of this announcement) to eligible agencies which intend to apply and which request the information.

III. Criteria for Review and Evaluation of Applicants

A. Planning Grant Proposals

On considering how the eligible applicant for a planning grant will carry out the responsibilities addressed under Part II of this announcement, applications will be reviewed and evaluated against the following criteria:

1. *Objectives and Need for Assistance.* (40 Points) The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a planning grant; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; and provides supporting documentation or other testimonies from concerned interests other than the applicant.

Information provided in response to Part II, Section C, Numbers 1 and 2 of this announcement, will be used to review and evaluate applicants on the above criteria.

2. *Results or Benefits Expected.* (10 points) The extent to which the application identifies results and benefits to be derived and describes the anticipated contribution to policy, practice, theory and/or research.

Information provided in response to Part II, Section C, Number 5 of this announcement, will be used to review and evaluate applicants on the above criteria.

3. *Approach.* (20 points) The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished and lists each organization, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Information provided in response to Part II, Section C, Numbers 3, 6, 7, 8, 9 and 11 of this announcement, will be used to review and evaluate applicants on the above criteria.

4. *Geographic Location.* (5 points) The extent to which the application gives a precise location of the project and area to be served by the proposed project and describes the families to be served.

Information provided in response to Part II, Section C, Number 4, of this announcement, will be used to review and evaluate applicants on the above criteria.

5. *Staff Background and Experience* (25 points) The extent to which the resumes of the planning staff (including names, addresses, background and other qualifying experience) demonstrate the ability to successfully carry out this planning phase.

Information provided in response to Part II, Section C, Number 10, of this announcement, will be used to review and evaluate applicants on the above criteria.

B. Operating Grant Proposals

In considering how the eligible applicant for an operating grant will carry out the responsibilities addressed under Part II of this annnouncement, applications will be reviewed and evaluated against the following criteria:

1. *Objectives and Need for Assistance.* (10 Points) The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring an operating grant; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; and provides supporting documentation or other testimonies from concerned interests other than the applicant. Relevant data based on results of planning studies are included and/or footnoted.

Information provided in response to Part II, Section D, Numbers 1 and 2 of this announcement, will be used to review and evaluate applicants on the above criteria.

2. *Results or Benefits Expected.* (10 points) The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal and there are clear and important anticipated contributions to policy, practice, theory and/or research indicated.

Information provided in response to Part II, Section D, Number 2 of this announcement, will be used to review and evaluate applicants on the above criteria.

3. *Approach.* (35 points) The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work and gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; provides for each of the core services and gives projections of the accomplishments to be achieved. Application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. Application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project along with a description of the activities and nature of their effort or contribution.

Information provided in response to Part II, Section D, Numbers 3, 4, 5, 6, 7, 8, 9, 14, 15, and 16 of this announcement, will be used to review and evaluate applicants on the above criteria.

4. *Geographic Location.* (5 points) The extent to which the application gives a precise location of the project and area to be served by the proposed project and includes maps or other graphic aids. Application describes the families to be recruited and enrolled in terms of characteristics and minimum numbers.

Information provided in response to Part II, Section D, Number 1 of this announcement, will be used to review and evaluate applicants on the above criteria.

5. *Staff Background and Experience.* (25 points) The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrates the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services. Application describes the relationship between this project and other work planned, anticipated or underway under Federal assistance.

Information provided in response to Part II, Section D, Numbers 10 and 13 of this announcement, will be used to review and evaluate applicants on the above criteria.

6. *Budget Appropriateness* (15 points) The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Information provided in response to Part II, Section D, Numbers 11 and 12 of this announcement, will be used to review and evaluate applicants on the above criteria.

IV. The Application Process

A. Availability of Forms

Agencies and organizations interested in applying for planning grant (applications due by February 15, 1989) and/or operating grant (applications due by July 14, 1989) funds should submit an application(s) on the Standard Form 424 (revised April 1988) included in this announcement (Appendix III).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Comprehensive Child Development Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., HHH Building–Room 341F, Washington, DC 20201.

The program announcement number (13600–883) must be clearly identified on the application.

C. Requests for Supplementary Information Kit on Operating Grants

A kit of supplementary information will be sent to eligible organizations that are interested in applying for an operating grant. This kit will include items such as copies of applicable Federal regulations, an additional set of application forms, plus other clarifying information that may help applicants better respond to this announcement. Agencies that are awarded a planning grant will automatically be sent a kit of supplementary information and need not make a separate request.

All other interested organizations that are eligible to apply for an operating grant should request the kit by writing to: Allen N. Smith, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013.

The kit may be requested by these agencies at any time between April 14, 1989 and June 14, 1989.

D. Appplication Consideration

For both planning grant and operating grant funding, applications will be scored against the criteria outlined in Part III of this announcement. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about early childhood education and development and family service.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who will recommend programs to be funded to the Commissioner of ACYF. The Commissioner of ACYF will make the final selections. Applicants may be funded in whole or in part and the Commissioner will ensure that both urban and rural programs are funded. Consideration will also be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share.

E. Due Date for the Receipt of Applications

Under this announcement the closing date for planning grant applications is February 15, 1989 and for operating grant applications is July 14, 1989.

1. Applications must either be hand delivered or mailed. Applications mailed through the U.S. Postal Service or a commercially delivered service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement; or

b. Sent on or before the deadline date and received in time for the independent review under Chapter 1–62 of HHS Transmittal 86.01 (4/30/86). (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications. Applications which do not meet the criteria in the above paragraphs are considered late applications and will not be considered in the current competition.

3. Extension of deadline. The Administration for Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these five areas need take on action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 60 days from the planning and operating grant application deadline dates to comment on applications for financial assistance under this program. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Comprehensive Child Development Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201. OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included in Appendix II of this announcement.

H. Protection of Human Subjects

Department of Health and Human Services policy (45 CFR Part 46, 42 U.S.C. 2891) requires that if any phase of this project will involve subjecting individuals ot the risk of physical, psychological, sociological, or other harm, certain safeguards must be instituted and an assurance must be filed. If there is any question about the application of requirements for the protection of human subjects for this project, further information should be requested from Mr. Denis Doyle of the Office for Protection from Research Risks, Building 31-4B09, National Institutes of Health, DHHS, 9000 Rockville Pike, Bethesda, Maryland 20014: (202) 496-7041).

Dated: December 16, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: December 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Appendix I

1988 Poverty Income Guidelines

Poverty Income Guidelines for all States (Except Alaska and Hawaii) and the District of Columbia.

Size of family unit	Poverty guideline
1	$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,480

For family units with more than 8 members, add $1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,480
7	21,910
8	24,380

For family units with more than 8 members, add $2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add $2,250 for each additional member.

Appendix II—Executive Order 12372—State Single Points of Contact

ALABAMA
Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105-0939, Tel. (205) 284-8905

ALASKA
None

ARIZONA
Department of Commerce, State of Arizona, Janice Dunn, Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255-5004

ARKANSAS
Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

CALIFORNIA
Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323-7480

COLORADO
State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866-2156

CONNECTICUT
Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

DELAWARE
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-4204

DISTRICT OF COLUMBIA
Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727-9111

FLORIDA
George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488-8114

GEORGIA
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW.—Room 608, Atlanta, Georgia 30334, Tel. (404) 656-3855

HAWAII
Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu. Hawaii 96813, Tel. (808) 548-3016 or 548-3085

IDAHO
None

ILLINOIS
Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

INDIANA
Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5604

IOWA
Stephen R. McCann, Division of Community Progress, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Tel. (515) 281-3725

KANSAS
Martin Kennedy, Intergovernmental Liaison, Department of

Administration, Division of Budget, Room 152-E, State Capitol Building, Topeka, Kansas 66612, Tel. (913) 296-2436

KENTUCKY

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, Tel. (502) 564-2382

LOUISIANA

Colby S. La Place, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342-9790

MAINE

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3161

MARYLAND

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

MASSACHUSETTS

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727-3253

MICHIGAN

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373-1838

Note: Please direct correspondence and questions to: Manager Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911 (517) 334-6190

MINNESOTA

None

MISSISSIPPI

Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202, Tel. (601) 359-3150

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 460, Truman Building, Jefferson City, MO 65102. Tel. (314) 751-4834

MONTANA

Deborah Davis, State Single Point of Contact Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210-State Capitol, Helena, MT 59620, Tel. (406) 444-5522

NEBRASKA

None

NEVADA

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420.

NEW HAMPSHIRE

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

NEW JERSEY

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government, Services—CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025.

NEW MEXICO

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224 (518) 474-1605

NORTH CAROLINA

Mrs. Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733-0499

NORTH DAKOTA

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

OHIO

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse Office of Budget and Management, 30 East Broad Street, Columbus, OH 43266-0411, Tel. (614) 466-0698

Note: Please direct correspondence and questions to: Linda E. Wise.

OKLAHOMA

Don Strain, State Single Point of contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

OREGON

Attn: Delores Streete, State Single Point of Contact, Intergovernmental Relations, Division State Clearinghouse, 155 Cottage Street, N.E., Salem, OR 97310, (503) 373-1998

PENNSYLVANIA

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

RHODE ISLAND

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

SOUTH CAROLINA

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734-0435

SOUTH DAKOTA

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

TENNESSEE

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

TEXAS

Thomas C. Adams, Office of the Budget and Planning, Office of the Governor, P.O. Box 12427, Austin, Texas 78711, Tel. (512) 463-1778

UTAH

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245

VERMONT

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

VIRGINIA

Nancy Miller, Intergovernmental

Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786-4474

WASHINGTON

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504-4151, Tel. (206) 753-4978

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

WISCONSIN

James R. Krauser, Secretary, Wisconsin Department of Administration, 101 South Webster—CEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741.

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration.

WYOMING

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

AMERICAN SAMOA

None

GUAM

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, GU 96910, (671) 472-2285

VIRGIN ISLANDS

Jose L. George, Director, Office of Management and Budget No. 32 and 33 Kongens Gade, Charlotte Amalle, VI 00802 (809) 774-0750

PUERTO RICO

Ms. Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Jan, Puerto Rico 00940-9985, Tel. (809) 727-4444

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM Northern, Mariana Islands 96950

BILLING CODE 4130-01-M

Appendix III

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐ ☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes. If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE

APPLICANT ORGANIZATION	DATE SUBMITTED

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[FR Doc. 88-29612 Filed 12-28-88; 8:45 am]
BILLING CODE 4130-01-C

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement for the Proposal To Lease Approximately 1,000 acres of the Ft. Mojave Indian Reservation, Nevada for a Mixed Residential, Commercial and Recreational Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the proposal to lease approximately 1,000 acres of the Ft. Mojave Indian Reservation, Nevada, for a mixed residential, commercial and recreational project in Clark County. Public scoping meetings will be held to receive input and questions from members of the public regarding this proposal and preparation of this EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received on or before January 30, 1989.

Scoping meetings to identify issues and alternatives to be evaluated in the EIS will be held on Tuesday, January 10, 1989, at the Mojave High School, 1414 Handcock Road, Riveria (Bullhead City area) Arizona, at 7:00 pm. and on Wednesday, January 11, 1989, at the Fort Mojave Indian Tribal Chambers, 500 Merriman, Needles, California, at 7:00 pm. Comments and participation in the scoping process are solicited and should be directed to the BIA at the address provided below or to Carter Associates, Inc., Attention: Ms. Leslie J. Stafford, 5080 North 40th Street, Suite 300, Phoenix, Arizona 85018.

Significant issues to be covered during the scoping process include biotic; archeological, cultural and historic sites; socioeconomic conditions; visual and land use; air and water quality; and resource use patterns.

ADDRESSES: Comments should be addressed to Mr. Wilson Barber Jr., Area Director, Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 10, Phoenix, Arizona 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Area Environmental Protection Specialist, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001, telephone (602) 241-2281 or FTS 261-2281.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, in cooperation with the Ft. Mojave Indian Tribe, will prepare an Environmental Impact Statement (EIS) on a proposed lease site located on the Ft. Mojave Indian Reservation on the Nevada side of the Colorado River north of the junction of Nevada, California and Arizona. The proposed lease would include approximately 1,000 acres of mixed residential, commercial and recreational development. The current proposal is divided into two phases of development. The first phase would include one hotel with approximately 150 rooms, 500 residential units, and an artificial lake of approximately 40 acres. The second phase would include two hotels, one with approximately 300 rooms and one with about 800 rooms, 1,000 residential units, lake expansion to a total of 75 acres, and an 18-hole golf course. The Ft. Mojave Indian Tribe had identified this area as a future new townsite as early as 1955 and more recently adopted land use plans which support this type of development.

Information describing the proposed action will be sent to the appropriate Federal, tribal, state and local agencies and to private organizations and citizens expressing an interest in this proposal.

The principal alternatives identified are to build the project as planned, not to build the project, build a smaller project, use a different location, or use the land for other purposes. Potential Environmental Impacts that may be of concern are to Water Resources, Biological Resources and Transportation.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1-6) and is in the exercise of authority delegated by the Secretary of the Interior to the Deputy Assistant Secretary-Indian Affairs by 209 DM 8.

Date: December 20, 1988.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-29904 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-02-M

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the annual update of the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs is published pursuant to 25 CFR Part 83.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs, Division of Tribal Government Services, 18th & C Streets NW., Washington, DC 20240, telephone number: (202) 343-7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary-Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Indian Tribal Entities* Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribel Town of the Creek Nation of Oklahoma
Alturas Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California

* Includes within its meaning Indian tribes, bands, villages, communities and pueblos as well as Alaska Native entities.

Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Indian Colony, Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of the Barona Reservation, California
Viejas Group of the Viejas Reservation, California
Cauyga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indian of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes of the Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Covelo Indian Community of the Round Valley Reservation, California
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Creek Nation of Oklahoma
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of Smith River Tolowa Indians of California
Ely Indian Colony of Nevada
Enterprise Rancheria of Maidu Indian of California
Flandreau Santee Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gay Head Wampanoag Indians of Massachusetts
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Tribe of the Hualapai Indian Reservation, California
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klallam Tribe of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma (includes Texas Band of Kickapoo Indians)
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Bank of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippawa Tribe, Minnesota (Six component Reservations: Bois Forte Band (Nett Lake), Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lac Band, White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mooretown Rancheria of Maidu Indians of California
Moronogo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Narragansett Indian Tribe of Rhode Island
Navajo Tribe of Arizona, New Mexico and Utah
Nez Perce Tribe of Idaho
Nisqually Indian Community of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Indians of Utah (Washakie)
Ogala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Tribe of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancheries & XL Ranch)
Poarch Band of Creek Indians of Alabama
Ponca Tribe of Indians of Oklahoma
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Oklahoma
Quartz Valley Rancheria of Karok, Shasta & Upper Klamath Indians of California
Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Bank of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of Pomo Indians of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rohnerville Rancheria of Bear River or Mattole Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Tribe of Missouri in Kansas and Nebraska
Sac & Fox Tribe of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Keetoowah Band of Cherokee Indians, Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, California
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita Indian Tribe of Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wisconsin Winnebago Indian Tribe of Wisconsin
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Hoopa Valley Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

The following are those Alaska entities which are recognized and eligible to receive funding and services from the Bureau of Indian Affairs. The purpose of this updated list is: (1) To comply with the regulatory requirement of annual publication pursuant to 25 CFR Part 83, (2) to reflect the Alaska entities which are statutorily eligible for funding and services from the Bureau of Indian Affairs, (3) to make it easier for previously unlisted, but statutorily eligible, entities to receive funding and services, and in so doing, (4) to describe the criteria used for inclusion on the list and for making additions.

All of the entities previously listed in the 1986 **Federal Register** publication are included in this list. However, the number of entities listed on the Alaska Native Entities section is approximately doubled on the basis of express Congressional recognition of the types of entities in Alaska eligible to receive funding or services from the Bureau of Indian Affairs. The additional entities are included without the necessity of completing the Federal Acknowledgment Process because of more explicit statutory provisions on groups eligible to receive funding and services on behalf of Alaska Natives.

The Federal Acknowledgment Procedures contained in 25 CFR Part 83 set forth a procedure whereby Indian groups may document their existence as tribes with a special relationship to the United States such as to qualify for funding and services as an "Indian tribe, organized band, pueblo or community." Section 83.6(b) requires that the Secretary publish a list of Indian tribes already recognized and receiving funding and services from the Department, groups to which the Federal Acknowledgment Procedures accordingly do not apply. This list is published pursuant to § 83.6(b).

The Department first published a list of Indian Tribal Entities on February 6, 1979, with the notation that "[t]he list of eligible Alaskan entities will be published at a later date." Subsequently, the Department published an updated list on November 24, 1982, to which it appended a list of "Alaska Native Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs." The preamble which described the scope and purpose of the Alaska list stated "[w]hile eligibility for services administered by the Bureau of Indian Affairs is generally limited to historical tribes and communities of Indians residing on reservations, and their members, unique circumstances have made eligible additional entities in Alaska which are not historical tribes. Such circumstances have resulted in multiple, overlapping eligibility of Native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to which the Bureau of Indian Affairs gives priority for purposes of funding and services." 47 FR 53133-53134 (1982). This preamble was inadvertently dropped from the subsequent lists.

A number of Alaska Native Entities have complained to the Department that they were omitted from previous lists despite the fact that they are receiving funding and services from the Bureau of Indian Affairs and qualify for such under the statutes that have established the programs of the Bureau. Some do not believe they should have to submit all of the documentation required of an Indian tribe under Part 83 to continue to receive benefits previously provided. Other departments have also made inquiry about the eligibility for their programs of entities included on or omitted from the 1982 Alaska Native Entities List. In addition, there has been confusion on whether inclusion on or exclusion from the Alaska Native Entities List constitutes an official determination of the United States government as to the governmental powers of particular Alaska villages or entities over non-members or territory.

The Department agrees that Alaska Native entities which satisfy the criteria listed below, and therefore are specifically eligible for the funding and services of the Bureau by statute, should not have to undertake to obtain Federal Acknowledgment pursuant to Part 83. We agree they should be included in the publication required by § 83.6(b) without further review.

However, inclusion on a list of entities already receiving and eligible for Bureau funding and services does not constitute a determination that the entity either would or would not qualify for Federal Acknowledgment under the regulations, but only that no such effort is necessary in order to preserve eligibility. Furthermore, inclusion on or exclusion from this list of any entity should not be construed to be a determination by this Department as to the extent of the powers and authority of that entity.

The principal demand by the Bureau and other federal agencies is for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning federal programs for Indians. General federal Indian statutes provide that the Bureau serve tribes which are usually defined as "any Indian Tribe, band, nation, rancheria, pueblo, colony or community." With respect to Alaska, Congress has provided additional guidance as to whom we should provide services. The 1936 amendments to the Indian Reorganization Act, applicable

only to Alaska, authorized groups to organize as tribes which are not historical tribes and are not residing on reservations. They include groups having a "common bond of occupation or association, or residence within a well-defined neighborhood, community, or rural district." 25 U.S.C. § 473a. More recently, Indian statutes, such as the Indian Self-Determination Act,[1] specifically include Alaska Native villages, village corporations and regional corporations defined or established under the Alaska Native Claims Settlement Act (ANCSA).

Therefore, this list includes all of the Alaska entities meeting any of the following criteria which are used in one or more Federal statutes for the benefit of Alaska Natives:

1. "Tribes" as defined or established under the Indian Reorganization Act as supplemented by the Alaska Native Act.
2. Alaska Native Villages defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA).[2]
3. Village corporations defined in or established pursuant to ANCSA.
4. Regional corporations defined in or established pursuant to ANCSA.
5. Urban corporations defined in or established pursuant to ANCSA.
6. Alaska Native groups defined in or established pursuant to ANCSA.
7. Alaska Native group corporations defined in or established pursuant to ANCSA.
8. Alaska Native entities that receive assistance from the Bureau in matters relating to the settlement of claims against the United States government, such as in the Act of June 19, 1935, Pub. L. 74–152, as amended by the Act of August 19, 1965, Pub. L. 89–130 and
9. Tribes which have petitioned to be acknowledged and have been determined to exist as tribes pursuant to 25 CFR Part 83.

Any Alaska village or entity not listed herein may still seek to obtain Federal Acknowledgment by following the procedures in 25 CFR Part 83 or may be added to the list by demonstrating that they meet one of the nine criteria above.

We are concerned, however, that applying the criteria presently contained in Part 83 to Alaska may be unduly burdensome for the many small Alaska organizations. Alaska, with small pockets of Natives living in isolated locations scattered throughout the state, may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48. While it is fair to require groups in the lower-48 states to produce such documentation because they are located in areas where no group could exist without being the subject of detailed written records, insistence on the same formality for those Alaska groups might penalize them simply for being located in an area that was, until recently, extremely isolated. Consequently, the Bureau, in consultation with Indians and Alaska Natives, will review the present acknowledgment process to determine if a modified process is needed so that Alaska organizations may seek inclusion on the list of entities recognized and eligible for services without using the present procedure which may be unduly burdensome.

Other Federal agencies should be aware that some statutes authorize the government to serve other organizations which are not listed while others specify only some of the criteria listed above. Therefore, each agency must look at its particular statutory authorities to make a final eligibility determination.

Afognak
Ahkiok-Kaguyak Native Corp.
AHTNA, Inc. (Cantwell, Chistochina, Copper Center, Gakona, Gulkana, Mentasta & Tazlina)
AHTNA, Incorporated
Akhiok
Akiachak, Ltd.
Akiachak
Akiachak, Akiachak Native Community
Akiak
Akiak Native Community
Akutan Corp.
Akutan
Alakanuk Native Corp.
Alakanuk
Alaska Peninsula Corporation (Kokhanok, Newhalen, Port Heiden, South Naknek & Ugashek)
Alatna
Aleknagik (aka Alegnagik)
Aleknagik Natives, Ltd.
Aleut Corporation
Alexander Creek
Alexander Creek, Inc.
Allakaket
Ambler
Anaktuvuk Pass
Andreafsey
Angoon Community Association
Angoon
Aniak
Anton Larsen, Inc.
Anvik
Arctic Village
Arctic Slope Regional Corporation
ARVIQ, Inc. (Platinum)
Askinuk Corp. (Scammon Bay)
Atka
Atka, Native Village of Atka
Atkasook Corp.
Atkasook
Atmauthluak, Ltd.
Atmautluak
Atxam Corp. (Atka)
Ayakulik
Ayakulik, Inc.
Azachorok, Inc. (Mountain Village)
Baan-o-yeel kon Corp. (Rampart)
Barrow
Bay View, Inc. (Ivanof Bay)
Bean Ridge Corp. (Manley Hot Springs)
Beaver Kwit'chin Corp.
Beaver
Becharof Corp. (Egegik)
Belkofski Corp.
Belkofsky (aka Belkofski)
Bells Flats Natives, Inc.
Bells Flats
Bering Straits Native Corporation
Bethel (aka Orutsararmuit)
Bethel Native Corp.
Bill Moore's (aka Bill Moore's Slough)
Birch Creek
Brevig Mission Native Corp.
Brevig Mission
Bristol Bay Native Corporation
Buckland, Native Village of Buckland
Buckland
Calista Corporation
Candle
Cantwell
Canyon Village
Cape Fox Corporation (Saxman)
Caswell Native Association
Caswell
Central Council of Tlingit and Haida Indian Tribes of Alaska
Chalkyitsik
Chalkyitsik Native Corp.
Chaloonawick
Chaluka Corp. (Nikolski)
Chanega, Native Village of Chanega
Chanilut
Chefarnmute, Inc. (Chefornak)
Chenega Corporation
Cherfornak
Chevak
Chevak Company Corp.
Chickaloon
Chickaloon Moose Creek Native Association, Inc.
Chignik Lagoon Native Corp.
Chignik
Chignik Lake
Chignik Lagoon
Chignik River, Limited (Chignik Lake)
Chilkat Indian Village of Klukwan
Chilkoot Indian Association of Haines
Chistochina
Chitina
Chitina Native Corp.
Choggiung, Ltd. (Dillingham, Ekuk, Portage Creek)
Chuathbaluk

[1] For purposes of the Indian Self-Determination Act, Indian tribe is defined to include "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. . . ." This definition includes criteria 1, 2, 3, 4 and 9.

[2] ANCSA defines a Native village as: "any tribe, band, clan, group, village, community or association in Alaska listed in [43 U.S.C. 1610 or 1615], or which meets the requirements of this chapter, and which the Secretary determines was composed of twenty-five or more Natives." 43 U.S.C. 1602(c).

Chugach Alaska Corporation
Chuloonawick Corporation
Circle
Clark's Point
Cook Inlet Region, Inc.
Copper Center
Council
Council Native Corporation
Craig
Craig Community Association
Crooked Creek
Cully Corp. (Point Lay)
Danzhit Hanlaii Corporation (Circle)
Deering, Native Village of Deering
Deering
Deloycheet, Inc. (Holy Cross)
Dillingham
Dineega Corporation (Ruby)
Dinyee Corporation (Stevens)
Diomede, Native Village of Diomede (aka Inalik)
Diomede Native Corporation
Dot Lake
Dot Lake Native Corporation
Douglas Indian Association
Doyon, Limited
Eagle
Eek
Egegik
Eklutna, Inc.
Eklutna
Ekuk
Ekwok
Ekwok Natives, Ltd.
Elim Native Corporation
Elim
Elim, Native Village of Elim
Emmonak Corporation
Emmonak
English Bay
English Bay Corporation
Evanville
Evanville, Inc.
Eyak Corporation
Eyak
False Pass
Far West, Inc. (Chignik)
Fort Yukon, Native Village of Fort Yukon
Fort Yukon
Gakona
Galena
Gambell
Gambell, Native Village of Gambell
Gana-'Yoo, Limited (Galena, Kaltag, Koyukuk & Nulato)
Georgetown
Gold Creek-Susitna
Gold Creek-Susitna, Inc.
Goldbelt, Inc. (Juneau)
Golovin Native Corporation
Golovin
Goodnews Bay
Grayling
Grayling, Organized Village of Grayling (aka Holikachuk)
Gulkana
Gwitchyaa Zhee Corporation (Fort Yukon)
Haida Corporation (Hydaburg)
Hamilton
Healy Lake
Hee-yea-lindge Corporation (Grayling)
Holy Cross
Hoonah Indian Association
Hooper Bay
Hughes
Huna Totem (Hoonah)
Hungwitchin Corporation (Eagle)
Huslia
Hydaburg
Hydaburg Cooperative Association
Igiugig Native Corporation
Igiugig
Iliamna Natives, Ltd.
Iliamna
Inalik (aka Diomede)
Ingalik, Inc. (Anvik)
Inupiat Community of the Arctic Slope
Iqfijouaq Company (Eek)
Isanotski Corporation (False Pass)
Ivanof Bay
K'oyitl'ots'ina, Ltd. (Alatna, Allakaket, Hughes & Huslia)
Kaguyak
Kake, Organized Village of Kake
Kake Tribal Corporation
Kake
Kaktovik Inupiat Corporation
Kaktovik
Kalskag
Kaltag
Kanatak, Native Village of Kanatak
Karluk, Native Village of Karluk
Karluk
Kasaan, Organized Village of Kasaan
Kasaan
Kasigluk, Inc.
Kasigluk
Kavilco, Inc. (Kasaan)
Kenai Native Association, Inc.
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Kiana
KianT'ree (Canyon Village)
Kijik Corporation (Nondalton)
Kikiktagruk Inupiat Corporation (Kotzebue)
King Island Native Community
King Island Native Corporation
King Cove
King Cove Corporation
Kipnuk
Kiutsarak, Inc. (Goodnews Bay)
Kivalina, Native Village of Kivalina
Kivalina
Klawock Cooperative Association
Klawock
Klawock Heenya
Klukwan, Inc.
Knik
Knikatnu, Inc. (Knik)
Kobuk
Kokarmiut Corporation (Akiak)
Kokhanok
Koliganek
Koliganek Natives, Ltd.
Kongiganak
Kongnikilnomiut Yuita Corporation (Bill Moore's)
Koniag, Incorporated
Koniag, Inc. (Karluk & Larsen Bay)
Kootznoowo, Inc. (Angoon)
Kotlik Yupik Corporation
Kotlik
Kotzebue
Kotzebue, Native Village of Kotzebue
Koyuk
Koyuk Native Corporation
Koyuk, Native Village of Koyuk
Koyukuk
Kugkaktlik, Ltd. (Kipnuk)
Kuskokwim Native Corporation (Aniak, Chuathbaluk, Crooked Creek, Georgetown, Lower Kalska, Red Devil, Napaimute, Sleetmute, Stony River, Upper Kalskag)
Kuugpik Corporation (Nooiksut)
Kwethluk, Organized Village of Kwethluk
Kwethluk, Incorporated
Kwethluk
Kwigillingok, Native Village of Kwigilingok
Kwigillingok
Kwik, Inc. (Kwigillingok)
Kwinhagak, Native Village of Kwinhagak (aka Quinhagak)
Larsen Bay
Leisnoi, Inc. (Woody Island)
Levelock, Natives, Ltd.
Levelock
Lime Village
Lime Village Company
Litnik
Litnik, Inc.
Lower Kalskag
Manley Hot Springs
Manokotak Natives, Ltd.
Manokotak
Marshall
Mary's Igloo
Mary's Igloo Native Corporation
Maserculiq, Inc. (Marshall)
McGrath
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak
Mekoryuk
Mendas Chaag Native Corporation (Healy Lake)
Mentasta Lake
Metlakatla Indian Community, Annette Island Reserve
Minto
Minto, Native Village of Minto
Montana Creek Native Association
Montana Creek
Mountain Village
MTNT, Ltd. (McGrath, Nikolai, Takotna & Telida)
Nagamut
Nagamut
Naknek
NANA Regional Corporation (Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Noatak, Noorvik, Selawik, & Shungnak)
Napaimute
Napakiak Corporation
Napakiak Native Village of Napakiak
Napakiak
Napakiak
Napakiak Corporation
Natives of Kodiak
Natives of Afognak, Inc. (Afognak & Port Lions)
Neets' ai Corporation (Arctic Village)
Nelson Lagoon
Nelson Lagoon Corporation
Nenana
Nerklikmute Native Corporation (Andreafski)
New Stuyahok
Newhalen
Newtok
Newtok Corporation
NGTA, Inc. (Nightmute)
Nightmute
Nikolai
Nikolski
Nikolski, Native Village of Nikolski
Nima Corporation (Mekoryuk)
Ninilchik
Ninilchik Native Association
Noatak
Noatak, Native Village of Noatak

Nome Eskimo Community
Nome (aka Nome Eskimo)
Nondalton
Nooiksut (aka Nuiqsut)
Noorvik Native Community
Noorvik
Northway
Northway Natives, Inc.
Nulato
Nunakauiak Yupik Corporation (Tooksok Bay)
Nunamiut Corporation (Anaktuvuk Pass)
Nunapiglluraq Corporation (Hamilton)
Nunapitchuk
Nunapitchuk, Ltd.
Nunapitchuk, Native Village of Nunapitchuk
Oceanside Corporation (Perryville)
OHOG, Inc. (Ohogamiut)
Ohogamiut
Old Harbor
Old Harbor Native Corporation
Olgoonik Corporation (Wainwright)
Olsonville
Olsonville
Oscarville
Oscarville Native Corporation
Ounalashka Corporation (Unalaska)
Ouzinkie Native Corporation
Ouzinkie
Paimiut Corporation
Paimiut
Paug-vik, Incorporated, Ltd. (Naknek)
Pauloff Harbor
Pedro Bay
Pedro Bay Native Corporation
Perryville
Perryville, Native Village of Perryville
Petersburg Indian Association
Pilot Point
Pilot Station
Pilot Point Native Corporation
Pilot Station, Inc.
Pitka's Point
Pitka's Point Native Corporation
Platinum
Point Hope
Point Lay
Point Hope, Native Village of Point Hope
Point Possession, Inc.
Point Lay, Native Village of Point Lay
Point Possession
Port Heiden (Meshick)
Port Lions
Port Graham
Port Alsworth
Port Graham Corporation
Port Williams (Shuyak)
Portage Creek (Ohgsenakale)
Pribilof Aleut Communities of St. Paul & St. George Islands
Qanirtuuq, Inc. (Quinhagak aka Kwinhagak)
Qemirtalek Coast Corporation (Kongiganak)
Quinhagak (aka Kwinhagak)
Rampart
Red Devil
Ruby
Russian Mission or Chauthalue (Kuskokwim)
Russian Mission (Yukon)
Russian Mission Native Corporation
Saguyak, Inc. (Clark's Point)
Salamatof Native Association, Inc.
Salamatof
Sanak Corporation (Pauloff Harbor)
Sand Point
Savoonga
Savoonga Native Corporation
Savoonga, Native Village of Savoonga
Saxman, Organized Village of Saxman
Saxman
Scammon Bay
Sea Lion Corporation (Hooper Bay)
Sealaska Corporation
Selawik
Selawik, Native Village of Selawik
Seldovia Native Association, Inc.
Seldovia
Seth-de-ya-ah Corporation (Minto)
Shaan-Seet, Inc. (Craig)
Shageluk Native Village
Shageluk
Shaktoolik, Native Village of Shaktoolik
Shaktoolik Native Corporation
Shaktoolik
Shee Atika, Inc. (Sitka)
Sheldon's Point
Shishmaref, Native Village of Shishmaref
Shishmaref
Shishmaref Native Corporation
Shumagin Corporation (Sand Point)
Shungnak
Shungnak, Native Village of Shungnak
Shuyak, Inc. (Port Williams)
Sitka Community Association
Sitnasuak Native Corporation (Nome)
Sleetmute
Solomon Native Corporation
Solomon
South Naknek
St. George Tanaq Corporation
St. Mary's Native Corporation
St. Michael, Native Village of St. Michael
St. Michael Native Corporation
St. George
St. Mary's (aka Algaaciq)
St. Michael
St. Paul
Stebbins Native Corporation
Stebbins Community Association
Stebbins
Stevens Village
Stevens, Native Village of Stevens
Stony River
Stuyahok, Ltd. (New Stuyahok)
Swan Lake Corporation (Sheldon's Point)
Takotna
Tanacross, Inc.
Tanacross
Tanacross, Native Village of Tanacross
Tanadgusix Corporation (St. Paul)
Tanalian, Inc. (Port Alsworth)
Tanana
Tanana, Native Village of Tanana
Tatitlek
Tatitlek Corporation
Tatitlek, Native Village of Tatitlek
Tazlina
Telida
Teller
Teller Native Corporation
Tetlin
Tetlin, Native Village of Tetlin
Tetlin Native Corporation
Thirteenth Regional Corporation
Tigara Corporation (Point Hope)
Tihteet'Aii, Inc. (Birch Creek)
Toghottele Corporation (Nenana)
Togiak Natives, Ltd.
Togiak
Toksook Bay
Tozitna, Ltd. (Tanana)
Tulkisarmute, Inc. (Tuluksak)
Tuluksak Native Community
Tuluksak
Tuntutuliak
Tuntutuliak Land, Ltd.
Tununak
Tununak, Native Village of Tununak
Tununrmiut Rinit Corporation (Tununak)
Twin Hills
Twin Hills Native Corporation
Tyonek, Native Village of Tyonek
Tyonek
Tyonek Native Corporation
Uganik Natives, Inc.
Uganik
Ugashik
Ukpeagvik Inupiat Corporation (Barrow)
Umkumiut, Ltd.
Umkumiut
Unalakleet
Unalakleet, Native Village of Unalakleet
Unalakleet Native Corporation
Unalaska
Unga
Unga Corporation
Upper Kalskag
Uyak
Uyak Natives, Inc.
Venetie, Native Village of Venetie
Venetie
Wainwright
Wales Native Corporation
Wales
Wales, Native Village of Wales
White Mountain, Native Village of White Mountain
White Mountain Native Corporation
White Mountain
Woody Island
Wrangell Cooperative Association
Yak-tat Kwaan, Inc. (Yakutat)
Yakutat
Zho-Tse, Inc. (Shageluk)

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 88-29990 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-050-09-4132-12]

Comment Period on Environmental Assessment; Mt. Hillers Trespass Rehabilitation, UT et al.

AGENCY: Bureau of Land Management, Richfield.

ACTION: Notice of Comment Period.

SUMMARY: The following Environmental Assessments are available for information and review:

(1) Mt. Hillers Trespass Rehabilitation EA in WSA UT-050-249.

(2) Breck Knoll Fences EA in the King Top WSA UT-050-070.

(3) Brecker Knoll-Pine Valley Fence in the Wah Wah Mountain in WSA UT-050-073.

The comment period will end 30 days from publication in the **Federal Register.** For further information contact Roy Edmonds at (801) 896-8221. Copies of

the EA's are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

December 20, 1988

Jerry W. Goodman,

District Manager.

[FR Doc. 88-29927 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-930-09-4214-10; MTM-37275]

Supplemental Notice of Proposed Withdrawal and Opportunity for Public Comment; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, has filed an application to withdraw 338.72 acres of land for multipurpose development in accordance with the Tiber Reservoir management plans of the Pick-Sloan Missouri Basin Program.

DATE: Comments and requests for meeting should be received on or before February 27, 1989.

ADDRESS: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, 406-657-6090.

SUPPLEMENTARY INFORMATION: 1. On May 16, 1977, the Bureau of Reclamation filed an application to withdraw the lands listed below from location and entry under the United States mining laws, subject to valid existing rights.

2. Notice of Bureau of Reclamation's application for withdrawal was published in the **Federal Register** on August 26, 1977, Volume 42, No. 166, page 43133, affecting the following described lands:

Principal Meridian, Montana

T. 30 N., R. 1 E.,
Sec. 2, lot 4.
T. 30 N., R. 1 E.,
Sec. 17, SE¼NE¼.
T. 30 N., R. 2 E.,
Sec. 26, NE¼NE¼.
T. 30 N., R. 3 E.,
Sec. 19, lot 13 and SE¼SW¼; and
Sec. 30, lot 1.
T. 30 N., R. 4 E.,
Sec. 13, NW¼NE¼; and
Sec. 28, N½NW¼.

The areas described aggregate 338.72 acres in Liberty and Toole Counties.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in conenction with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 60 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application is being processed in accordance with the regulations set forth in 43 CFR 2300.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

December 19, 1988.

[FR Doc. 88-29924 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Brushy Creek Dam and Reservoir, Iowa; Termination of the Environmental Impact Statement Process

SUMMARY: In Volume 44, Number 185, page 54783 of the **Federal Register** dated September 21, 1979, The Heritage Conservation and Recreation Service announced a notice of intent to prepare an Environmental Impact Statement (EIS) in conjunction with a Land and Water Conservation Fund grant to the State of Iowa, Iowa Conservation Commission for the proposed construction of a 980 acre recreational lake and the development of recreational facilities in Webster County, Iowa. Subsequent to the notice, the request for Federal funding was terminated. Therefore, an EIS will not be prepared and the process has been terminated. The Heritage Conservation and Recreation Service was merged into the National Park Service in 1981.

FOR FURTHER INFORMATION CONTACT: Jacob Hoogland, U.S. Department of the Interior, National Park Service, Environmental Compliance Division, Room 1210, 18th and C Streets, NW., Washington, DC 20240, telephone (202) 343-2163.

December 22, 1988.

Gerald D. Patten,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 88-29980 Filed 12-28-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 26X)]

Central of Georgia Railroad Co.; Abandonment Exemption Between Lafayette and Roanoke, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 18.76-mile line of railroad between milepost T-339.66 at Lafayette, AL, and milepost T-358.42, at Roanoke, AL. Applicant discontinued service over this line in December 1976 with Commission approval in Docket No. AB-28.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or 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. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee 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 has been received, this exemption will be effective on January 28, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 9, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 18, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 3, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29753 Filed 12-28-88; 8:45 am]

BILLING CODE 7035-01-M

informed decision on environmental issues (whether raised by a party or by the 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*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this 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), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-90]

Nathan Beckman, D.D.S., Miami Beach, FL; Hearing

Notice is hereby given that on September 6, 1988, the Drug Enforcement Administration, Department of Justice, issued to Nathan Beckman, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 18, 1989, commencing at 9:30 a.m., at the United States Tax Court, Room 1524, 51 Southwest First Avenue, Miami, Florida.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29932 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-66]

Ruben Calvillo, M.D., Tucson, AZ; Hearing

Notice is hereby given that on July 14, 1988, the Drug Enforcement Administration, Department of Justice, issed to Ruben Calvillo, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC1107754, and any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, January 26, 1989, commencing at 9:30 a.m., in the Bankruptcy Court, Courtroom 212, 110 South Church Avenue, Tucson, Arizona.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29931 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-92]

Kissena Pharmacy, Inc., Flushing, NY; Hearing

Notice is hereby given that on September 1, 1988, the Drug Enforcement Administration, Department of Justice, issued to Kissena Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AK8695148, and deny any pending application of renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 18, 1989, commencing at 10:00 a.m., at the United States Claims Court, 717 Madison Place, N.W., Courtroom No. 10, Room 309, Washington, DC.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29933 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-73]

Liberty Discount Drugs, Detroit, MI; Hearing

Notice is hereby given that on July 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Liberty Discount Drugs, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BL0809523, and deny any pending application for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 10, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom. Ann Arbor, Michigan.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29935 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-74]

Leonardo V. Lopez, M.D., Southgate, MI; Hearing

Notice is hereby given that on October 1, 1987, the Drug Enforcement Administration, Department of Justice, issued to Leonardo V. Lopez, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 11, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: December 22, 1988.

John C. Lawn,

Drug Enforcement Administration.

[FR Doc. 88-29934 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-55]

Wayne Nichols, D.V.M., West Liberty, OH; Hearing

Notice is hereby given that on October 1, 1987, the Drug Enforcement Administration, Department of Justice, issued to Wayne Nichols, D.V.M., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AN2871451, and deny any pending application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, February 9, 1989, commencing at 9:30 a.m., in the United States Probate Court, Courtroom One, Eighth Floor, 369 South High Street, Columbus, Ohio.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29936 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-19]

Arunkumar J. Shah, M.D., Houston TX; Hearing

Notice is hereby given that on February 11, 1988, the Drug Enforcement Administration, Department of Justice, issued to Arunkumar J. Shah, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS9062162, and any pending application for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 24, 1989, commencing at 9:30 a.m., in Courtroom #12, Westside Command Center, 3203 S. Dairy Ashford Road, Houston, Texas.

Dated: December 22, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-29937 Filed 12-28-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption T88-1; Exemption Application No. T-7840]

Class Exemptions for Thrift Savings Fund

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of Class Exemptions.

SUMMARY: This document adopts, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act), certain prohibited transaction class exemptions (the Class Exemptions) granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA). Pursuant to the adoption, the prohibited transaction restrictions of section 8477(c)(2) of FERSA or the relevant subsections thereunder will not apply to certain transactions described in the Class Exemptions, provided that the conditions of the exemptions are satisfied. The adoption affects participants and beneficiaries of the Thrift Savings Fund (the Fund), a fund established pursuant to provisions of FERSA, and parties in interest with respect to the Fund.

EFFECTIVE DATE: This adoption is effective as of January 1, 1988.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the information 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 the burden, to Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

On September 29, 1988, notice was published in the **Federal Register** (53 FR 38105) of the pendency before the Department of Labor (the Department) of a proposal to adopt certain class exemptions granted pursuant to section 408(a) of ERISA, for purposes of the prohibited transaction provisions of section 8477(c)(2) of FERSA or relevant sub-sections thereunder.[1] The notice described the Fund, the authority pursuant to which the Class Exemptions were proposed to be adopted and the relief that would be provided under the Class Exemptions. The notice also referred interested persons to the Department's record with respect to each of the Class Exemptions including, but not limited to, applications for such exemptions, notices of the proposal of the Class Exemptions, public comments received by the Deparment with respect to such proposals, testimony which was part of any public hearing held with regard to any of the Class Exemptions and notices of the granting of the Class Exemptions. This information has been available for public inspection at the Department in Washington, DC. The notice invited interested persons to submit written comments or requests for a hearing on the proposed adoption to the Department. No public comments and no requests for a hearing were received by the Department.

[1] Sections 8401 through 8479 of Title 5, United States Code, (U.S.C.) were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section number under which those provisions are to be codified in Title 5 of the U.S.C. For purposes of clarity and convenience, the provisions of FERSA are referenced herein using the U.S.C. section number which Congress assigned to them in the Act. Thus, for example, a reference to "section 8477(c)(2) of FERSA" is to Title 5 U.S.C. 8477(c)(2).

The Class Exemptions are adopted for purposes of section 8477(c)(2) of FERSA or the relevant subsections thereunder pursuant to the authority of the Secretary established in section 8477(c)(3) of FERSA. Subparagraph (E) of section 8477(c)(3) provides that the Secretary may adopt exemptions granted for any class of fiduciaries or transactions under section 408(a) of ERISA, upon publication of notice in the **Federal Register.**[2] The Class Exemptions are adopted only to the extent that they provide exemptive relief from the restrictions of section 406(b) of ERISA or, subsections thereunder, which are parallel to those of section 8477(c)(2) of FERSA. The Department proposed the adoption on its own motion in accordance with the procedures set forth in section 3.01 of ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).[3]

Each of the Class Exemptions adopted herein for purposes of section 8477(c)(2) of FERSA or the relevent subsection thereunder was originally granted for purposes of ERISA pursuant to the provision of section 408(a) of ERISA and the procedures set forth in ERISA Procedure 75-1. Among other things, this required a finding on the record by the Secretary that each of the exemptions was administratively feasible, in the interests of plan participants and beneficiaries, and protective of the rights of plan participants and beneficiaries. Notice of the pendency of each exemption was published in the **Federal Register** and interested persons were afforded the opportunity to present their views and where appropriate, to request a hearing.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-7901 (not a toll free number) or Daniel J. Magiuire, Esq., Plan Benefits Security Division, Office of the Solicitor, Washington, D.C. 20210, (202) 523-9596 (not a toll free number).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the disclosure provision included in this Adoption of Class Exemptions for purposes of FERSA have been submitted to the Office of Management and Budget (OMB) and assigned control number 1210-0074. The disclosure provisions of the Class Exemptions are reprinted in this document and were also published separately in a December 15, 1988 **Federal Register** notice of Department of Labor information collection activities under review by OMB (52 FR 50472).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption from the prohibitions of section 8477(c)(2) of FERSA, pursuant to section 8477(c)(3) of FERSA, does not relieve a fiduciary from any other provision of FERSA, including but not limited to any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 8477(b) of FERSA. Among other things, this section requires a fiduciary to discharge his duties respecting the Fund solely in the interest of participants and beneficiaries and in a prudent manner.

(2) The Class Exemptions adopted hereby for purposes of section 8477(c)(2) of FERSA or relevant subsections thereunder are supplemental to, and not in derogation of, any of other provisions of FERSA.

(3) The fact that a transaction is the subject of an administrative exemption pursuant to section 8477(c)(3) of FERSA is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The exemptions adopted herein apply to a particular transaction only if the conditions specified in the exemption are satisfied.

Adoption for purposes of Section 8477(c)(2) of FERSA of Certain Prohibited Transaction Exemptions Granted Pursuant to Section 408(a) of ERISA

In accordance with the authority of the Secretary as set forth in section 8477(c)(3) of the Federal Employees' Retirement Act of 1986 (FERSA), and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and based upon the entire record, the Department adopts the following class exemptions for purposes of the prohibited transaction provisions of section 8477(c)(2) of FERSA or the relevant subsections thereunder, to the extent that such exemptions provide relief from section 406(b) of ERISA or the relevant subsections thereunder:

(a) Prohibited Transaction Exemption (PTE) 75-1 (40 FR 50845, October 31, 1975);

(b) PTE 78-19 (43 FR 59915, December 22, 1978);

(c) PTE 80-26 (45 FR 28545, April 29, 1980, technically corrected at 45 FR 35040, May 23, 1980);

(d) PTE 80-51 (45 FR 49709, July 25, 1980, technically corrected at 45 FR 52949, August 8, 1980);

(e) PTE 82-63 (47 FR 14804, April 6, 1982, technically corrected at 47 FR 16437, April 16, 1982); and

(f) PTE 86-128 (51 FR 41686, November 18, 1986, amended at 52 FR 8676, March 19, 1987); (collectively, the Class Exemptions).[4]

Pursuant to the requirements of section 8477(c)(3)(C) of FERSA, the Department makes the following findings with regard to the Class Exemptions adopted herein for purposes of section 8477(c)(2) of FERSA or the relevant subsections thereunder:

(a) the exemptions are administratively feasible;

(b) the exemptions are in the interests of the Fund and its participants and beneficiaries; and

(c) the exemptions are protective of the rights of the participants and beneficiaries of the Fund.

On April 27, 1987, the Secretary delegated to the Assistant Secretary for Pension and Welfare Benefits the authority to administer section 8477 of FERSA (Secretary's Order 1-87, 52 FR 13139, April 21, 1987).

I. *In General.* The Class Exemptions, as adopted, provide conditional relief only from the prohibitions of section 8477(c)(2) of FERSA or the relevant subsections thereunder, and only to the extent that the Class Exemptions provide parallel relief from the prohibitions of section 406(b) of ERISA or subsections thereunder. Reference should be made to explanatory

[2] Section 8477(c)(3)(E) of FERSA was added to section 8477(c)(3) of FERSA by section 112 of the FERSA Technical Corrections Act of 1986 (FERSTCA, P.L. 99-556, October 27, 1986).

[3] Proposed regulations prescribing exemption procedures for purposes of both section 408(a) of ERISA and section 8477(c)(3) of FERSA were published in the **Federal Register** on June 28, 1988 (53 FR 24422). However, section III Of FERSTCA authorizes the Secretary of Labor to grant exemptions under FERSA section 8477(c)(3) pursuant to the procedures currently applicable to exemption applications under ERISA section 408(a) until the earlier of December 31, 1988, or the date of publication of final regulations adopting a procedure for such exemption applications. The procedures currently applicable to exemptions under section 408(a) of ERISA are set forth in ERISA Procedure 75-1. Section 3.01 of ERISA Procedure 75-1 provides that the Secretary may initiate an exemption proceeding on his or her own motion.

[4] The Department recognizes that certain kinds of transactions exempted from section 406(b) of ERISA by the Class Exemptions may not be relevant with respect to the operation of the Fund. For example, both PTE 78-19 and 80-51 provide 406(b) relief for certain transactions involving multiple employer plans and for certain investments by plans in employer securities and employer real property. The prohibited transaction provisions of FERSA do not contain specific restrictions on the acquisition and holding of employer securities and employer real property parallel to those of section 407(a) of ERISA.

information in each of the notices of the granting of the Class Exemptions under ERISA and to other documents referenced therein for further guidance with respect to matters relating to the Class Exemptions.

II. *Specific Terms.* For purposes of applying the Class Exemptions to the prohibitions of section 8477(c)(2) of FERSA, (1) any reference in the Class Exemptions to "section 406", "section 406 of the Act", "section 406(b)" or "section 406(b) of the Act" shall be deemed to apply to section 8477(c)(2) of FERSA. Reference to subsections of section 406(b) of ERISA shall be deemed to apply to the corresponding subsection of section 8477(c)(2) of FERSA. Thus, reference to "section 406(b)(1)" shall mean section 8477(c)(2)(A) of FERSA; reference to "section 406(b)(2)" shall mean section 8477(c)(2)(B) of FERSA; and reference to "section 406(b)(3)" shall mean section 8477(c)(2)(C) of FERSA. (2) The term "fiduciary" as used in the Class Exemptions shall be construed to mean "fiduciary" as defined in section 8477(a)(3) of FERSA. (3) The terms "employee benefit plan(s)" and "plan(s)" shall be construed to mean "Thrift Savings Fund" as established under section 8437 of FERSA. (4) The term "party in interest" shall be construed to mean "party in interest" as defined in section 8477(a)(4) of FERSA. (5) Reference in the Class Exemptions to "section 502(i) of the Act" shall be deemed to apply to section 8477(e)(1)(B) of FERSA. (6) References in the Class Exemptions to "subsections (a)(2) and (b) of section 504 of the Act" shall be deemed to apply to section 8478a of FERSA. (7) References in the Class Exemptions to section 4975 of the Internal Revenue Code (the Code) or subsections thereunder are not applicable with respect to the Fund, pursuant to sections 4975(g) and 414(d) of the Code. (8) For purposes of Section I(b)(2) of PTE 86–128, the term "relative (as defined in section 3(15) of ERISA)" shall mean any spouse, ancestor, lineal descendant, or spouse of a lineal descendant. (9) For purposes of PTE 78–19 and PTE 80–51, the phrase "by reason of a relationship to a service provider described in section 3(14) (F), (G), (H), or (I) of the Act" shall mean "by reason of a relationship to a service provider described in section 8477(a)(4) (F), (G), (H), (I) or (J) of FERSA."

III. For purposes of convenience, the Class Exemptions, as amended and technically corrected, are reprinted below in their entirety, with the exception of Part I of PTE 75–1. Part I of PTE 75–1 provided a temporary exemption, until April 29, 1978, from the prohibitions of section 406(b) of ERISA for certain agency transactions. This temporary exemption was replaced by a permanent exemption, PTE 79–1 (44 FR 5963, January 30, 1979). PTE 79–1 was subsequently replaced by PTE 86–128, the text of which is set forth below.

PTE 75–1

Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks (40 FR 50845, October 31, 1975)

I. Agency Transactions and Services

(Superseded.)

II. Principal Transactions Exemption

The restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government ("Governmental securities") and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon, or a bank supervised by the United States or a State, if the following conditions are met:

(a) In the case of such broker-dealer, it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(b) In the case of such reporting dealer or bank, it customarily purchases and sells Government securities for its own account in the ordinary course of its business and such purchase or sale between the plan and such reporting dealer or bank is a purchase or sale of Government securities.

(c) Such transaction is at least as favorable to the plan as an arm's length transaction with an unrelated party would be, and it was not, at the time of such transaction, a prohibited transaction within the meaning of section 503(b) of the Code.

(d) Such broker-dealer, reporting dealer or bank is not a fiduciary with respect to the plan, and such broker-dealer, reporting dealer or bank is a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code or a relationship to a person described in such sections. For purposes of this paragraph, a broker-dealer, reporting dealer, or bank shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan. Neither the restrictions of this paragraph nor (if other conditions of this exemption are met) the restrictions of section 406(b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall apply to the purchase or sale by the plan of securities issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), provided that a fiduciary with respect to the plan is not a principal underwriter for, or affiliated with, such investment company within the meaning of sections 2(a)(29) and 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29) and 80a–2(a)(3).

(e) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) Such broker-dealer, reporting dealer, or bank shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (f) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan. For purposes of this exemption, the terms "broker-dealer," "reporting dealer" and "bank" shall include such persons and any affiliates thereof, and the term

"affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).

III. Underwritings Exemption

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or other acquisition of any securities by an employee benefit plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than a fiduciary with respect to the plan, when such a fiduciary is a member of such syndicate, provided that the following conditions are met:

(a) No fiduciary who is involved in any way in causing the plan to make the purchase is a manager or such underwriting or selling syndicate, except that this paragraph shall not apply until July 1, 1977. For purposes of this exemption, the term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are—

(1) Part of an issue registered under the Securities Act of 1933 or, if exempt from such registration requirement, are (i) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the Uniteds States pursuant to authority granted by the Congress of the United States, (ii) issued by a bank, (iii) issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended, (iv) exempt from such registration requirement pursuant to a Federal statute other than the Securities Act of 1933, or (v) are the subject of a distribution and are of a class which is requried to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports to be filed thereunder with the Securities and Exchange Commission during the preceding 12 months.

(2) Purchased at not more than the public offering price prior to the end of the first full business day after the final terms of the securities have been fixed and announced to the public, except that—

(i) If such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a public offering price on a day subsequent to the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public subsequent to such first full business day and prior to the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization;

(2) Such securities are issued or fully guaranteed by a person described in paragraph (b)(1)(i) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraph (b)(1) (ii), (iii), (iv) or (v) and this paragraph (c).

(d) The amount of such securities to be purchased or otherwise acquired by the plan does not exceed three percent of the total amount of such securities being offered.

(e) The consideration to be paid by the plan in purchasing or otherwise acquiring such securities does not exceed three percent of the fair market value of the total assets of the plan as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if such consideration exceeds $1 million, it does not exceed one percent of such fair market value of the total assets of the plan.

(f) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (g) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(g) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of Part II of this notice (relating to certain principal transactions) are met.

For purposes of this exemption, the term "fiduciary" shall include such fiduciary and any affiliates of such fiduciary, and the term "affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).

IV. Market-Making Exemption

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to any purchase or sale of any securities by an employee benefit plan from or to a market-maker with respect to such securities who is also a fiduciary with

respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization;

(2) Such securities are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, or

(3) Such securities are fully guaranteed by a person described in this paragraph (a).

(b) As a result of purchasing such securities—

(1) The fair market value of the aggregate amount of such securities owned, directly or indirectly, by the plan and with respect to which such fiduciary is a fiduciary, does not exceed three percent of the fair market value of the assets of the plan with respect to which such fiduciary is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if the fair market value of such securities exceeds $1 million, it does not exceed one percent of such fair market value of such assets of the plan, except, that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption; and

(2) The fair market value of the aggregate amount of all securities for which such fiduciary is a market-maker, which are owned, directly or indirectly, by the plan and with respect to which such fiduciary is a fiduciary, does not exceed 10 percent of the fair market value of the assets of the plan with respect to which such fiduciary is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption.

(c) At least one person other than such fiduciary is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to the plan for the number of shares or other units to be purchased or sold in the transaction which is more favorable to the plan than that which such fiduciary, acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to such securities.

(e) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year period.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

For purposes of this exemption—

(1) The term "market-maker" shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(2) The term "fiduciary" shall include such fiduciary and any affiliates of such fiduciary, and the term "affiliate" shall be defined in the same manner as that term in defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).

V. Extension of Credit Exemption

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to any extension of credit to an employee benefit plan by a party in interest or a disqualified person with respect to the plan, provided that the following conditions are met:

(a) The party in interest or disqualified person—

(1) Is a broker or dealer registered under the Securities Exchange Act of 1934; and

(2) Is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit.

(b) Such extension of credit—

(1) Is in connection with the purchase or sale of securities;

(2) Is lawful under the Securities Exchange Act of 1934 and any rules and regulations promulgated thereunder; and

(3) Is not a prohibited transaction within the meaning of section 503(b) of the Code.

(c) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (d) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) If such party in interest or disqualified person is not a fiduciary with respect to any assets of the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination as required by paragraph (d) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(d) Notwithstanding anything to the contrary in subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (c) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan. For purposes of this exemption, the terms "party in interest" and "disqualified person" shall include such party in interest or disqualified person and any affiliates thereof, and the term "affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).

The effective date for exemptions I through IV above is January 1, 1975.

PTE 78-19

Class Exemptions for Certain Transactions Involving Insurance Company Pooled Separate Accounts (43 FR 59915, December 22, 1978)

Section I—Basic Exemption

Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(2)

and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C), or (D) of the Code, shall not apply to transactions described below if the applicable conditions set forth in section III are met.

(a) General Exemption

Any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate account of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(1) The assets of the plan (together with the assets of any other plans maintained by the same employer or employee organization) in the pooled separate account do not exceed—

(i) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs prior to February 20, 1979; or

(ii) 5 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after February 20, 1979, and

(2) The party in interest is not the insurance company which holds the plan assets in its pooled separate account, any other separate account of the insurance company, or any affiliate for the insurance company.

(b) Multiple Employer Plans Exemption

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate account of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(1) In the case of a transaction occurring prior to February 20, 1979, the employer is not a substantial employer with respect to the plan (within the meaning of section 4001(a)(2) of the Act); or

(2) In the case of a transaction occurring on or after February 20, 1979,

(i) The assets of the multiple employer plan in the pooled separate account do not exceed 10 percent of the total assets in the pooled separate account, and the employer is not a substantial employer with respect to the plan (within the meaning of section 4001(a)(2) of the Act) or

(ii) The assets of the multiple employer plan in the method separate account exceed 10 percent of the total assets in the pooled separate account, but the employer is not a substantial employer and would not be a substantial employer with respect to the plan within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(c) Excess Holding Exemption for Employee Benefit Plans

Any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through a pooled separate account) if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by an insurance company pooled separate account in which the plan has an interest, and

(2) The requirements of either paragraph (a) or paragraph (b) of this section are met.

(d) Employer Securities and Employer Real Property

(1) Except as provided in subsection 2 of the paragraph, any acquisition, sale or holding of employer securities and any acquisition, sale, holding or lease of employer real property by the insurance company pooled separate account in which a plan has an interest and which does not meet the requirements of paragraph (a) or (b) of this section, if no commission is paid to the insurance company or to the employer or any affiliate of the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property, and

(i) In the case of employer real property—

(a) Each parcel of employer real property and the improvements thereon held by the pooled separate account are suitable (or adaptable without excessive cost) for use by different tenants, and

(b) The property of the pooled separate account, which is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

The employer security is (1) stock, or (2) a bond, debenture, note, certificate, or other evidence of indebtedness (the security described in (2) is hereinafter referred to as an "obligation"), and

(b) The insurance company in whose pooled separate account the security is held is not an affiliate of the issuer of the security and, if the security is an obligation of the issuer, either

(c) The pooled separate account already owns the obligation at the time the plan acquires an interest in the separate account and interests in the pooled separate account are offered and redeemed in accordance with valuation procedures of the pooled separate account applied on a uniform or consistent basis, or

(d) Immediately after acquisition of the obligation: (1) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (2) in the case of an obligation which is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount referred to in (1) is held by persons independent of the issuer. The insurance company, its affiliates and any separate account of the insurance company shall be considered persons independent of the issuer if the insurance company is not an affiliate of the issuer.

(2) Provided that, in the case of a plan which is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), immediately after such acquisition the aggregate fair market value of employer securities and employer real property owned by the plan does not exceed 10 percent of the fair market value of the assets of the plan.

(3) For the purposes of the exemption contained in subsection (1) of this paragraph (d), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a plan (which has an interest in the separate account) by reason of a relationship to the employer described in section 3(14) (E), (G), (H), or (I) of the Act.

Section II—Specific Exemptions

Effective January 1, 1975, the restrictions of section 406(a)(1) (A), (B), (C), and (D) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C), (D) or (E) of the Code shall not apply to the transactions described below provided that the conditions of section III are met.

(a) Certain Leases and Goods

The furnishing of goods to an insurance company pooled separate account by a party in interest with respect to the plan, which plan has an interest in the pooled separate account, or the leasing of real property of the pooled separate account to a party in

interest and the incidental furnishing of goods to the party in interest by the insurance company separate account, if—

(1) In the case of goods, they are furnished to or by the pooled separate account in connection with the real property investments of the pooled separate account;

(2) The party in interest is not the insurance company, any other pooled separate account of the insurance company, or an affiliate of the insurance company; and

(3) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the pooled separate account with the same party in interest (or any affiliate thereof), does not exceed the greater of $25,000 or .025 percent of the fair market value of the assets of the pooled separate account on the most recent valuation date of the account prior to the transaction.

(b) Transactions With Persons Who Are Parties in Interest to the Plan Solely By Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

Any transaction between an insurance company pooled separate account and a person who is a party in interest with respect to a plan, which plan has an interest in the pooled separate account, if—

(1) The person is a part in interest including a fiduciary by reason of providing services to the plan, or by reason of a relationship to a service provider described in section 3(14) (F) (G), (H) or (I) of the Act, and the person exercised no discretionary authority, control, responsibility, or influence with respect to the investment of plan assets in the pooled separate account and has no discretionary authority, control, responsibility, or influence with respect to the management or disposition of the plan assets held in the pooled separate account; and

(2) The person is not an affiliate of the insurance company.

(c) Management of Real Property

Any services provided to an insurance company pooled separate account (in which a plan has an interest) by the insurance company or its affiliate in connection with the management of the real property investments of the pooled separate account, if the compensation paid to insurance company or its affiliate for the services does not exceed the cost of the services to the insurance company or its affiliate.

(d) Transactions Involving Places of Public Accommodation

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company pooled separate account, to a party in interest with respect to a plan, which plan has an interest in the pooled separate account, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section III—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent the insurance company, the terms of the transaction are not less favorable to the pooled separate account than the terms generally available in arm's-length transactions between unrelated parties.

(b) The insurance company maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the insurance company, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in subsection 2 of this paragraph and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(ii) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the separate account, or any duly authorized employee or representative of such fiduciary,

(iii) Any contributing employer to any plan which has an interest in the pooled separate account or any duly authorized employee or representative of that employer,

(iv) Any participant or beneficiary of any plan which has an interest in the pooled separate account or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraph (ii) through (iv) of this paragraph shall be authorized to examine an insurance company's trade secrets or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

For purposes of sections I through III above,

(a) The term "multiple employer plan" means an employee plan which satisfies at least the requirements of section 3(37)(A)(i), (ii) and (v) of the Act and section 414(f)(1)(A), (B), and (E) of the Code.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee (including, in the case of an insurance company, an insurance agent thereof, whether or not the agent is a common law employee of the insurance company) or relative, or partner in, any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) General

(i) The time as of which any transaction, acquisition, or holding occurs for the purposes of this exemption is the date upon which the transaction is entered into (or the acquisition is made) and the holding commences. Thus, for purposes of this exemption, if any transaction is entered into, or an acquisition is made, on or after January 1, 1975, or a renewal which requires the consent of the insurance company occurs on or after January 1, 1975, and the requirements of this exemption are satisfied at the time the

transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into, or holding commencing, prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1975, if the transaction had been entered into, acquisition was made, or if the holding had commenced, on January 1, 1975. Nothwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of section I(a) above at such time as the interest of the plan in the pooled separate account exceeds the percentage interest limitation of section I(a), if the excess results solely from an increase in the amount of consideration allocated to the pooled separate account by the plan. (ii) Each plan shall be considered to own the same fractional share of each asset (or portion thereof) in the pooled separate account as its fractional share of total assets in the pooled separate account on the most recent preceding valuation date of the account.

PTE 80-26

Class Exemption for Certain Interest Free Loans to Employee Benefit Plans (45 FR 28545, April 29, 1980, as technically corrected at 45 FR 35040, May 23, 1980);

Effective January 1, 1975, the restrictions of section 406(a)(1) (B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

PTE 80-51

Class Exemption for Certain Transactions Involving Bank Collective Investment Funds (45 FR 49709, July 25, 1980, as technically corrected at 45 FR 52949, August 8, 1980)

Section I. Exemption for Certain Transactions Involving Bank Collective Investment Funds

(a) Effective on January 1, 1975, the restrictions of section 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C) or (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) Transactions Between Parties in Interest and Bank Collective Investment Funds: General

Any transaction between a party in interest with respect to a plan and a collective investment fund that is maintained by a bank and in which the plan has an interest, or any acquisition or holding by the collective investment fund of employer securities or employer real property, if the party in interest is not the bank that maintains the collective investment fund, any other collective investment fund maintained by the bank or any affiliate of the bank, and if, at the time of the transaction, acquisition or holding, either

(A) The interest of the plan, together with the interest of any other plans maintained by the same employer or employee organization in the collective investment fund does not exceed—

(i) 10 percent of the total of all assets in the collective investment fund, if the transaction occurs prior to October 23, 1980; or

(ii) 5 percent of the total of all assets in the collective investment fund if the transaction occurs on or after October 23, 1980, or

(B) The collective investment fund is a specialized fund that has a policy of investing, and invests, substantially all of its assets in short term obligations, including but not necessarily limited to—

(i) Corporate or governmental obligations or related repurchase agreements;

(ii) Certificates of deposit;

(iii) Bankers' acceptances; or

(iv) Variable amount notes of borrowers of prime credit

having a stated maturity date of one year or less or having a maturity date of one year or less from the date of purchase by such specialized fund.

(2) Special Transactions Not Meeting the Criteria of Section I(a)(1)(A) Between Employers of Employees Covered by a Multiple Employer Plan and Collective Investment Funds

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan and a collective investment fund maintained by a bank in which the plan has an interest, or any acquisition or holding by the collective investment fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) In the case of a transaction occurring prior to October 23, 1980, the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act); or

(B) In the case of a transaction occurring on or after October 23, 1980:

(i) The interest of the multiple employer plan in the collective investment fund does not exceed 10 percent of the total assets in the collective investment fund, and the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act); or

(ii) The interest of the multiple employer plan in the collective investment fund exceeds 10 percent of the total assets in the collective investment fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(3) Acquisition, Sales or Holdings of Employer Securities and Employer Real Property

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities and any acquisition, sale or holding of employer real property by a collective

investment fund in which a plan has an interest and which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, if no commission is paid to the bank or to the employer or any affiliate of the bank or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the collective investment fund are suitable (or adaptable without excessive cost) for use by different tenants; and

(b) The property of the collective investment fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) The bank in whose collective investment fund the security held is not an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either

1. The collective investment fund owns the obligation at the time the plan acquires an interest in the collective investment fund, and interests in the collective fund are offered and redeemed in accordance with valuation procedures of the collective investment fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. The bank, its affiliates and any collective investment fund maintained by the bank shall be considered to be persons independent of the issuer if the bank is not an affiliate of the issuer.

(B) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this paragraph (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer real property with respect to which the bank has investment discretion does not exceed 10 percent of the fair market value of all the assets of the plan with respect to which the bank has such investment discretion.

(C) For the purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a plan (participating in the collective investment fund) by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective January 1, 1975, the restrictions of section 406(a)(1) (A), (B), (C) and (D) and section 4065(b) (1) and (2) of the Act and the taxes imposed on section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C), (D) or (E) of the Code, shall not apply to the transactions describer below, if the conditions of Section II are met.

(1) Transactions With Persons Who are Parties in Interest With Respect to the Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

Any transaction between a collective investment fund and a person who is a party in interest with respect to a plan that has an interest in the collective investment fund, if—

(A) The person is a party in interest (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of plan assets in, or held by, the collective investment fund, and

(B) The person is not an affiliate of the bank maintaining the collective investment fund.

(2) Certain Leases and Goods

The furnishing of goods to a collective investment fund by a party in interest with respect to a plan participating in the collective investment fund, or the leasing of real property owned by the collective investment fund to such party in interest and the incidental furnishing of goods to such party in interest by the collective investment fund, if—

(A) In the case of goods, they are furnished to or by the collective investment fund in connection with real property owned by the collective investment fund;

(B) The party in interest is not the bank maintaining the collective investment fund, or any affiliate of the bank, or any other collective investment fund maintained by the bank; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the collective investment fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the collective investment fund on the most recent valuation date of the fund prior to the transaction.

(3) Management of Real Property

Any services provided to a collective investment fund in which a plan has an interest by the bank maintaining that fund or by an affiliate of that bank in connection with the management of the real property owned by the collective investment fund, if the compensation paid to the bank or its affiliate does not exceed the cost of the services to the bank or its affiliate.

(4) Transactions Involving Places of Public Accommodation

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by a bank collective investment fund, to a party in interest with respect to a plan, which plan has an interest in the collective investment fund, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) Effective January 1, 1975, the restrictions of section 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C) or (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through a collective investment fund), if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by a collective investment fund in which the plan has an interest;

(2) The requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and

(3) The applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the bank, the terms of the transaction are not less favorable to the collective investment fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) The bank maintains for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's control, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or not available for examination as required by paragraph (c) below.

(c)(1) Except as povided in subsection 2 of this paragraph and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) 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 of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the collective investment fund, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan that has an interest in the collective investment fund or any duly authorized employee or representative of such employer,

(D) Any participant or beneficiary of any plan that has an interest in the collective investment fund, 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 paragraph shall be authorized to examine a bank's trade secrets or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person incudes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of an person other than an individual.

(c) The term "party in interest" includes a "disqualified person" as defined in section 4975(e)(2) of the Code.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e)(1) Except as provided in subparagraph (2) of this paragraph, the term "collective investment fund" means a common or collective trust fund or pooled investment fund maintained by a bank or a trust company.

(2) In the case of a common or collective trust fund or pooled investment fund maintained by a bank or trust company that consists of separate investment accounts, each separate investment account of that fund, rather than the entire fund, shall be considered to be a separate "collective investment fund" for purposes of this exemption.

(f) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A) (i), (ii) and (v) of the Act and section 414(f)(1) (A), (B) and (E) of the Code.

(g) The term "obligation" means a bond, debenture, note, certificate, or other evidence of indebtedness.

(h) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after January 1, 1975, or a renewal that requires the consent of the bank occurs on or after January 1, 1975, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into, or holding commencing prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1975 if the transaction had been entered into, the acquisition was made, or the holding had commenced, on January 1, 1975. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of section I(a)(1) at such time as the interest of the plan in the collective investment fund exceeds the percentage interest limitation of section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the collective investment fund by the plan. For this purpose, assets allocated do not include the reinvestment of fund earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by a collective investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(i) Each plan participating in a collective investment fund shall be considered to own the same proportionate undivided interest in each asset of the collective investment fund as its proportionate undivided interest in the total assets of the collective investment fund as calculated on the most recent preceding valuation date of the fund.

(j) Where any of the assets of a collective investment fund are invested in another collective investment fund, the interest of the plan in the second fund arising from its investment in the first fund shall be established by multiplying the percentage interest of the plan in the first fund by the percentage interest of the first fund in the second fund, such computation to be continued similarly in the event that further investments are made by the second investment fund in one or more other collective investment funds.

PTE 82-63

Class Exemption to Permit Payment of Compensation to Plan Fiduciaries for the Provision of Securities Lending Services (47 FR 14804, April 6, 1982, as technically corrected at 47 FR 16437, April 16, 1982)

I. Transactions

Effective April 6, 1982, the restrictions of section 406(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(E) of the Code shall not apply to the payment to a fiduciary (the "lending fiduciary") of compensation for services rendered in connection with loans of plan assets that are securities, provided that:

(a) The loan of securities is not prohibited by section 406(a) of the Act;

(b) The lending fiduciary is authorized to engage in securities lending transactions on behalf of the plan;

(c) The compensation is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of securities lending transactions;

(d) Except as otherwise provided in paragraph (f), the arrangement under which the compensation is paid (1) is subject to the prior written authorization of a plan fiduciary (the "authorizing fiduciary"), who is (other than in the case of a plan covering only employees of the lending fiduciary or affiliates of such fiduciary) independent of the lending fiduciary and of any affiliate thereof, and (2) may be terminated by the authorizing fiduciary within (i) the time negotiated for such notice of termination by the plan and the lending fiduciary, or (ii) five business days, whichever is lesser, in either case without penalty to the plan;

(e) No such authorization is made or renewed unless the lending fiduciary shall have furnished the authorizing fiduciary with any reasonably available information which the lending fiduciary reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request; and

(f) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency, the requirements of paragraph (d) of this exemption shall not apply: *Provided*, that

(1) The information described in paragraph (e) (including information with respect to any material change in the arrangement) shall be furnished by the lending fiduciary to the authorizing fiduciary described in paragraph (d) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(2) In the event any such authorizing fiduciary submits a notice in writing to the lending fiduciary objecting to the implementation of, material change in, or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in paragraphs (f)(1) and (f)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (d)(1).

II. Definitions

For purposes of this exemption, the term "affiliate" of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

PTE 86-128

Class Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers (51 FR 41686, November 18, 1986, as amended at 52 FR 8676, March 19, 1987)

Section I. Definitions and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person;

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term "covered transaction" means an action described in section II (a), (b) or (c) of this exemption.

(e) The term "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "profit" includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term "securities transaction" means the purchase or sale of securities.

(i) The term "nondiscretionary trustee" of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan

are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Section II. Covered Transactions

Effective February 12, 1987, if each condition of section III of this exemption is either satisfied or not applicable under section IV, the restrictions of section 406(b) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (E) or (F) of the Code shall not apply to—

(a) A plan fiduciary's using its authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A plan fiduciary's acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transactions; or

(c) The receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III. Conditions

Except to the extent otherwise provided in section IV of this exemption, section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the person engaging in the covered transaction.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary not less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice from the authorizing fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized person to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that the person seeking authorization reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization described in section III(c), a description of the person's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) The person engaging in a covered transaction furnishes the authorizing fiduciary with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction within ten business days of the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10; or

(2) At least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this section during the three-month period covered by the report;

(B) The total of all securities transaction related charges incurred by the plan during such period in connection with such covered transactions; and

(C) The amount of the securities transaction-related charges retained by such person and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this section at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized person and the amount of these charges paid to other persons for execution or other services.

(3) A description of the person's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4)(i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio", calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized person had discretionary investment authority, or with respect to which such person rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

Examples of the use of this formula are provided in section V of this exemption.

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized person has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which section IV(b) does not apply is involved, the following conditions must also be satisfied.

(1) The information required under section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions the person effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the person engaging in the transactions in connection with those transactions during the period;

(3) The person effecting or executing the agency cross transaction has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both;

(4) The agency cross transaction is a purchase, or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transactions is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

Section IV. Exceptions From Conditions

(a) Certain plans not covering employees

Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3–2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3–3.

(b) Certain agency cross transactions

Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person effecting or executing the transaction:

(1) Does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of ERISA with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3–21(d); and

(3) does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) Recapture of profits

Section III(a) of this exemption does not apply in any case where the person where the person engaging in a covered transaction returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction.

(d) Special rules for pooled funds

In the case of a person engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III (b), (c) and (d) of this exemption do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the person. The requirement that the authorizing fiduciary be independent of the person shall not apply in the case of a plan covering only employees of the person, if the requirements of section IV(d)(2) (A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that the person engaging or proposing to engage in the covered transactions reasonably believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the person's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of a plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1) (B) and (C) of this section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraphs (d)(1)(A).

(2) Section III(a) of this exemption, to the extent that it prohibits the person from being the employer of employees covered by a plan investing in a pool managed by the person does not apply if—

(A) The person is an "investment manager" as defined in section 3(38) of ERISA, and

(B) Either (i) the person returns or credits to the pooled fund all profits earned by the person in connection with all covered transactions engaged in by the person on behalf of the fund, or (ii) the pooled fund satisfies the requirements of paragraph IV(d)(3).

(3) A pooled fund satisfies the requirements of this paragraph for a fiscal year of the fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled

fund during the fiscal year by any plan covering employees of the person, the aggregate fair market value of the interests in such fund of all plans covering employees of the person does not exceed twenty percent of the fair market value of the total assets of the fund; and

(B) The aggregate brokerage commissions received by the person, in connection with covered transactions engaged in by the person on behalf of all pooled funds in which a plan covering employees of the person participates, do not exceed five percent of the total brokerage commissions received by the person from all sources in such fiscal year.

Section V. Examples Illustrating the Use of the Annualized Portfolio Turnover Ratio Described in Section III(f)(4)(ii)

(a) A, an investment manager affiliated with a broker-dealer that A uses to effect securities transactions for the accounts that it manages, exercises investment discretion over the account of plan P for the period January 1, 1987, through June 30, 1987, after which the relationship between A and P ceases. The market values of P's account with A at the relevant times (excluding debt securities having a maturity of one year or less at the time of acquisition) are:

Date	Market value ($ millions)
January 1, 1987	10.4
January 31, 1987	10.2
February 28, 1987	9.9
March 31, 1987	10.0
April 30, 1987	10.6
May 31, 1987	11.5
June 30, 1987	12.0
Sum of market values	74.6

Aggregate purchases during the 6-month period were $850,000; aggregate sales were $1,000,000, excluding in each case debt securities having a maturity of one year or less at the time of acquisition.

For purposes of section III(f)(4) of this exemption, A computes the annualized portfolio turnover as follows:

A = $850,000 (lesser of purchases or sales)
B = $10,657,143 ($74.6 million divided by 7, i.e., the number of valuation dates)
Annualizing factor = C/D = 12/6 = 2
Annualized portfolio turnover ratio = 2 × (850,000/10,657,143) = 0.160 = 16.0 percent

(b) Same facts as (a), except that A manages the portfolio through July 15, 1987 and, in addition, resumes management of the portfolio on November 10, 1987 through the end of the year. The additional relevant valuation dates and portfolio values are:

Date	Market value ($ millions)
July 15, 1987	12.2
November 10, 1987	9.4
November 30, 1987	9.6
December 31, 1987	9.8
Sum of Market Values	41.0

During the periods July 1, 1987 through July 15, 1987, and November 10, 1987 through December 31, 1987, there were an additional $650,000 of purchases and $400,000 of sales. Thus, total sales were $1,500,000 (i.e., $850,000 + $650,000) and total sales were $1,400,000 (i.e., $1,000,000 + $400,000 for the management periods.

A now computes the annualized portfolio turnover as follows:

A = $1,400,000 (lesser of aggregate purchases or sales)
B = $10,509,091 ($115.6 million divided by 11)
Annualizing factor = C/D = 12/(6.5 + 1.67) = 1.47
Annualized portfolio turnover ratio = 1.47 × (1,400,000/10,509,091) = 0.196 = 19.6 percent.

Section VI. Effective Dates and Transitional Rule.

(a) This exemption is effective February 12, 1987.

(b) PTE 79-1 and PTE 84-86 are revoked effective June 1, 1987.

IV. Effective Date of This Adoption

The adoption herein of the Class Exemptions, for purposes of section 8477(c)(2) of FERSA or the relevant subsection thereunder, is effective as of January 1, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 88-30009 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6555]

Employee Benefit Plans; Exemption; First Boston Corporation (First Boston) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, 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 from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption would exempt transactions relating to the origination and operation of certain asset pool investment trusts (trusts), and the acquisition and holding by employee benefit plans (plans) of certain asset-backed pass-through certificates (certificates) representing interests in those investment trusts. The exemption, if granted, would affect participants and beneficiaries of plans investing in certificates, the sponsors, servicers, trustees and insurers of the trusts, the underwriters of certificates, and obligors with respect to receivables contained in the trusts.

EFFECTIVE DATE: If granted, this exemption would be effective November 1, 1985.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor by February 13, 1989.

ADDRESS: All written comments and requests for a hearing (preferably at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. D-6555. 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.

FOR FURTHER INFORMATION CONTACT: Janet Laufer of the Department, telephone (202) 523-8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b) and 407(a) 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. First Boston requested the exemption in an application filed 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).

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.[1]

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. First Boston is a wholly-owned subsidiary of First Boston, Inc., a publicly traded New York Stock Exchange listed company. First Boston, a leading international investment banking firm, provides financial advice to, and raises capital for, a broad range of domestic and international clients. First Boston and its affiliates manage and participate in public offerings and arrange direct placements of debt and equity securities in the domestic and international capital markets for both public and private sector issuers. These securities include common stock, preferred stock, tax-exempt securities, non-investment grade high-yield securities, asset-backed securities and mortgage-related securities. Additionally, First Boston underwrites commercial paper as well as other short-term and medium-term securities.

First Boston has been a pioneer in the mortgage-backed and asset-backed securities markets. The firm was the lead manager of the first public offering of collateralized mortgage obligations in 1983 and sole manager of the first public asset-backed securities offering in 1985. First Boston was the leading underwriter of asset-backed securities in 1985 and in each subsequent year.

Trust Assets

2. First Boston seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[2] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[3]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. First Boston Brothers, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of Certificates made to date and all of the public offerings of Certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, First Boston has privately placed Certificates on both a firm commitment and an agency basis. First Boston may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. First Boston requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on mortgages is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[4]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less

[1] References in the remainder of the preamble to specific sections of the Act refer also to the corresponding sections of the Code.

[2] The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. First Boston requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, First Boston has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[3] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

[4] It is the Department's understanding that where a plan invests in Real Estate Mortgage Investment Conduit (REMIC) "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of ERISA section 404(a)(1)(B) would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

than the amount required to be so distributed, all certificateholders will share in the amount distributed on a pro rata basis.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except with respect to 30-year obligations, in which case the period may be as long as two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies, for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originators of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to First Boston, the trust sponror or the servicer. First Boston represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the sponsor or servicer.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to First Boston. In some cases, however, affiliates of First Boston may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells these certificates for cash to investors or securities underwriters. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[5] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation.

[5] The pass-through rate on certificates representing interests in trust holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is paid out of the interest income received on the receivables in excess of the pass-through rate.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. First Boston will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what First Boston receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be either: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1), or (b) the fair market value of such obligations in the case of a Real Estate Mortgage Investment Conduit (REMIC), or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages, Duff & Phelps Inc. (D&P). Insurance or other credit support (such as surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (i) out of late payments by the obligors, (ii) from the credit support provider (which may be itself) or, (iii) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the Servicer is the provider of the credit support and provides its own funds to cover delinquent payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly or quarterly, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver

to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur toward the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto.

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is First Boston's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is First Boston's intention to attempt to make a market for any certificates for which First Boston is lead or co-managing underwriter.

Retroactive Relief

25. First Boston represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assemption that retroactive relief would not be granted. However, since November 1985, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a

trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3-101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's or D&P. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which First Boston seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) First Boston has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

The exemptive relief proposed herein is similar to that provided in PTE 81-7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83-1 (48 FR 895, January 7, 1983).

PTE 83-1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage trust certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83-1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of ERISA for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83-1 provides conditional exemptive relief from section 406 (a) and (b) of ERISA for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83-1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount to less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83-1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The propose exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's or D&P (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

I. Ratings of Certificates

A. Rating Process

In connection with the Department's consideration of First Boston's exemption request, representatives of the Department met with representatives of S&P's, Moody's and D&P to discuss the rating process. Set forth below is a summary of the information supplied to the Department by these rating agencies.

The sponsor of a trust initiates the rating process by requesting a specific rating from the rating agency. The rating agency then analyzes the security for credit risk, structural risk, and legal risk.

In the course of establishing a rating, the rating agency investigates the originators' and servicers' policies and track records in handling defaults and delinquencies as well as their foreclosure procedures and actual loss record. The rating agency evaluates the loan appraisal process and the training of the personnel involved. The rating agency then performs statistical analysis to determine how existing factors correlate with the known default rates. This analysis is performed with respect to loan to value ratios, geographic location, type of asset, and interest rates. The rating agency also considers the economic stability of the entity providing credit support. Furthermore, the rating agency considers any ability of the trust servicer to commingle trust funds with its own, and the extent to which and conditions under which collateral may be substituted.

From its analysis, the rating agency determines the amount of credit support required in order for the issue to receive the requested rating.

Generally, the analyzed degree of investment risk (that is, the overall investment risk, taking into account credit risk, structural risk, and legal risk) associated with a particular rating will be the same regardless of the type of instrument being rated and the nature of the collateral (including credit support) covering the instrument.

Securities rated in one of the four highest generic rating categories by S&P's, Moody's or D&P are considered to be "investment grade" securities.

Both S&P's and Moody's have established refinements to further distinguish among securities within a given rating category. S&P's uses "+" and "−" to designate such refinements. For instance, securities rated in the "AA" category may be rated "AA+", "AA" or "AA−". Likewise, Moody's uses numerals to designate refinements within a rating category, such as "Aa1", "Aa2" or "Aa3".[6]

[6] The proposed exemption conditions exemptive relief upon the certificates in which the plan invests having been rated in one of the three highest "generic" rating categories by S&P's, Moody's, or D&P. The term "generic" is included to make clear that the Department intends the condition to refer to the rating category (such as "AAA", "AA" and "A") without regard to refinements within a rating category.

D&P ratings of 1–7 are assigned to securities rated by D&P in the three highest "generic" rating categories of "Triple A", "Double A" and "Single A". Securities in D&P's generic "Triple A" category receive a D&P rating of "1"; securities in D&P's "Double A" generic category receive a D&P rating ranging from "2" to "4"; securities in D&P's "Single A" generic category receive a D&P rating ranging from "5" to "7".

B. Rating Condition

After consideration of the representations of the applicant, and the information provided by S&P's, Moody's and D&P, the Department has decided to condition exemptive relief upon the certificates in which a plan invests having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, or, in the case of certificates representing interests in trust containing multi-family residential mortgages or commercial mortgages, D&P.[7]

The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables, while ensuring that the interests of plans holding certificates are adequately protected. In particular, in rating certificates, S&P's, Moody's and D&P take into account such factors as commingling of funds and conflicts of interest of the trust sponsor and servicer.

However, the Department is not prepared to rely solely on determinations made by these rating agencies in providing exemptive relief. In this regard, the applicant orginally requested that exemptive relief apply to trusts containing any type of receivable—secured or unsecured—provided that the rating condition is met. The Department is not prepared at this time to grant such broad exemptive relief. The Department believes that the rating agencies currently have more expertise in rating certificates representing interests in secured, as opposed to unsecured, receivable trusts. Consequently, the Department believes that the ratings are more indicative of the relative safety of the investment when applied to trusts containing secured receivables.

Moreover, First Boston has represented that trusts containing different types of receivables are continuously being developed and rated. While the Department would generally prefer to be more specific as to the types of assets contained in the trusts, the Department recognizes the applicant's need for flexibility. At the same time, the Department believes that it is appropriate to ensure that the rating agencies have developed expertise in rating a particular type of asset-backed security, and that such security has been tested in the marketplace, prior to plan investment pursuant to this exemption. Consequently, the Department has further conditioned the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year, and having been sold to investors other than plans for at least one year.[8]

II. Limited Section 406(b) and Section 407(a) Relief for Sales

The applicant represents that in some cases a trust sponsor, trustee, servicer, insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[9] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[10] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, the applicant represents that a trust sponsor, servicer, trustee, insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. The applicant represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, the applicant represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

The proposed exemption from the restrictions of section 406(a) for the sale of certificates closely follows the exemptive relief provided by PTE 83–1. In particular, (1) the acquisition of certificates by a plan must be on terms that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party, and (2) the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates representing interests in the same trust.

The applicant originally requested broad section 406(b) relief for the sale of certificates. First Boston subsequently amended its application to request substantially more limited section 406(b) relief for the sale of certificates. Under the amendment, First Boston requested section 406(b) relief for sales of certificates by an obligor with respect to 25 percent or less of the fair market value of obligations contained in the trust or an affiliate of such obligor. In requesting this relief, First Boston represented that this 25 percent limitation would function as a "de

[7] First Boston's original application for exemptive relief would have conditioned the exemption upon the certificates having received a rating from any "nationally recognized statistical rating agency" that is in one of that agency's three highest rating categories. Although the Department is aware that rating agencies other than S&P's, Moody's and D&P currently qualified as "nationally recognized statistical rating organizations" for purposes of Rule 15c3–1 under the Securities Exchange Act of 1934, the Department has decided to condition the proposed exemption on attainment of the specified ratings from S&P's, Moody's, or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages, D&P. Currently, it appears that asset-backed securities underwritten by First Boston which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. First Boston represents that D&P has rated significantly more multi-family residential and commercial mortgage pass-through certificates than S&P's or Moody's, and that D&P has expertise with respect to these types of mortgages which is at least as great as that of S&P's and Moody's.

[8] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[9] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which First Boston or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[10] The applicant represents that where a trust sponsor is an affiliate of First Boston, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if First Boston is not a fiduciary with respect to plan assets to be invested in certificates.

minimis" test so that First Boston would not be unduly burdened with policing the actions of obligors who are also plan fiduciaries.

In this regard, the Department views a five percent limitation as a more appropriate measure for purposes of a "de minimis" test. Consequently, the proposed exemption provides section 406(b) relief for sales of certificates only where a person exercises its investment discretion to invest a plan's assets in certificates issued by a trust, five percent or less of whose assets consist of obligations of that person or an affiliate.

Additionally, in the case of an acquisition of certificates, section 406(b) exemptive relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the "restricted group". This "restricted group" consists of the trust sponsor, servicer, or trustee; each provider of credit support; each underwriter of certificates; or any obligor with respect to receivables in the trust constituting more than five percent of the fair market value of all receivables included in the trust.

Section 406(b) relief for sales of certificates also would be subject to the following conditions: (1) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and (2) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the fiduciary has discretionary authority or renders investment advice are invested in certificates representing an interest in trusts containing assets sold or serviced by the same entity.[11]

Also, section 406(a) and (b) relief for sales would apply only to a plan which is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933. To be an accredited investor under Rule 501(a)(1), a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment advisor registered under the Investment Advisers Act of 1940.

Finally, the proposed exemptive relief from the provisions of sections 406(a)(1)(E), 406(a)(2) and 407 of ERISA would not apply to the acquisition or holding of a certificate by a person who has discretionary authority or renders investment advice with respect to the assets of an "excluded plan". Under the exemption, an "excluded plan" is a plan with respect to which any member of the restricted group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

[11] This condition effectively imposes a 25 percent limit on plan investment in trusts which have the same sponsor or which have the same servicer.

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 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 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. That section requires, among other things, that a fiduciary discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act. In addition, it does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before granting an exemption 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 affected plans and of their participants and beneficiaries, and protective of the rights of those participants and beneficiaries.

(3) The proposed exemption, 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.

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application accurately describe all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the Procedures set forth in ERISA Procedure 75–1:

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an Excluded Plan.

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons

independent of the members of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advise are invested in certificates representing an interest in trust containing assets sold or serviced by the same entity.[12] For purposes of this subparagraph B(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or fully described in the prospectus or private offering memorandum provided to, investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G) (H) or (I) of the Act or section 4975(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating that is in one of the three highest generic rating categories

(a) from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's) or Duff & Phelps Inc., if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property, or

(b) from either S&P's or Moody's if the certificates represent an interest in a trust containing assets other than obligations secured by multi-family residential or commercial real property;

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retrained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or to the taxes imposed by sections 4975(a) and (b) of the Code, if the provision of subsection IIA(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition; and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means a certificate

(1) that represents a beneficial ownership interest in the assets of a trust;

(2) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trusts; and

(3) with respect to which First Boston or any of its affiliates is either (a) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent;

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private offering memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either;

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interest on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2410.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B(1);

(2) property which has secured any of the obligations described in subsection B(1);

(3) undistributed cash; and

(4) rights under any insurance policies, third-party guarantees, contracts or suretyship and other credit support arrangements with respect to any obligations described in subsection B(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's or Moody's for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) First Boston;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with First Boston; or

(3) any member of an underwriting syndicate of which First Boston or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligator" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligator" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligator with respect to obligations or receivable included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private offering memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligator other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

Signed at Washington, DC, this 23rd day of December, 1988.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-29985 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7573]

Employee Benefit Plans; Exemption; Goldman, Sachs & Co. (Goldman Sachs) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, 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 from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption would exempt transactions relating to the organization and operation of certain asset pool investment trusts (trusts), and the acquisition and holding by employee benefit plans (plans) of certain asset-backed pass-through certificates (certificates)) representing interests in those investment trusts. The exemption, if granted, would affect participants and beneficiaries of plans investing in certificates, the sponsors, servicers, trustees and insurers of the trusts, the underwriters of certificates, and obligors with respect to receivables contained in the trusts.

EFFECTIVE DATE: If granted, this exemption would be effective January 1, 1987.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor by February 13, 1989.

ADDRESS: All written comments and requests for a hearing (preferably at least three copies) should be sent to the Office of Regulations and Interpretations, Pensions and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. D-7573. 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.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Notice is given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b) and 407(a) 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. Goldman Sachs requested the exemption in an application filed 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).

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.[1]

[1] References in the remainder of the preamble to specific sections of the Act refer also to the corresponding sections of the Code.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Goldman Sachs is a full-service global banking organization that engages in securities transactions as both a principal and agent and which provides underwriting, research and financial services to institutional, corporate and private investment clients as well as governments, foundations and charitable organizations. Goldman Sachs is one of only a few firms that are members of the New York, London and Tokyo exchanges and are actively involved in the equity and debt markets of those financial centers. The firm is prominent in Eurobond and Euroequity markets and is a major factor in international government securities markets, international research and foreign exchange. Goldman Sachs has extensive experience in underwriting and trading asset-backed pass-through securities such as the certificates.

Trust Assets

2. Goldman Sachs seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[2] (2) motor vehicles receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[3]

[2] The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Goldman Sachs requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

[3] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates, because the certificates in the trusts are plan assets.

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, by an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Goldman Sachs, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, Goldman Sachs may act either as agent or principal. Goldman Sachs may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Goldman Sachs requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on mortgages is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[4]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all certificateholders will share in the amount distributed on a pro rata basis.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of 30-year obligations in which case the period may be as long as two years). Goldman Sachs represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty or representations regarding the assets in a trust. Any obligation so substituted is required to have characteristics substantially similar to those of the original obligation.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be businesses experienced in the origination of receivables of the types included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust *sponsor* are typically limited to depositing receivables in a trust in exchange of certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in facor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Goldman Sachs, the trust sponsor or the servicer. Goldman Sachs represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related

[4] It is the Department's understanding that where a plan invests in Real Estate Mortgage Investment Conduit (REMIC) "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of ERISA section 404(a)(1)(B) would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in cretificates pursuant to this exemption.

series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Goldman Sachs. In some cases, however, affiliates of Goldman Sachs may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.[5] This rate is generally determined by the same market forces that determine the price of a certificate. There is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

13. As compensation for performing its serivcing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificatesholders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables maybe made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In the event that payments on receivables are held in non-interest bearing accounts or commingled with the servicer's funds, the servicer will be required to make deposits attributable to such payments by a date specified in the pooling and servicing agreement into an account from which payments are made to certificateholders.

16. Goldman Sachs will receive a fee in exchange for its services in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what Goldman Sachs receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 5 or 10 percent) of the initial balance.

The repurchase price for such an option is set at a level such that the certificateholders will receive the full amount on all of the receivables held by the trust plus the accrued interest at the pass-through rate plus the full amount of property, if any, that has been acquired by the trust through collections on or liquidations of the receivables.

Certificates Ratings

18. The certificates will have received one of the three highest ratings available from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages,

[5] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

Duff & Phelps Inc. (D&P). Insurance or other credit support (such as surety bonds, letters, of credit, reserve funds or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of credit support is set by the rating agencies at a level that is a multiple of the very worst historical credit loss experience for obligations of the type included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer will first advance funds in a timely manner to cover any delinquent payments to the extent that it expects to recover those moneys out of future payments, or the master servicer, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism.

If the master servicer, fails to advance funds and fails to call upon the credit support mechanism to provide funds to cover delinquent payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When the master servicer, advances funds, the amounts so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer, provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer, has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer, to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly or quarterly, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountant's review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any risk factors with respect to the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) A full description of all material provisions of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the trust.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the master servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained these trusts normally would continue to have the obligation to file current reports on form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the

status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the rating agencies or agencies that have rated the trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the trust and its assets, including underlying obligations.

Secondary Market Transactions

24. Goldman Sachs normally attempts to make a market for securities for which it is leading or co-managing underwriter. It is also Goldman Sachs' policy to facilitate sales by investors who purchase certificates if Goldman Sachs has acted as agent or principal in the original placement of the certificates and if such investors request Goldman Sachs' assistance.

Retroactive Relief

25. Goldman Sachs represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since January 1987, it is possible that some transactions may have occurred that arguably would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(f)). In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3-101(b)), Goldman Sachs represents that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trust contain "fixed pools' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's or D&P. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Goldman Sachs seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Goldman Sachs has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

The exemptive relief proposed herein is similar to that provided in PTE 81-7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83-1 (48 FR 895, January 7, 1983).

PTE 83-1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83-1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of ERISA for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83-1 provides conditional exemptive relief from section 406 (a) and (b) of ERISA for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83-1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83-1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's or D&P (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

I. Ratings of Certificates

A. Rating Process

Representatives of the Department have met with representatives of S&P's, Moody's and D&P to discuss the rating process. Set forth below is a summary of the information supplied to the Department by these rating agencies.

The sponsor of a mortgage pool initiates the rating process by requesting a specific rating from the rating agency. The rating agency then analyzes the security for credit risk, structural risk, and legal risk.

In the course of establishing a rating, the rating agency investigates the originators' and servicers' policies and track records in handling defaults and delinquencies as well as their foreclosure procedures and actual loss record. The rating agency evaluates the loan appraisal process and the training of the personnel involved. The rating agency then performs statistical analysis to determine how existing factors correlate with the known default

rates. This analysis is performed with respect to loan to value ratios, geographic location, type of asset, and interest rates. The rating agency also considers the economic stability of the entity providing credit support. Furthermore, the rating agency considers any ability of the trust servicer to commingle trust funds with its own, and the extent to which and conditions under which collateral may be substituted.

From its analysis, the rating agency determines the amount of credit support required in order for the issue to receive the requested rating.

Generally, the analyzed degree of investment risk (that is, the overall investment risk, taking into account credit risk, structural risk, and legal risk) associated with a particular rating will be the same regardless of the type of instrument being rated and the nature of the collateral (including credit support) covering the instrument.

Securities rated in one of the four highest generic rating categories by S&P's, Moody's or D&P are considered to be "investment grade" securities.

Both S&P's and Mody's have established refinements to further distinguish among securities within a given rating category. S&P's uses "+" and "−" to designate such refinements. For instance, securities rated in the "AA" category may be rated "AA+", "AA" or "AA−". Likewise, Moody's uses numerals to designate refinements within a rating category, such as "Aa1", "Aa2" or "Aa3".[6]

D&P ratings of 1–7 are assigned to securities rated by D&P in the three highest "generic" rating categories of "Triple A", "Double A" and "Single A". Securities in D&P's generic "Triple A" category receive a D&P rating of "1"; securities in D&P's "Double A" generic category receive a D&P rating ranging from "2" to "4"; securities in D&P's "Single A" generic category receive a D&P rating ranging from "5" to "7".

B. Rating Condition

After consideration of the representations of the applicant, and the information provided by S&P's, Moody's and D&P, the Department has decided to condition exemptive relief upon the certificates in which a plan invests having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, or, in the case of certificates representing interests in trust containing multi-family residential mortgages or commercial mortgages, D&P.[7]

The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables, while ensuring that the interests of plans holding certificates are adequately protected. In particular, in rating certificates, S&P's, Moody's and D&P take into account such factors as commingling of funds and conflicts of interest of the trust sponsor and servicer (including conflicts of interests that may arise where the servicer or an affiliate of the servicer provides credit support to a trust).

However, the Department is not prepared to rely solely on determinations made by these rating agencies in providing exemptive relief. In this regard, the applicant originally requested that exemptive relief apply to trusts containing any type of receivable—secured or unsecured—provided that the rating condition is met. The Department is not prepared at this time to grant such broad exemptive relief. The Department believes that the rating agencies currently have more expertise in rating certificates representing interests in secured, as opposed to unsecured, receivables trusts. Consequently, the Department believes that the ratings are more indicative of the relative safety of the investment when applied to trusts containing secured receivables.

The Department believes that it is appropriate to ensure that the rating agencies have developed expertise in rating a particular type of asset-backed security, and that such security has been tested in the marketplace, prior to plan investment pursuant to this exemption. Consequently, the Department has further conditioned the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year, and having been sold to investors other than plans for at least one year.[8]

II. Limited Section 406(b) and Section 407(a) Relief for Sales

The applicant represents that in some cases a trust sponsor, trustee, servicer, insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[9] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[10] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, the applicant represents that a trust sponsor, servicer, trustee, insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. The applicant represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1),

[6] The proposed exemption conditions exemptive relief upon the certificates in which the plan invests having been rated in one of the three highest "generic" rating categories by S&P's, Moody's, or D&P. The term "generic" is included to make clear that the Department intends the condition to refer to the rating category (such as "AAA", "AA" and "A") without regard to refinements within a rating category.

[7] Although the Department is aware that rating agencies other than S&P's, Moody's and D&P currently qualify as "nationally recognized statistical rating organizations" for purposes of Rule 15c3–1 under the Securities Exchange Act of 1934, the Department has decided to condition the proposed exemption on attainment of the specified ratings from S&P's, Moodys, or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages, D&P. Currently, it appears that asset-backed securities underwritten by Goldman Sachs which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Goldman Sachs represents that D&P has rated significantly more multi-family residential and commercial mortgage pass-through certificates than S&P's or Moody's, and that D&P has expertise with respect to these types of mortgages which is at least as great as that of S&P's and Moody's.

[8] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[9] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Goldman Sachs or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[10] The applicant represents that where a trust sponsor is an affiliate of Goldman Sachs, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Goldman Sachs is not a fiduciary with respect to plan assets to be invested in certificates.

and in some cases section 406(b)(2), of the Act.

Moreover, the applicant represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor with respect to receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

The proposed exemption from the restrictions of section 406(a) for the sale of certificates closely follows the exemptive relief provided by PTE 83-1. In particular, (1) the acquisition of certificates by a plan must be on terms that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party, and (2) the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates representing interests in the same trust.

Goldman Sachs has requested section 406(b) relief for sales of certificates by an obligor with respect to 25 percent or less of the fair market value of obligations contained in the trust or an affiliate of such obligor. The Department views a five percent limitation as a more appropriate measure for purposes of a "de minimis" test. Consequently, the proposed exemption provides section 406(b) relief for sales of certificates only where a person exercises its investment discretion to invest a plan's assets in certificates issued by a trust, five percent or less of whose asset consist of obligations of that person or an affiliate.

Additionally, in the case of an acquisition of certificates, section 406(b) exemptive relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the "restricted group". This "restricted group" consists of the trust sponsor, servicer, or trustee; each provider of credit support; each underwriter of certificates; or any obligor with respect to receivables included in the trust constituting more than five percent of the fair market value of all receivables included in the trust.

Section 406(b) relief for sales of certificates also would be subject to the following conditions: (1) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and (2) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the fiduciary has discretionary authority or renders investment advice are invested in certificates representing an interest in trusts containing assets sold or serviced by the same entity.[11]

Also, section 406 (a) and (b) relief for sales would apply only to a plan which is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933. To be an accredited investor under Rule 501(a)(1), a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment advisor registered under the Investment Advisers Act of 1940.

Finally, the proposed exemptive relief from the provisions of sections 406(a)(1)(E), 406(a)(2), and 407 of ERISA would not apply to the acquisition or holding of a certificate by a person who has discretionary authority or renders investment advice with respect to the assets of an "excluded plan". Under the exemption, an "excluded plan" is a plan with respect to which any member of the restricted group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

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 of the Code does not relieve a fiduciary or other party in interest or 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. That section requires, among other things, that a fiduciary discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act. In addition, it does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before granting an exemption 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 affected plans and of their participants and beneficiaries, and protective of the rights of those participants and beneficiaries.

(3) The proposed exemption, if ganted, 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.

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application accurately describe all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the Procedures set forth in ERISA Procedure 75-1:

I. Transactions

A. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an Excluded Plan.

[11] This condition effectively imposes a 25 percent limit on plan investment in trusts which have the same sponsor or which have the same servicer.

B. Effective January 1, 1987, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of the members of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in trust containing assets sold or serviced by the same entity.[12] For purposes of this subparagraph B(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B (1) or (2).

C. Effective January 1, 1987, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management, and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or is fully described in the prospectus or private offering memorandum provided to, investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975 (F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificates price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating that is in one of the three highest generic rating categories:

(a) From either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc., if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property, or

(b) From either S&P's or Moody's if the certificates represent an interest in a trust containing assets other than obligations secured by multi-family residential or commercial real property;

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with the respect to the plan assets used by a plan to acquire certificates, shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or to the taxes imposed by sections 4975 (a) and (b) of the Code, if the provision of subsection II.A(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private offering memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933.

of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means a certificate

(1) That represents a beneficial ownership interest in the assets of a trust;

(2) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; and

(3) With respect to which Goldman Sachs or any of its affiliates is either (a) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent;

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between busienss entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real propperty);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this subsection B(1);

(2) Property which had secured any of the obligations described in subsection B(1);

(3) Undistributed cash; and

(4) Rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's or Moody's for at least one year prior to the plan's acquisition of certificates purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Goldman Sachs;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Goldman Sachs; or

(3) Any member of an underwriting syndicate of which Goldman Sachs or a person described in (2) is a manager or co-manager with respect to the certificates

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordianted to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment managment authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private offering memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term included both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equpment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

Signed at Washington, DC, this 23rd day of December, 1988.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-29987 Filed 12-28-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6446]

Salomon Brothers, Inc. (Salomon) Located in New York, New York

AGENCY: Pension and Welfare Benefits Administration, 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 from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption would exempt transactions relating to the origination and operation of certain asset pool investment trusts (trusts), and the acquisition and holding by employee benefit plans (plans) of certain asset-backed pass-through certificates (certificates) representing interests in those investment trusts. The exemption, if granted, would affect participants and beneficiaries of plans investing in certificates, the sponsors, servicers, trustees and insurers of the trusts, the underwriters of certificates, and obligors with respect to receivables contained in the trusts.

EFFECTIVE DATE: If granted, this exemption would be effective November 1, 1985.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor by February 13, 1989.

ADDRESS: All written comments and requests for a hearing (preferably at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. D-6446. 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.

FOR FURTHER INFORMATION CONTACT: Janet Laufer of the Department, telephone (202) 523-8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Notice is given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b) and 407(a) 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. Salomon requested the exemption in an application filed 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).

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.[1]

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Salomon is an international investment banking firm which makes markets in securities as both principal and agent, and provides a broad range of underwriting, research and financial services to institutional investors, corporations and governmental entities. Salomon manages or co-manages the underwriting and distribution of new corporate issues and new issues of asset-backed securities, and also acts as an agent or principal in private placements. Salomon trades in a wide range of equity securities as both dealer and broker. As a dealer in fixed-income securities, Salomon trades obligations issued or guaranteed by domestic and foreign governments, agencies, corporations and financial institutions in the U.S. and major foreign capital markets. These range from long-term bonds to medium-term notes and include securities backed by residential and commercial mortgages, receivables and other assets. Salomon also provides brokerage services in fixed-income securities. Salomon was a pioneer in the field of asset-backed securities, and is a leader in the mortgage-backed securities market.

Trust Assets

2. Salomon seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[2] (2) motor vehicle

[1] References in the remainder of the preamble to specific sections of the Act refer to the corresponding sections of the Code.

[2] The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage

Continued

receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[3]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been orginated by a sponsor or servicer of the trust, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Salomon Brothers, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, Salomon may act either as agent or principal. Salomon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Salomon requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on mortgages is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[4]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and only when that class of certificates have been paid in full (or has received a specified amount) will distibutions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all certificateholders will share in the amount distributed on a pro rata basis.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years in which case the period will not exceed two years). Salomon represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty or representations regarding the assets in a trust (for example, where a defect in title to an asset is discovered after its inlcusion in the trust). The pooling and servicing agreement will impose restrictions on substituted receivables to ensure that the substituted receivables have payment characteristics substantially similar to those of the replaced receivables and are at least as creditworthy as the replaced receivables.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be financial institutions experienced in the origination of receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust sponsor are typically limited to depositing receivables in a trust in exchange for certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

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pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Salomon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Salomon has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[3] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

[4] It is the Department's understanding that where a plan invests in Real Estate Mortgage Investment Conduit (REMIC) "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of ERISA section 404(a)(1)(B) would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

9. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Salomon, the trust sponsor or the servicer. Salomon represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer.

10. The servicer of a trust administers the receivables on behalf of the certificateholders. the servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Salomon. In some cases, however, affiliates of Salomon may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in the trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.[5] This rate is generally determined by the same market forces that determines the price of a certificate. There is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificate-holders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer pays the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders.

[5] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made to obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy. In the event payments on receivables are held in a non-interest bearing account or are commingled with the servicer's own funds, the servicer will be required to deposit such payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Salomon will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what Salomon receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 10 percent) of the initial balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to the upaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either Standard & Poor's Corporation (S&P's) Moody's Investors Service, Inc. (Moody's), or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages, Duff & Phelps Inc. (D&P). Insurance or other credit support (such as surety bonds, letter of credit, reserve funds or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of the credit support is set by the rating agencies at a level that is a multiple of the very worst historical credit loss experience for receivables of the type included in the trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds in a timely manner and to the full extent required by the pooling and servicing agreement if it determines that such advances will be recoverable out of late payments by the obligors or, in the case of a trust which issued subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon (by itself as servicer acting on behalf of the trustee, or directly by the trustee) to provide funds to cover such payments to the full extent of its obligations as insurer.

If the master servicer fails to advance funds and fails to call upon the credit support mechanism to provide funds to cover delinquent payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly or quarterly, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amounts of all servicer advances, along with other current information as to collections, on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate or an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur toward the end of the life of the trust, whether due to servicer advances or and other cause. Once the floor amount has been reached the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no porportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus of private offering memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and the material risk factors with respect to an investment in the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identify of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) The material terms of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth

material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report on operation of the trust, including information on any delinquencies or advances by servicers, will be made to the trustee and rating agencies. These reports will be available to investors and the availability of the reports will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement sumarizing information regarding the trust and its assets. Such statement will include information regarding payments and prepayments, delinquencies and foreclosures.

Secondary Market Transactions

24. Salomon has historically made a market in mortgage-backed and asset-backed securities of the type described in the exemption request. Salomon anticipates that it will continue to make such a market in the future, subject to market conditions and applicable law.

Retroative Relief

25. Salomon represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since November 1985, it is possible that some transactions may have occurred that arguably would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), Salomon represents that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's or D&P. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Salomon seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Salomon has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of ERISA for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transactions by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of ERISA for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's or D&P (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

I. Ratings of Certificates

A. Rating Process

In connection with the Department's consideration of Salomon's exemption

request, representatives of the Department met with representatives of S&P's, Moody's and D&P to discuss the rating process. Set forth below is a summary of the information supplied to the Department by these rating agencies.

The sponsor of a mortage pool initiates the rating process by requesting a specific rating from the rating agency. The rating agency then analyzes the security rating agency then analyzes the security for credit risk, structural risk, and legal risk.

In the course of establishing a rating, the rating agency investigates the originators' and servicers' policies and track records in handling defaults and delinquencies as well as their foreclosure procedures and actual loss record. The rating agency evaluates the loan appraisal process and the training of the personnel involved. The rating agency then performs statistical analysis to determine how existing factors correlate with the known default rates. This analysis is performed with respect to loan to value ratios, geographic location, type of asset, and interest rates. The rating agency also considers the economic stability of the entity providing credit support. Furthermore, the rating agency considers any ability of the trust servicer to commingle trust funds with its own, and the extent to which and conditions under which collateral may be substituted.

From its analysis, the rating agency determines the amount of credit support required in order for the issue to receive the requested rating.

Generally, the analyzed degree of investment risk (that is, the overall investment risk, taking into account credit risk, structural risk, and the legal risk) associated with a particular rating will be the same regardless of the type of instrument being rated and the nature of the collateral (including credit support) covering the instrument.

Securities rated in one of the four highest generic rating categories by S&P's, Moody's or D&P are considered to be "investment grade" securities.

Both S&P's and Moody's have established refinements to further distinguish among securities within a given rating category. S&P's uses "+" and "−" to designate refinements. For instance, securities rated in the "AA" category may be rated "AA+", "AA" or "AA−". Likewise, Moody's uses numerals to designate refinements within a rating category, such as "Aa1", "Aa2" or "Aa3".[6]

D&P ratings of 1–7 are assigned to securities rated by D&P in the three highest "generic" rating categories of "Triple A", "Double A" and "Single A". Securities in D&P's generic "Triple A" category receive a D&P rating of "1"; securities in D&P's "Double A" generic category receive a D&P rating ranging from "2" to "4"; securities in D&P's "Single A" generic category receive a D&P rating ranging from "5" to "7".

B. Rating Condition

After consideration of the representations of the applicant, and the information provided by S&P's, Moody's and D&P, the Department has decided to condition exemptive relief upon the certificates in which a plan invests having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, or, in the case of certificates representing interests in trust containing multi-family residential mortgages or commercial mortgages, D&P.[7]

The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables, while ensuring that the interests of plans holding certificates are adequately protected. In particular, in rating certificates, S&P's, Moody's and D&P take into account such factors as commingling of funds and conflicts of interest of the trust sponsor and servicer (including conflicts of interest that may arise where the servicer or an affiliate of the servicer provides credit support to a trust).

However, the Department is not prepared to rely solely on deteminations made by these rating agencies in providing exemptive relief. In this regard, the applicant originally requested that exemptive relief apply to trusts containing any type of receivable—secured or usecured—provided that the rating condition is met. The Department is not prepared at this time to grant such broad exemptive relief. The Department believes that the rating agencies currently have more expertise in rating certificates representing interests in secured, as opposed to unsecured, receivables trusts. Consequently, the Department believes that the ratings are more indicative of the relative safety of the investment when applied to trusts containing secured receivables.

Moreover, Salomon has represented that trusts containing different types of receivables are continuously being developed and rated. While the Department would generally prefer to be more specific as to the types of assets contained in the trusts, the Department recognizes the applicant's need for flexibility. At the same time, the Department believes that it is appropriate to ensure that the rating agencies have developed expertise in rating a particular type of asset-backed security, and that such security has been tested in the marketplace, prior to plan investment pursuant to this exemption. Consequently, the Department has further conditioned the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year, and having been sold to investors other than plans for at least one year.[8]

II. Limited Section 406(b) and Section 407(a) Relief for Sales

The applicant represents that in some cases a trust sponsor, trustee, servicer,

[6] The proposed exemption conditions exemptive relief upon the certificates in which the plan invests having been rated in one of the three highest "generic" rating categories by S&P's, Moody's, or D&P. The term "generic" is included to make clear that the Department intends the condition to refer to the rating category (such as "AAA", "AA" and "A") without regard to refinements within a rating category.

[7] Salomon's original application for exemptive relief would have conditioned the exemption upon the certificates having received a rating from any "nationally recognized statistical rating agency" that is in one of that agency's three highest rating categories. Although the Department is aware that rating agencies other than S&P's, Moody's and D&P currently qualify as "nationally recognized statistical rating organizations" for purposes of Rule 15c3–1 under the Securities Exchange Act of 1934, the Department has decided to condition the proposed exemption on attainment of the specified ratings from S&P's, Moody's, or, in the case of certificates representing interests in trusts containing multi-family residential mortgages or commercial mortgages, D&P. Currently, it appears that asset-backed securities underwritten by Salomon which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Salmon represents that D&P has rated significantly more multi-family residential and commercial mortgage pass-through certificates than S&P's or Moody's, and that D&P has espertise with respect to these types of mortgages which is at least as great as that of S&P's and Moody's.

[8] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[9] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[10] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, the applicant represents that a trust sponsor, servicer, trustee, insurer, an obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. The applicant represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, the applicant represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor with respect to receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

The proposed exemption from the restrictions of section 406(a) for the sale of certificates closely follows the exemptive relief provided by PTE 83-1. In particular, (1) the acquisition of certificates by a plan must be on terms that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party, and (2) the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates representing interests in the same trust.

The applicant originally requested broad section 406(b) relief for the sale of certificates. Salomon subsequently amended its application to request substantially more limited section 406(b) relief for the sale of certificates. Under the amendment, Salomon requested section 406(b) relief for sales of certificates by an obligor with respect to 25 percent or less of the fair market value of obligations contained in the trust or an affiliate of such obligor. In requesting this relief, Salomon represented that this 25 percent limitation would function as a "de minimis" test so that Salomon would not be unduly burdened with policing the actions of obligors who are also plan fiduciaries.

In this regard, the Department views a five percent limitation as a more appropriate measure for purposes of a "de minimis" test. Consequently, the proposed exemption provides section 406(b) relief for sales of certificates only where a person exercises its investment discretion to invest a plan's assets in certificates issued by a trust, five percent or less of whose assets consists of obligations of that person or an affiliate.

Additionally, in the case of an acquisition of certificates, section 406(b) exemptive relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the "restricted group." This "restricted group" consists of the trust sponsor, servicer, or trustee; each provider of credit support; each underwriter of certificates; or any obligor with respect to receivables included in the trust constituting more than five percent of the fair market value of all receivables included in the trust.

Section 406(b) relief for sales of certificates also would be subject to the following conditions: (1) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and (2) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the fiduciary has discretionary authority or renders investment advice are invested in certificates representing an interest in trusts containing assets sold or serviced by the same entity.[11]

Also, section 406(a) and (b) relief for sales would apply only to a plan which is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933. To be an accredited investor under Rule 501(a)(1), a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment advisor registered under the Investment Advisers Act of 1940.

Finally, the proposed exemptive relief from the provisions of sections 406(a)(1)(E), 406(a)(2) and 407 of ERISA would not apply to the acquisition or holding of a certificate by a person who has discretionary authority or renders investment advice with respect to the assets of an "excluded plan." Under the exemption, an "excluded plan" is a plan with respect to which any member of the restricted group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

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 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. That section requires, among other things, that a fiduciary discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act. In addition, it does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before granting an exemption 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 affected plans and of their participants and beneficiaries, and protective of the rights of those participants and beneficiaries.

(3) The proposed exemption, 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 wheteher the transaction is in fact a prohibited transaction.

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each

[9] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Salomon or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[10] The applicant represents that where a trust sponsor is an affiliate of Salomon, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Salomon is not a fiduciary with respect to plan assets to be invested in certificates.

[11] This condition effectively imposes a 25 percent limit on plan investment in trusts which have the same sponsor or which have the same servicer.

application accurately describe all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the Procedures set forth in ERISA Procedure 75–1:

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of section 406 (a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an Excluded Plan.

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of the members of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in trust containing assets sold or serviced by the same entity.[12] For purposes of this subparagraph B(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisiton or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or fully described in the prospectus or private offering memorandum provided to, investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975 (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating that is in one of the three highest generic rating categories

(a) From either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc., if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property, or

(b) From either S&P's or Moody's if the certificates represent an interest in a trust containing assets other than obligations secured by multi-family residential or commercial real property;

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as is proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private offering memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933.

upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or to the taxes imposed by sections 4975(a) and (b) of the Code, if the provision of subsection II.A(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a convenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means a certificate

(1) That represents a beneficial ownership interest in the assets of a trust;

(2) That entitles the holder to pass-through payments of principal, interest, and/or other paymnents made with respect to the assets of such trust; and

(3) With respect to which Salomon or any of its affiliates is either (a) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent;

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B(1);

(2) Property which had secured any of the obligations described in subsection B(1);

(3) Undistributed cash; and

(4) Rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's or Moody's for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Salomon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Salomon; or

(3) Any member of an underwriting syndicate of which Salomon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized

principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more imtermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person;

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private offering memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following ceriteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

Signed at Washington, DC, this 23rd day of December, 1988.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–29986 Filed 12–28–88; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Georgia Power Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) for the Vogtle Electric Generating Plant, Unit 2, located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). Because a facility operating license may be issued for Vogtle 2 before the rulemaking action is completed, the Commission would issue as part of the license a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i). Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there

are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of Section 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338). A copy of the facility operating license will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29999 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of a temporary exemption from certain requirements of General Design Criterion 17 of Appendix A to 10 CFR 50 to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Power Plant, Unit 2, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action: The licensee would be temporarily exempted from the electrical separation requirements of General Design Criterion (GDC) 17 of Appendix A to 10 CFR Part 50. As relevant to TVA's request, GDC 17 requires that, "* * * The onsite electric power supplies, including the batteries, and the onsite electric distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure * * *".

The Need for the Proposed Action: The proposed exemption is needed on a temporary basis in order to allow TVA Browns Ferry, Unit 2, to load fuel and perform hydro testing. The modifications necessary to bring the plant into compliance with GDC 17 will be made prior to Unit 2 restart.

Environmental Impact of the Proposed Action: The licensee has indicated that approximately 250 cables have been discovered that do not meet the cable separation criterion of GDC 17. Due to the extended Unit 2 outage, there is very little decay heat in the fuel and Krypton 85 is the only significant fission product left. The licensee's analysis of design basis accidents shows that any potential radiological releases would not be greater than previously determined nor would the temporary exemption otherwise affect radiological effluents. The staff has reviewed the licensee's environmental analysis and concurs with its findings. The proposed action does not affect the probability or consequences of any accident. In addition, the proposed action does not change the types of effluents that may be released offsite and does not increase the allowable individual or cumulative occupational radiation exposure. The Commission concludes that there are no significant radiological impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has not other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed exemption.

Alternative Use of Resources: This action does not involve any use of resources not previously considered in the September 1, 1972 Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant.

Alternatives to the Proposed Action: Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemption, alternatives to the proposed action need not be evaluated. The principal alternative, however, to the exemption would be to deny the exemption requested by the licensee from the requirements of 10 CFR Part 50 Appendix A, GDC 17. Such action would not enhance the protection of the environment.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the forgoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the NRC's Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-29994 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on the Individual Plant Examinations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Workshop.

SUMMARY: On November 23, 1988 the NRC Staff issued Generic Letter No. 88-20, INDIVIDUAL PLANT EXAMINATION FOR SEVERE ACCIDENT VULNERABILITIES. The Generic Letter requires all licensees holding operating licenses and construction permits for nuclear power reactor facilities to perform an individual plant examination for severe accident vulnerabilities. A document that provides additional licensee guidance for reporting the results of the Individual Plant Examination (IPE) and describes the review evaluation process that the NRC will use for assessing the submittals will be issued in draft form on or about January 27, 1989. In order to discuss the IPE objectives and solicit questions and points for clarification on the draft NUREG-1335, "Individual Plant Examination: Submittal Guidance and Staff Review Requirements", the NRC plans to conduct a workshop.

DATES: February 28, 1989 and March 1-March 2, 1989.

ADDRESS: The Worthington Hotel, 200 Main Street, Fort Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: John H. Flack, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3979. For hotel room reservations, request the IPE Workshop Conference room rates at the Worthington Hotel, telephone (817) 870-1000 no later than January 27, 1989.

SUPPLEMENTARY INFORMATION: The following items will be discussed during the workshop: Generic Letter 88-20, Preparing for External Events in the IPE, IPE Submittal Guidance and NRC Staff Review Requirements on the Front and Back end Submittals. The workshop will also be used to discuss NRC plans on Accident Management.

Those members of the public who wish to attend the worhshop should notify the contact listed above. In addition, those members of the public who wish to make a concise presentation at the workshop, should indicate their desire to do so to the contact listed above, so that they can be added to the agenda. Early notification is recommended since requests will be processed as they are received. Written comments will also be accepted up to and during the workshop time period.

Dated in Rockville, Maryland, this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

William Beckner,

Chief, Severe Accident Issues Branch, Office of Nuclear Regulatory Research.

[FR Doc. 88-29996 Filed 12-28-88; 8:45 am]

BILLING CODE 7509-01-M

[Docket No. 50-344]

Portland General Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and 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-1 issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant, located in Columbia County, Oregon. The request for amendment was submitted by letter dated May 9, 1988.

The proposed amendment would revise the license for Trojan to reflect that Pacific Power and Light Company has merged with Utah Power and Light Company to become a new corporation named PC/UP&L Merging Corporation which will change its name to PacifiCorp, but will operate under the assumed business name of Pacific Power and Light Company. Pacific Power and Light Company has a 2.5 ownership interest in Trojan. The other owners are Portland General Electric Company (67.5 percent) and Eugene Water and Electric Board (30 percent). Portland General Electric Company is responsible for the operation of Trojan.

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.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless its receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, 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-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 4:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licnese, 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 petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. 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 must 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 a 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. A 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 fifteen (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 fifteen (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, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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 becomes 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 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 involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 be Commission take this action, it will publish 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.

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 Servicing Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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 Leonard A. Girard, Esq., Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, 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 wtih respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washinton, DC 20555, and at the Portland State University Library, 731 SW., Harrison Street, Portland, Oregon 97297.

Dated at Rockville, Maryland, this 21st day of December, 1988.

For the Nuclear Regulatory Commission

George W. Knighton,

Project Director, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Officer of Nuclear Reactor Regulation.

[FR Doc. 88-29995 Filed 12-28-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost Comparison Studies; Circular No. A-76

AGENCY: Office of Management and Budget.

ACTION: Publication of Schedules for OMB Circular No. A-76 cost comparison studies.

SUMMARY: This Notice contains the schedules of cost comparisons for FY 1989 for the Department of Defense. Executive Order 12615, Performance of Commercial Activities, dated November 19, 1987, requires OMB to publish the schedules as they become available. This is the initial submission for DOD; additions to these schedules, where the goals required by the Executive Order have not been met, and schedules from other agencies will be forthcoming.

The department goal and number of positions scheduled for study are listed below:

Agency: DOD
Goal: 29,664
Scheduled: 27,146

General questions relating to the cost comparisons should be referred to the following individuals:

Air Force, Colonel Dave Held, (202) 695-7076
Army, Edward Breland, (202) 694-9046
Navy, Charlie Maca, (202) 697-0750
Defense Logistics Agency, Billie Blackman, (202) 274-5050
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Joseph R. Wright, Jr.,

Director.

DEPARTMENT OF THE ARMY.—LIST OF COST COMPARISONS THAT WILL BE COMPLETED IN FY 1989

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE, CIV	FTE, MIL
AMC	INSTALLATION SUPPORT	ANNISTON ARMY DEPOT, AL	287	0
AMC	INSTALLATION SUPPORT	RED RIVER ARMY DEPOT, TX	331	0
AMC	INSTALLATION SUPPORT	US ARMAMENT RES DEV & ENG, NJ	407	0
COE	ADP SERVICES	NAN, NY NY	1	16
COE	MOTOR VEHICLE OPERAT	NORFOLK, VA	11	2
COE	GRAPHIC ARTS	HUNTSVILLE, AL	1	3
COE	ADMIN SERVICES	NAN, NY	0	9
FORSCOM	MAIT	FT. CAMPBELL, KY	5	11
FORSCOM	DOL PACKAGE	FT. CARSON, CO	406	58
FORSCOM	DPTM PACKAGE	FT. CARSON, CO	57	3
FORSCOM	DPTM (TASC) PACKAGE	FT. DEVENS, MA	35	0
FORSCOM	DEH PACKAGE	FT. DEVENS, MA	233	0
FORSCOM	DOL (SUPPLY)	FT. DEVENS, MA	21	9
FORSCOM	AUDIOVISUAL	FT. DRUM, NY	29	5
FORSCOM	LAUNDRY/DRY CLEANING	FT. HOOD, TX	77	0
FORSCOM	DEH HOUSING	FT. HOOD, TX	20	0
FORSCOM	AUDIOVISUAL	FT. LEWIS, WA	57	2
FORSCOM	LAUNDRY/DRY CLEANING	FT. LEWIS, WA	25	0
FORSCOM	DPTM (TASC) PACKAGE	FT. McCOY, WI	23	0
FORSCOM	AUDIOVISUAL	FT. McPHERSON, GA	35	2
FORSCOM	DOL	FT. McPHERSON, GA	74	17
FORSCOM	FOOD SERVICE	FT. BUCHANAN, PR	6	12
FORSCOM	AUDIOVISUAL	FT. BUCHANAN, PR	7	3
FORSCOM	DOL PACKAGE	FT. BUCHANAN, PR	13	4
FORSCOM	AUDIOVISUAL	FT. MEADE, MD	40	3
FORSCOM	DEH PACKAGE	FT. MEADE, MD	344	0
FORSCOM	DOL PACKAGE	FT. MEADE, MD	267	13
FORSCOM	PUBLICAT DISTRIB CTR	FT. INDIANTOWN GAP, PA	8	1
FORSCOM	DEH PACKAGE	FT. INDIANTOWN GAP, PA	58	0
FORSCOM	DOL PACKAGE	FT. INDIANTOWN GAP, PA	54	0
FORSCOM	DPTM (TASC) PACKAGE	FT. ORD, CA	28	11
FORSCOM	DPTM (RANGE MAIN)	FT. POLK, LA	16	2
FORSCOM	RANGE OPER MAIN	FT. HOOD, TX	33	0
FORSCOM	AUDIOVISUAL INFORMAT	FT. RILEY, KS	28	0
HSC	NUTRITIONAL CARE	FT. CARSON, CO	44	6
HSC	NUTRITIONAL CARE	FT. MONMOUNTH, NJ	16	2
HSC	CLINIC/DISPENSARY	TOOELE ARMY DEPOT, UT	34	2
HSC	CLINIC/DISPENSARY	NATICK LAB, MA	4	3
HSC	CLINIC/DISPENSARY	SENECA ARMY DEPOT	8	8
HSC	CLINIC/DISPENSARY	WATERVLIET ARSENAL	9	0
HSC	CLINIC/DISPENSARY	RED RIVER ARMY DEPOT, TX	15	0
HSC	CLINIC/DISPENSARY	FT McCOY, WI	2	1
HSC	CLINIC/DISPENSARY	ROCK ISLAND, IL	14	6
HSC	CLINIC/DISPENSARY	SAVANNA ARMY DEPOT, GA	2	1
HSC	CLINIC/DISPENSARY	SELFRIDGE AIR NG, MI	10	12
HSC	CLINIC/DISPENSARY	DETROIT ARSENAL, MI	11	0
HSC	CLINIC/DISPENSARY	DEFENSE GEN SUPPORT CENTER, VA	4	0
HSC	CLINIC/DISPENSARY	TOBYHANNA ARMY DEPOT, PA	14	1
HSC	CLINIC/DISPENSARY	PINE BLUFF ARSENAL, AK	7	8
HSC	CLINIC/DISPENSARY	SACRAMENTO ARMY DEPOT, CA	13	0
HSC	CLINIC/DISPENSARY	SHARPE ARMY DEPOT, CA	12	0
HSC	CLINIC/DISPENSARY	SIERRA ARMY DEPOT, CA	11	18
HSC	CLINIC/DISPENSARY	TRACY ARMY DEPOT, CA	7	2
HSC	CLINIC/DISPENSARY	UMATILLA ARMY DEPOT, OR	1	6
HSC	CLINIC/DISPENSARY	ARLINGTON HALL, VA	2	3
HSC	CLINIC/DISPENSARY	CAMERON STATION, VA	3	2
HSC	ELECTRONIC COMMO EQUIP	FITZSIMONS AMC, CO	21	0
HSC	CUSTODIAL SERVICE	FT. BEN HARRISON, IN	7	0
HSC	CUSTODIAL SERVICE	FT. BENNING, GA	44	0
HSC	CUSTODIAL SERVICE	FT. HUACHUCA, AZ	15	0
HSC	CUSTODIAL SERVICE	FT. RILEY, KS	23	0
HSC	CUSTODIAL SERVICE	CARLISLE BARRACKS, PA	3	0
HSC	CUSTODIAL SERVICE	WEST POINT, NY	9	0
HSC	CUSTODIAL SERVICE	WALTER REED AMC, DC	141	0
HSC	FOOD SERVICE	FT. DETRICK, MD	0	6
HSC	OFFICE EQUIP REPAIR	WALTER REED AMC, DC	7	0
HSC	WATER PLANTS	FT. DETRICK, MD	11	0
HSC	STORAGE & WAREHOUSING	ABERDEEN, MD	3	0
HSC	VISUAL INFORMATION	FT. GORDON, GA	6	0
HSC	VISUAL INFORMATION	FT. DETRICK, MD	4	0
HSC	VISUAL INFORMATION	PRESIDIO, SAN FRANCISCO, CA	4	3
HSC	VISUAL INFORMATION	FT. LEWIS, WA	5	0
HSC	VISUAL INFORMATION	TRIPLER AMC, HI	0	4
HSC	VISUAL INFORMATION	FITZSIMONS AMC, CO	1	1
HSC	VISUAL INFORMATION	WALTER REED AMC, DC	28	13
MDW	MILITARY CLOTHING	FT. MYER, VA	1	8
MDW	MAIL & DISTRIB SERV	FT. McNAIR, DC	5	6
MDW	COMMUNICAT & ELECTRON	FT. McNAIR, DC	0	10
MTMC	VEHICLE PREPARATION	OARB	17	0
MTMC	INSTALLATION SUPPLY	SUNNY POINT, NC	11	0

DEPARTMENT OF THE ARMY.—LIST OF COST COMPARISONS THAT WILL BE COMPLETED IN FY 1989—Continued

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE, CIV	FTE, MIL
TRADOC	FACILITY ENGINEER	FT. BENNING, GA	853	5
TRADOC	INDUSTRIAL OPERATIONS	FT. BENNING, GA	840	82
TRADOC	OPERATION RANGE & AVIAT	FT. BENNING, GA	135	138
TRADOC	TASC	FT. BENNING, GA	101	19
TRADOC	INSTALLATION SUPPORT	FT. BLISS, TX	1,138	59
TRADOC	FACILITY ENGINEERS	FT. DIX, NJ	511	7
TRADOC	TASC	FT. EUTIS, NJ	93	4
TRADOC	ADMIN SUPPORT	FT. EUTIS, NJ	16	16
TRADOC	ADMIN SUPPORT	FT. EUTIS, NJ	42	72
TRADOC	DOL	FT. KNOX, KY	705	10
TRADOC	FOOD SERVICE	FT. KNOX, KY	30	216
TRADOC	FACILITY ENGINEERS	FT. KNOX, KY	523	4
TRADOC	FACILITY ENGINEERS	FT. LEAVENWORTH, KS	297	8
TRADOC	INDUSTRIAL OPERAT	FT. LEAVENWORTH, KS	72	3
TRADOC	FACILITY ENGINEERS	FT. LEE, VA	260	0
TRADOC	ADP	FT. LEE, VA	15	12
TRADOC	PRINTING & REPRODUCT	FT. LEE, VA	24	3
TRADOC	INDUSTRIAL OPERAT	FT. RUCKER, AL	445	113
TRADOC	FACILITY ENGINEERS	FT. RUCKER, AL	378	5
TRADOC	AUDIOVISUAL	FT. RUCKER, AL	59	3
TRADOC	FOOD SERVICE	FT. RUCKER, AL	29	25
TRADOC	LOG PACKAGE	REDSTONE, AL	15	133
TSA	COMMISSARY SHELF STOCK	FT. IRWIN, CA	13	0
TSA	COMMISSARY SHELF STOCK	FT. McNAIR, DC	15	0
TSA	COMMISSARY SHELF STOCK	FT. DRUM, NY	6	0
TSA	COMMISSARY SHELF STOCK	CAMERON STATION, VA	59	0
TSA	COMMISSARY SHELF STOCK	FT. BRAGG, NC	84	0
TSA	COMMISSARY SHELF STOCK	FT. ORD, CA	50	0
TSA	COMMISSARY SHELF STOCK	FT. BENNING, GA	50	0
TSA	COMMISSARY SHELF STOCK STORAGE & ISSUE.	FT. LEWIS, WA	70	0
TSA	STORAGE & ISSUE	FT. LEE, VA	8	0
TSA	STORAGE & ISSUE	FT. RICHARDSON, AK	2	0
TSA	STORAGE & ISSUE	FT. BELVOIR, VA	16	0
TSA	STORAGE & ISSUE	FT. MEADE, MD	20	0
TSA	STORAGE & ISSUE	REDSTONE ARSENAL AL	13	0
TSA	STORAGE & ISSUE	TOBYHANNA ARMY DEPOT, PA	2	0
TSA	STORAGE & ISSUE	FT. BLISS, TX	26	0
OTSA	STORAGE & ISSUE	FT. LEAVENWORTH, KS	7	0
TSA	STORAGE & ISSUE	FITZSIMONS AMC, CO	3	0
TSA	STORAGE & ISSUE	FT. MONROE, VA	4	0
WESTCOM	FACILITY ENGINEERS	OAHU, HI	597	0
WESTCOM	DOL	OAHU, HI	536	133
WESTCOM	PACIFIC TRAIN FACILITY	HAWAII, HI	44	24

AIR FORCE.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989

COMMERCIAL ACTIVITY	LOCATION	FTE, CIV	FTE MIL
COMMISSARY WAREHOUSE	SCOTT AFB, IL	14	0
COMMISSARY WAREHOUSE	MATHER AFB, CA	13	0
COMMISSARY WAREHOUSE	TRAVIS AFB, CA	13	0
COMMISSARY WAREHOUSE	RANDOLPH AFB, TX	16	0
COMMUNICATION FUNCTIONS	WILLOW GROVE AFRES FAC, PA	17	0
COMMUNICATION FUNCTIONS	GEN BILLY MITCHELL FLD, WI	13	0
DATA PROCESSING	NORTON AFB, CA	3	3
FUELS MANAGEMENT	KELLY AFB, TX	70	0
FURNISHINGS MANAGEMENT	DOVER AFB, DE	3	2
FURNISHINGS MANAGEMENT	ANDREWS AFB, MD	1	2
FURNISHINGS MANAGEMENT	NORTON AFB, CA	2	1
FURNISHINGS MANAGEMENT	MCCHORD AFB, WA	4	0
FURNISHINGS MANAGEMENT	MCGUIRE AFB, NJ	4	1
FURNISHINGS MANAGEMENT	TRAVIS AFB, CA	1	6
FURNISHINGS MANAGEMENT	SCOTT AFB, IL	1	4
GROUND RADIO MAINTENANCE	KIRTLAND AFB, NM	3	2
GROUNDS MAINTENANCE	EIELSON AFB, AK	2	12
GROUNDS MAINTENANCE	ELMENDORF AFB, AK	2	3
GROUNDS MAINTENANCE	COLUMBUS AFB, MS	17	0
GROUNDS MAINTENANCE	KELLY AFB, TX	2	0
GROUNDS MAINTENANCE	WRIGHT-PATTERSON AFB, OH	48	0
GROUNDS MAINTENANCE	HILL AFB, UT	35	0
GROUNDS MAINTENANCE	TINKER AFB, OK	20	0
GROUNDS MAINTENANCE	CHARLESTON AFB, SC	13	2
GROUNDS MAINTENANCE	DOVER AFB, DE	9	1
GROUNDS MAINTENANCE	TRAVIS AFB, CA	16	0
GROUNDS MAINTENANCE	NORTON AFB, CA	19	0
GROUNDS MAINTENANCE	SCOTT AFB, IL	13	0
GROUNDS MAINTENANCE	POPE AFB, NC	8	5

AIR FORCE.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989—Continued

COMMERCIAL ACTIVITY	LOCATION	FTE, CIV	FTE MIL
GROUNDS MAINTENANCE	KIRTLAND AFB, NM	29	1
GROUNDS MAINTENANCE	HANSCOM AFB, MA	6	3
LABORATORY SUPPLY SUPPORT	EDWARDS AFB, CA	13	5
LABORATORY SUPPLY SUPPORT	EGLIN AFB, FL	9	5
LABORATORY SUPPLY SUPPORT	WRIGHT-PATTERSON AFB, OH	46	1
LABORATORY SUPPLY SUPPORT	KIRTLAND AFB, OH	22	6
LINEN	HICKAM AFB, HI	1	2
LOGISTICS MATL CONTROL ACTIVITY	HILL AFB, UT	3	3
MB 26 SIMULATOR MAINT	MULTIPLE INSTALL	0	165
MIL FAMILY HOUSING MAINT	DOVER AFB, DE	8	0
MIL FAMILY HOUSING MAINT	MCCHORD AFB, WA	16	0
MIL FAMILY HOUSING MAINT	TRAVIS AFB, CA	41	0
MIL FAMILY HOUSING MAINT	LITTLE ROCK AFB, AR	29	0
MIL FAMILY HOUSING MAINT	CANNON AFB, NM	13	0
MIL FAMILY HOUSING MAINT	HOMESTEAD AFB, FL	21	0
MIL FAMILY HOUSING MAINT	MOODY AFB, GA	5	0
MIL FAMILY HOUSING MAINT	MYRTLE BEACH AFB, SC	9	0
OCCUPATIONAL MEDICINE	WRIGHT-PATTERSON AFB, OH	27	0
OCCUPATIONAL MEDICINE	KELLY AFB, TX	12	0
PICK UP & DELIVERY	MCCLELLAN AFB, CA	51	0
PRECISION MEASUREMENT EQUIP LAB	HANSCOM AFB, MA	6	12
POSTAL SERVICE CENTER	ROBINS AFB, GA	0	2
POSTAL SERVICE CENTER	MCCLELLAN AFB, CA	1	0
POSTAL SERVICE CENTER	TINKER AFB, OK	1	0
PROTECTIVE COATING	ELMENDORF AFB, AK	15	13
PROTECTIVE COATING	MCCLELLAN AFB, CA	16	0
PROTECTIVE COATING	NORTON AFB, CA	12	3
PROTECTIVE COATING	TRAVIS AFB, CA	18	5
PROTECTIVE COATING	HICKAM AFB, HI	13	10
PROTECTIVE COATING	PATRICK AFB, FL	12	0
RANGE MAINT	HILL AFB, UT	28	0
REFUSE COLLECTION	EIELSON AFB, AK	7	0
COMMISSARY SHELF STOCK CUSTODIAL/WAREHOUSE	LOS ANGELES AFS, CA	18	0
SOFTWARE PROGRAMMING	RANDOLPH AFB, TX	0	10
TAPE LIBRARY	RANDOLPH AFB, TX	1	9
TRANSIENT AIRCRAFT MAINT	DOVER AFB, DE	19	44
TRANSIENT AIRCRAFT MAINT	HURLBURT FIELD, FL	0	5
TRANSIENT AIRCRAFT MAINT	POPE AFB, NC	2	11
TRANSIENT AIRCRAFT MAINT	MCGUIRE AFB, NJ	14	15
TRANSIENT AIRCRAFT MAINT	MCCHORD AFB, WA	21	12
TRANSIENT AIRCRAFT MAINT	WRIGHT-PATTERSON AFB, OH	25	3
TRANSIENT AIRCRAFT MAINT	GILA BEND, AZ	0	5
TRANSIENT AIRCRAFT MAINT	MOODY AFB, GA	7	0
TV ORDINANCE SCORING SYSTEM	MACDILL AFB, FL	0	18
UNDRGRAD PILOT TRAIN AIRCRAFT	LAUGHLIN AFB, TX	126	853
VEHICLE OPER & MAINT	HILL AFB, UT	177	0
VEHICLE OPER & MAINT	MCCLELLAN AFB, CA	89	0
WATERCRAFT	HOMESTEAD AFB, FL	0	46
WEATHER SERVICES	MULTIPLE INSTALL	44	36
AUTO CMD/CONTROL EXEC SUPPORT SYS	OFFUTT AFB, NE	2	21
ADMIN SUPPORT/POSTAL SVC CTR	HANSCOM AFB, MA	4	9
ADMIN SWITCHBOARD	TRAVIS AFB, CA	16	0
ADMIN SUPPORT	LACKLAND AFB, TX	22	0
ADMIN SUPPORT	TRAVIS AFB, CA	7	0
ADMIN SUPPORT	HICKAM AFB, HI	15	0
ADMIN SUPPORT	HOMESTEAD AFB, FL	4	5
AUDIOVISUAL	HILL AFB, UT	19	0
AUDIOVISUAL	MCCLELLAN AFB, CA	19	0
BASE OPER SUPPORT	MINN/ST PAUL IAP MN	113	0
BASE OPER SUPPORT	GREATER PITTSBURGH, PA	99	0
BASE OPER SUPPORT	NIAGARA FALLS, NY	117	0
BASE OPER SUPPORT	CHICAGO O'HARE, IL	130	0
BASE OPER SUPPORT	NEWARK AFB, OH	96	0
BASE OPER SUPPORT	RICKENBACKER ANGB, OH	70	0
BASE OPER SUPPORT	OTIS ANGBG, MA	67	0
BASE OPER SUPPORT	BUCKLEY ANGB, CO	83	0
BASE INFO TRANSFER CTR/POSTAL SVC	KELLY AFB, TX	17	0
BASE INFO TRANSFER CTR/POSTAL SVC	SHEPPARD AFB, TX	8	0
BOX MFG & LUMBER RECLAM	KELLY AFB, TX	21	0
BOX MFG & LUMBER RECLAM	TINKER AFB, OK	33	0
BOX MFG & LUMBER RECLAM	ROBINS AFB, GA	19	0
BOX MFG & LUMBER RECLAM	MCCLELLAN AFB, CA	22	0
BOX MFG & LUMBER RECLAM	HILL AFB, UT	19	0
C-141 SIMULATOR MAINT	MULTIPLE INSTALL	45	121
CHAMBER OPER	BROOKS AFB, TX	2	7
CIVIL ENGINEER	OTIS ANGB, MA	87	0
CIVIL ENGINEER	BUCKLEY ANGB, CO	31	0
CIVIL ENGINEER	RICKENBACKER ANGB, OH	73	0

AIR FORCE.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989—Continued

COMMERCIAL ACTIVITY	LOCATION	FTE, CIV	FTE MIL
COMMISSARY WAREHOUSE	MCGUIRE AFB, NJ	18	0
COMMISSARY WAREHOUSE	MULTIPLE INSTALL	21	0
COMMISSARY WAREHOUSE	LITTLE ROCK AFB, AR	12	0
COMMUNICATION FUNCTIONS	MINN/ST PAUL, MN	27	0

NAVY.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE CIV	FTE MIL
ASO	BUILD/STRUC	PHILADELPHIA	101	0
BRHOSP	CUSTODIAL SERVICES	GULFPORT	4	0
COMNAVSEA	AUDIOVISUAL/VISUAL	WASHINGTON	7	0
SYSCOM	INFO SERVICES			
COMNAVSEA	ADMIN SUPPORT SERV	WASHINGTON	6	0
SYSCOM				
COMNAVSEA	REFERENCE AND TECH	WASHINGTON	8	0
SYSCOM	LIBRARIES			
COMNAVSEA	INTERNAL MAIL	WASHINGTON	22	0
SYSCOM	MESSENGER SERVICES			
COMPACMIS	BUILD/STRUCT	POINT MAGU	198	0
TESTCEN				
COMSCLANT	MOTOR POOL OPER	BAYONNE	4	0
COMSCLANT	AUDIOVISUAL/VISUAL INFO SERVICES	BAYONNE	1	1
COMSCPAC	BASE SUPPLY OPER	OAKLAND	8	0
CRYP TRA	TRAIN DEVICES	CORRY STATION	12	84
TECHTRA	SIMULATORS			
EPMAC	ADMIN SPT SERVICES	NEW ORLEANS	19	4
FASWTRA CENLANT	ADMIN SPT SERVICES	NORFOLK	1	0
FASWTRA CENLANT	BUILD/STRUCT	NORFOLK	1	0
FCTLANT	BUILD/STRUCT	VIRGINIA BEACH	79	0
FLEMINEWARTRACEN	WORD PROCESS CENTER	CHARLESTON	3	3
FLTRACEN	TRAINING DEVELOP	NORFOLK	7	3
FMWTC	INTERNAL MAIL	CHASN	0	1
GEN SKILL TRA AMTG	TRAINING DEVELOP	MILLINGTON	10	131
GEN SKILL TRA TTC	PRINT/REPRO	MERIDIAN	1	0
GUIDED MSL	WORD PROCESSING CENTERS	DAM NECK	0	1
GUIDED MSL	TRAINING DEVICES SIMULATORS	NORFOLK	0	58
N&MC	CUSTODIAL SERVICES	ALAMEDA	1	0
N&MC	BUILD/STRUC	BROOKLYN	2	0
N&MC	BUILD/STRUC	PORTLAND	1	0
N&MC	CUSTODIAL SERVICES	RICHMOND	1	0
N&MC	CUSTODIAL SERVICES	SAN BERNADINO	1	0
N&MC	BUILD/STRUC	TACOMA	1	0
NAF	BUILD/STRUC	ANDREWS AFB, WASH	29	0
NAF	DATA TRANSCRIPTION	MAYPORT	0	3
NAS	CUSTODIAL SERVICES	ATLANTA	13	0
NAS	BASE SUPPLY OPER	ATLANTA	6	6
NAS	DATA PROCESS SERVICES	ATLANTA	2	3
NAS	BUILD/STRUC	ATLANTA	30	0
NAS	BASE SUPPLY OPER	BRUNSWICK	17	0
NAS	DATA TRANSCRIPTION	BRUNSWICK	7	0
NAS	BASE SUPPLY OPER	CHASE FIELD	29	26
NAS	BASE SUPPLY OPER	CORPUS CHRISTI	144	5
NAS	AIR COND/REF PLANTS	DALLAS	32	3
NAS	DATA PROCESS SERVICES	DALLAS	7	2
NAS	MOTOR VEHICLE OPER	GLENVIEW	15	9
NAS	BUILD/STRUC	GLENVIEW	42	9
NAS	PEST MGT	JACKSONVILLE	3	0
NAS	MOTOR VEH MAINT	JACKSONVILLE	47	0
NAS	MOTOR VEH MAINT	KEY WEST	27	0
NAS	DATA PROCESS SERVICES	KEY WEST	14	0
NAS	ADMIN SPT SERVICES	MEMPHIS	8	2
NAS	BUILD/STRUC	MIRAMAR	224	66
NAS	BUILD/STRUC	MOFFETT FIELD	199	15
NAS	TRAINING DEVICES	NEW ORLEANS	2	4
NAS	BUILD/STRUC	NEW ORLEANS	47	5
NAS	BASE SUPPLY OPER	NORTH ISLAND	184	83
NAS	AIR CONDIT/REF PLANTS	WEYMOUTH	49	14
NAS	DATA PROCESS SERVICES	WEYMOUTH	6	2
NAS	BUILD/STRUC	WILLOW GROVE	66	0
NATTC	BASE SUPPLY OPER	MILLINGTON	7	3
NATTC	ADMIN SPT SERVICES	MILLINGTON	0	11
NAVAIR ENGCEN	HEATING PLANTS	LAKEHURST	108	0
NAVAIR ENGCEN	AUDIOVISUAL/VISUAL	LAKEHURST	13	3
NAVAIRES	TRNG DEVICES/AV EQUIP	SAN DIEGO	1	0
NAVAIRES	CUSTODIAL SERVICES	SAN DIEGO	1	0
NAVAIR TESTCEN	OTHER NONMANUFAC OPS	PATUXENT RIVER	36	6
NAVAVION ICCEN	BUILD/STRUC	INDIANAPOLIS	69	0

NAVY.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989—Continued

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE CIV	FTE MIL
NAVAVN DEPOT	INDUSTRIAL PLANT EQUIP	ALAMEDA	15	0
NAVAVN DEPOT	MOTOR VEH OPER	ALAMEDA	52	0
NAVAVN DEPOT	BASE SUPPLY OPER	ALAMEDA	5	0
NAVAVN DEPOT	OTHER INSTALL SERVICES	ALAMEDA	1	0
NAVAVN DEPOT	ENGINEER & TECH SERV	ALAMEDA	2	0
NAVAVN DEPOT	INDUS PLANT EQUIP	CHERRY POINT	6	0
NAVAVN DEPOT	MOTOR VEH OPER	JACKSONVILLE	19	0
NAVAVN DEPOT	BASE SUPPLY OPER	JACKSONVILLE	27	0
NAVAVN DEPOT	BASE SUPPLY OPER	NORFOLK	8	0
NAVAVN DEPOT	AUDIOVISUAL/VISUAL INFO	NORFOLK	7	0
NAVAVN DEPOT	FINANCIAL/PAYROLL	PENSACOLA	8	0
NAVAVN DEPOT	MOTOR VEH OPER	PENSACOLA	10	0
NAVAVN DEPOT	BASE SUPPLY OPER	PENSACOLA	8	0
NAVAVN DEPOT	OTHER NONMANUFAC OPS	PENSACOLA	11	0
NAVAVN DEPOT	BASE SUPPLY OPER	SAN DIEGO	7	0
NAVAVN DEPOT	ADMIN SPT SERV	SAN DIEGO	9	0
NAVAVN DEPOT	OTHER PROD MANUF FAB IN HOUSE	SAN DIEGO	49	0
NAVCOAST SYSCEN	OTHER VEH OPS	PANAMA CITY	17	0
NAVCOMM STA	TELECOMMUNICATION CENTERS	PUGET SOUND	24	1
NAVCOMM STA	CUSTODIAL SERVICES	SAN DIEGO	6	0
NAVCOMM STA	OTHER INSTALL SERVICES	SAN DIEGO	5	0
NAVCOMM STA	ADMIN SPT SERVICES	STOCKTON	8	0
NAVCOMM STA	BUILD/STRUC	STOCKTON	77	0
NAVCOMMU	MOTOR VEH OPER	CHELTENHAM	4	0
NAVCOMMU	GROUNDS/SURFACED AREAS	CHELTENHAM	3	0
NAVEDTRA SUPPCEN	AUDIOVISUAL	NORFOLK	71	42
NAVENVIR HLTHCEN	DATA PROCESS SERVICES	NORFOLK	2	0
NAVFAC	ADMIN TELEPHONE SVC	CENTERVILLE BEACH	11	40
NAVFINCEN	DATA PROCESS SVC	CLEVELAND	107	17
NAVGMSCOL	REFERENCE AND TECH LIBRARIES	DAM NECK	5	3
NAVHOSP	BUILD/STRUC	BEAUFORT	34	0
NAVHOSP	DATA PROCESS SVC	BETHESDA	12	0
NAVHOSP	MATERIEL SVC	BREMERTON	12	0
NASHOSP	CLINICS & DISPEN	BREMERTON	30	12
NASHOSP	MOTOR VEH OPER	BREMERTON	2	0
NAVHOSP	SYS DESIGN/DEVELOP	BREMERTON	7	0
NAVHOSP	MEDICAL RECORDS TRANSCRIPTION	CAMP LEJUNE	7	0
NAVHOSP	DATA PROCESS SVC	CAMP LEJUNE	7	1
NAVHOSP	BUILD/STRUC	CAMP LEJUNE	54	0
NAVHOSP	MED RECORDS TRANSCRIP	CAMP PENDLETON	10	0
NAVHOSP	CUSTODIAL SERVICES	CAMP PENDLETON	50	2
NAVHOSP	MOTOR VEH OPER	CAMP PENDLETON	6	0
NAVHOSP	DATA PROCESS SVC	CAMP PENDLETON	12	0
NAVHOSP	MED RECORDS TRANSCRIP	CHARLESTON	8	0
NAVHOSP	DATA PROCESS SVC	CHARLESTON	8	0
NAVHOSP	MED RECORDS TRANSCRIP	CHERRY POINT	5	0
NAVHOSP	BUILD/STRUC	CHERRY POINT	4	0
NAVHOSP	DATA PROCESS SVC	CORPUS CHRISTI	4	0
NAVHOSP	SYS DESIGN/DEVELOP	GREAT LAKES	2	0
NAVHOSP	MED RECORDS TRANSCRIP	JACKSONVILLE	9	0
NAVHOSP	MED RECORDS TRANSCRIP	LEMOORE	1	0
NAVHOSP	MED RECORDS TRANSCRIP	LONG BEACH	17	0
NAVHOSP	CUSTODIAL SVC	LONG BEACH	43	0
NAVHOSP	MOTOR VEH OPER	LONG BEACH	18	0
NAVHOSP	DATA PROCESS SVC	LONG BEACH	0	2
NAVHOSP	CUSTODIAL SVC	MILLINGTON	19	0
NAVHOSP	DATA PROCESS SVC	MILLINGTON	6	0
NAVHOSP	SYS DESIGN/DEVELOP	MILLINGTON	3	0
NAVHOSP	NUTRITIONAL CARE	NEWPORT	22	2
NAVHOSP	DATA PROCESS SVC	NEWPORT	7	0
NAVHOSP	MED RECORDS TRANSCRIP	OAK HARBOR	5	3
NAVHOSP	MATERIEL SERVICES	OAKLAND	4	0
NAVHOSP	MED RECORDS TRANSCRIP	OAKLAND	20	19
NAVHOSP	MED RECORDS TRANSCRIP	ORLANDO	6	0
NAVHOSP	DATA PROCESS SERVICES	ORLANDO	5	0
NAVHOSP	CUSTODIAL SERVICES	ORLANDO	18	0
NAVHOSP	MED RECORDS TRANSCRIP	PENSACOLA	10	0
NAVHOSP	CUSTODIAL SERVICES	PENSACOLA	33	0
NAVHOSP	SYS DESIGN/DEVELOP	PENSACOLA	12	0
NAVHOSP	CLINICS AND DISPENSAR	PHILADELPHIA	33	3
NAVHOSP	MED RECORDS TRANSCRIP	PHILADELPHIA	8	0
NAVHOSP	DATA PROCESS SVC	PHILADELPHIA	9	0
NAVHOSP	MED RECORDS TRANSCRIP	PORTSMOUTH	23	0
NAVHOSP	NUTRITIONAL CARE	ROOSEVELT ROADS	21	3
NAVHOSP	MED RECORDS TRANSCRIP	ROOSEVELT ROADS	5	0
NAVHOSP	CUSTODIAL SVC	ROOSEVELT ROADS	8	0
NAVHOSP	MED RECORDS TRANSCRIP	SAN DIEGO	14	0
NAVHOSP	CUSTODIAL SVC	SAN DIEGO	81	0
NAVHOSP	MOTOR VEH OPER	SAN DIEGO	7	0
NAVMASSO	OPER OF ADP EQUIP	NORFOLK	16	14

NAVY.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989—Continued

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE CIV	FTE MIL
NAVMED ATASERVCEN	SYS DESIGN/DEVELOP	BETHESDA	35	0
NAVMED CLINIC	GROUNDS AND SURFACED AREAS	QUANTICO	2	0
NAVMED CLINIC	CLINICS AND DISPEN	SAN FRANCISCO	32	0
NAVMEDCOM	DATA PROCESS SVC	NORFOLK	27	0
NAVMEDCOM	OTHER MAINT/REP REAL PROPERTY	BETHESDA	189	4
NAVMEDCOM	MOTOR VEH OPER	OAKLAND	7	0
NAVMEDCOM	DATA PROCESS SVC	OAKLAND	22	0
NAVMEDCOM	DATA PROCESS SVC	JACKSONVILLE	13	0
NAVMEDCOM	DATA PROCESS SVC	SAN DIEGO	4	0
NAVOCEAN SYSCEN	OTHER TEST/MEAS DIAGNOSTIC EQUIP	SAN DIEGO	9	0
NAVOCEAN SYSCEN	INTERNAL MAIL MESSENGER SVC	SAN DIEGO	10	0
NAVORDSTA	DATA PROCESS SVC	LOUISVILLE	19	0
NAVPHI BASE	MOTOR VEH MAINT	LITTLE CREEK	85	0
NAVPHI BASE	BASE SUPPLY ORDER	LITTLE CREEK	22	0
NAVPHIB SCOL	TRAINING DEVELOP	LITTLE CREEK	2	9
NAVPHIB SCOL	INTERNAL MAIL MESSENGER SVC	LITTLE CREEK	37	1
NAVRES PERSCEN	MICROFILMING	NEW ORLEANS	6	0
NAVSCSCOL	TRAINING DEVEL SUPPORT	ATHENS	6	5
NAVSEC GRUACT	MESS HOUSEKEEPING	NORTHWEST CHESAPE	5	0
NAVSHIP	MOTOR VEH OPER	PORT HUENE	7	0
NAVSHIPYD	WATERWAYS	CHARLESTON	22	0
NAVSHIPYD	OTHER INSTALL SVC	LONG BEACH	4	0
NAVSHIPYD	CARE/REWAREHOUSE	LONG BEACH	8	0
NAVSHIPYD	OTHER ADP OPS	LONG BEACH	3	0
NAVSHIPYD	BUILD/STRUC	LONG BEACH	31	0
NAVSHIPYD	ELEC PLANTS	MARE ISLAND	3	0
NAVSHIPYD	CARE/REWAREHOUSE	MARE ISLAND	4	0
NAVSHIPYD	OTHER STORAGE	MARE ISLAND	4	0
NAVSHIPYD	BUILD/STRUC	MARE ISLAND	50	0
NAVSHIPYD	WATERWAYS	MARE ISLAND	4	0
NAVSHIPYD	STORAGE/WAREHOUSE	PEARL HARBOR	8	0
NAVSHIPYD	OTHER MAINT/REP REAL PROPERTY	PHILADELPHIA	55	0
NAVSTA	ADMIN TELEPHONE SVC	CHARLESTON	14	0
NAVSTA	BUILD/STRUC	MAYPORT	104	0
NAVSTA	BUILD/STRUC	NEW YORK	68	11
NAVSTA	OPER OF BULK LIQUID STORAGE	ROOSEVELT ROADS	19	0
NAVSUB	DATA PROCESS SVC	NEW LONDON	2	0
NAVSUB SCOL	ADMIN SPT SVC	GROTON	9	1
NAVSUB	TRAINING DEVICES	PEARL HARBOR	2	4
NAVSUB	TRAINING DEVICES	SAN DIEGO	0	10
NAVSUP	STORAGE/WAREHOUSING	NEW ORLEANS	0	7
NAVSWC	MOTOR VEH OPER	DAHLGREN	162	5
NAVSWC	MAINT OF ADP EQUIP	DAHLGREN	8	0
NAVSWC	BUILD/STRUC	DAHLGREN	121	0
NAVSWC	PEST MGT	SILVER SPRING	1	0
NAVSWC	TELECOMMUNICATION	SILVER SPRING	5	1
NAVSWC	DATA PROCESS SVC	SILVER SPRING	9	0
NAVSWC	BUILD/STRUC	SILVER SPRING	104	0
NAVTRAGRU	ADMIN SPT SVC	MILLINGTON	3	3
NAVTRASTA	PEST MGT	ORLANDO	6	0
NAVUSEA	HEATING PLANTS	KEYPORT	7	0
NAVWARCOL	CUSTODIAL	NEWPORT	31	0
NETC	BUILD/STRUC	NEWPORT	219	0
NETPMSA	OPER OF ADP EQUIP	MEMPHIS	14	4
NETPMSA	BASE SUPPLY OPER	PENSACOLA	15	2
NRL	BUILD/STRUC	WASHINGTON	152	0
NSC	PACKING AND CRATING	CHARLESTON	76	1
NSC	OTHER STORAGE/WAREHOUSING	CHARLESTON	17	0
NSC	MOTOR VEH MAINT	NORFOLK	64	0
NSC	DATA TRANSCRIP	NORFOLK	4	0
NSC	BUILD/STRUC	NORFOLK	33	0
NSC	PRESERVATION AND PACKAGING	OAKLAND	147	0
NSC	MOTOR VEH OPER	PEARL HARBOR	12	0
NSC	PACKING AND CRATING	PEARL HARBOR	31	0
NSC	PACKING AND CRATING	PENSACOLA	52	0
NSC	PACKING AND CRATING	PUGET SOUND	43	0
NSC	PACKING AND CRATING	SAN DIEGO	119	0
NSC	OTHER STORAGE/WAREHOUSE	SAN DIEGO	10	0
NTC	AUDIOVISUAL	GREAT LAKES	5	9
NTCC	TELECOMMUNICATION	NORFOLK	23	0
	CUSTODIAL SVC	RESERVE CENTER AVOCA	1	0
	CUSTODIAL SVC	RESERVE CENTER PERTH AMBOY	1	0
	BUILD/STRUC	RESERVE CENTER SEATTLE	1	0
SEASYSCMD	DATA PROCESS SVC	INDIAN HD	7	0
SFC WARF	ADMIN SPT SVC	NEWPORT	6	12
SFC WARF	TRAINING DEVELOP	CORONADO	4	2
SPCC	OTHER MAINT/REAL PROPERTY	MECHANICSBURG	167	0
SUBASE	BASE SUPPLY OPER	KINGS BAY	5	0
SUBASE	MOTOR VEH OPER	NEW LONDON	47	0
SUBASE	BUILD/STRUC	NEW LONDON	104	0

NAVY.—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989—Continued

UNITS	COMMERCIAL ACTIVITY	LOCATION	FTE CIV	FTE MIL
SUBBASE	ELECTRICAL PLANTS	BANGOR	48	6
SWOSCOL COM	TRAINING DEVELOP	NEWPORT	2	12
	ELECTRONIC AND COMM EQUIP	CHASE FIELD	50	127
	FLIGHT TRAINING	CHASE FIELD	5	0
	AUDIOVISUAL	CORPUS	10	44
	AIRCRAFT	KINGSVILLE	173	901
	AUDIOVISUAL	MERIDIAN	0	6
USNA	MOTOR VEH OPER	ANNAPOLIS	48	0
USNS	WATER TRANS SVC	MERCURY AKR 10	31	0
USNS	TUG OPER	MOHAWK ATR 170	149	0
WPNSTA	AIR CONDIT/REF PLANTS	CHARLESTON	11	0
WPNSTA	BUILD/STRUC	CHARLESTON	21	0
WPNSTA	BASE SUPPLY OPER	EARLE	11	0
WPNSTA	MOTOR VEH OPER	SEAL BEACH	26	0
WPNSTA	DATA PROCESS SVC	YORKTOWN	27	0
WPNSTA	SYS DESIGN/DEVELOP	YORKTOWN	10	0
WPNSTA	BUILD/STRUC	YORKTOWN	195	0
TTC	TRAINING DEVELOP	MERIDIAN	0	6
NAVSTA	ADMIN TELEPHONE SVC	ROOSEVELT ROADS	17	1
NAVSTA	OPER OF ADP EQUIP	ROOSEVELT ROADS	12	8
NSC	PRESERVATION	NORFOLK	279	0

DEFENSE LOGISTICS AGENCY—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989

Commercial Activity	FTE CIV	FTE MIL
Printing	2	0
Travel Office	2	0
Reproduction/Audiovisual SVC	18	0
Pub Dist Mail	14	0
Travel Office	1	0
Mail Messenger SVC	13	0
Box Assembly	6	0
Transportation	2	0
Install SPT SVC	91	0
Facil Maint	50	0
Audiovisual SVC	28	0
Audiovisual & Library	7	0
Motor Veh Oper	10	0
Mail Messenger	11	0
Base Supply	11	0
Install/Admin SPT SVC	13	0
Build/Struc	3	0
Install Supp Serv	32	0

DEFENSE MAPPING AGENCY—LIST OF COST COMPARISONS THAT WILL BE COMPETED IN FY 1989

Commercial activity	FTE Civ
Insect and Rodent Ctrl	2
Insect and Rodent Ctrl	1
Custodial	53
Custodial	31
Motor Veh Oper	10
Motor Veh Oper	11
Audio Visual Produc	26
Mail/Messenger	5
Grounds	7
Grounds	6

[FR Doc. 88-29923 Filed 12-28-88; 8:45 am]

BILLING CODE 3110-01-M

Office of Federal Procurement Policy

Solicitation of Views; Federal Procurement Data System

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Request for public comments regarding the review and evaluation of the Federal Procurement Data System (FPDS).

SUMMARY: The Office of Federal Procurement Policy Act, Pub. L. 93-400, as amended, 41 U.S.C. 401, specifies that the functions of the Administrator for Federal Procurement Policy shall include:

> * * * providing for and directing the activities of the Federal Procurement Data System * * * in order to adequately * * * collect, develop, and disseminate procurement data;

This statutory requirement was first implemented in 1978 with the establishment of the FPDS which is operated by the General Services Administration. The data elements collected by the FPDS have been changed several times since 1978 in response to policy and legislation. The most recent changes were made in October 1988. A number of additional changes, however, have now been proposed (see Senate Report 100-424, page 18, July 8, 1988).

The Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. 100-679, requires that the Administrator for Federal Procurement Policy, in consultation with the Comptroller General, conduct a study and submit a report no later than April 1, 1989 to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives with respect to (1) the extent to which the data collected by the FPDS are adequate for the management, oversight and evaluation of Federal Procurement; and (2) any appropriate recommendations for improvements of the FPDS.

DATE: Comments regarding the required study and any suggested changes to the FPDS must be received on or before January 20, 1989.

ADDRESS: Comments should be submitted to Mrs. Linda Williams, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain additional information regarding this request for comments should contact Mr. Charles W. Clark or Mrs. Linda Williams of the OFPP staff at (202) 395-6803.

Allan V. Burman,

Deputy Administrator and Acting Administrator.

[FR Doc. 88-29928 Filed 12-28-88; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

SMALL BUSINESS ADMINISTRATION

Interim Policy Directive

AGENCY: Office of Federal Procurement Policy (OFPP), Small Business Administration (SBA).

ACTION: Notice of interim policy directive.

SUMMARY: The OFPP and SBA are issuing, on an interim basis, a policy directive that implements Title VII of the

"Business Opportunity Development Reform Act of 1988", Pub. L. 100-656, which establishes the Small Business Competitiveness Demonstration Program.

DATES: Effective Date: January 1, 1989.

COMMENT DATE: Comments on the interim policy directive and the information collection requirements should be submitted to the addresses shown below on or before February 15, 1989, to be considered for formulation of the final policy directive.

ADDRESSES: Comments on the policy directive: Interested persons are invited to submit comments on the interim policy directive to: Allan Burman, Deputy Director and Acting Administrator, Office of Federal Procurement Policy 725 17th Street, NW.—Room 9001, Washington, DC 20416.

Comments on the information collections requirements contained in attachment A of the policy directive should be submitted both to the OFPP Administrator at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Acquisition Regulation.

FOR FURTHER INFORMATION CONTACT: Karen Maris, Deputy Associate Administrator, (202) 395-3300; or William Coleman, Deputy Associate Administrator, (202) 395-3501.

SUPPLEMENTARY INFORMATION:

A. Background

Section 15(a) of the Small Business Act mandates that small businesses achieve a fair share of Federal procurements. To achieve this goal, Subpart 19.5 of the Federal Acquisition Regulation (FAR) requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when two or more small businesses are capable of providing the goods or services at a reasonable price.

Title VII Of the "Business Opportunity Development Reform Act of 1988", (Pub. L. 100-656), alters this requirement and seeks to test the effectiveness of eliminating set-asides in certain industries through the establishment of a new program, entitled the "Small Business Competitiveness Demonstration Program". The program has two primary objectives: (1) to demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (2) to demonstrate whether targeted goaling and management techniques can expand federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. OFPP and SBA have developed the following policy directive to implement this policy change.

B. Regulatory Flexibility Act

These interim procedures may have a significant economic impact on a substantial number of small businesses, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and an Initial Regulatory Flexibility Analysis is necessary. Each of the major elements of the Small Business Competitiveness Demonstration Program, as enacted and as proposed to be implemented, contains features intended either to directly result in increases in the small business share of Federal contract opportunities, or to ensure that the small business share of Federal contract opportunities, or to ensure that the small business and emerging small business shares of contract opportunities are maintained at a significant level. However, data adequate for performance of an initial analysis will not be available until completion of the first quarterly review under the Program, which is to be completed by May 30, 1989. An initial analysis will be prepared based on this review and will be provided to the Chief Counsel for Advocacy, U.S. Small Business Administration. Notice of availability of the results of the first quarterly review and of the initial analysis will be published in the **Federal Register**. Comments are invited.

The Program seeks to demonstrate whether expanded use of full and open competition in the four designated industry groups adversely affects small business participation in those industry groups. This element of the Program contains two protective features to ensure that any possible adverse impacts on small business participation in these industry groups are limited. First, the Program sets a small business participation goal of 40 percent in each of these groups. Second, the Program sets a goal for participation by emerging small businesses of 15 percent in each of these groups. For example, in Fiscal Year 1987, the overall total small business share of Federal contract dollars in actions over $25,000 in construction was approximately 51 percent. The overall emerging small business share of award dollars in construction is presently unknown, but is likely to be somewhat in excess of 15 percent. The first quarterly review under the Program will provide baseline data to be used in performing an initial analysis of the likely effects of these provisions in the designated industry categories.

Also, the Program directs each of the participating agencies to identify ten procurement categories that represent products and services purchased in substantial quantities by the agency that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government. Each agency, in consultation with the SBA, will develop a plan for expanding small business participation in these categories. Successful implementation of this aspect of the program would have a significant beneficial impact on a substantial number of small businesses. The first quarterly review under the program will also provide baseline data to be used in performing the initial analysis of this portion of the program.

C. Executive Order 12291

For the purposes of E.O. 12291, OFPP and SBA have determined that this interim policy directive is a major rule because it will have an annual effect on the economy of $100 million or more. In FY 1987, the total amount of Federal contract dollars set-aside for small businesses in the four designated industries groups affected by this directive was approximately $6.9 billion. We assume that the figures will be comparable for FY 1989. Most of these contracts will not longer be set aside for small businesses. This is expected to have a substantial impact on the small businesses in the four designated industry groups; however, the net effect on the economy is expected to be positive due to the increased level of competition for Federal contracts, by all sizes of firms, and the resulting reduction in Federal contract costs. This estimate does not include the portion of the program covering the ten industries categories. Since each agency will have the discretion to select the ten industry categories it will target, estimates of the economic impact for this portion of the program cannot be developed here and instead must be developed by the respective agencies.

The statutory deadline for implementation of January 1, 1989 and the lack of available economic data will not allow us to publish a regulatory analysis at this time. We, therefore, requested and received from OMB a waiver from the requirements of section 3 of E.O. No. 12291 regarding the preparation and consideration of a Regulatory Impact Analysis at this time. We will publish in the **Federal Register** a

notice of availability of the results of the regulatory analysis upon its completion.

D. Paperwork Reduction Act

The statutory deadline does not allow OFPP and SBA to solicit and consider public comments prior to implementation of the Demonstration Program. Therefore, the reporting requirements of attachment A of the policy directive have been submitted for expedited approval to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). The information collection requirements are essential to the program's operations and must be approved prior to January 1, 1989. OFPP and SBA have requested OMB's approval of the information collection requirements not later than December 30, 1988. When the final policy directive is published, it will contain the approval numbers for these sections.

List of Subjects

Government procurement, Small business procurement.

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.

December 22, 1988.

Memorandum For: The Secretary of Agriculture; The Secretary of Defense; The Secretary of Energy; The Secretary of Health and Human Services; The Secretary of Transportation; The Administrator of the Environmental Protection Agency; The Administrator of the General Services; The Administrator of the National Aeronautics and Space Administration; The Administrator of the Veterans Administration.

Subject: The Small Business Competitiveness Demonstration Program.

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656, that establishes the Small Business Competitiveness Demonstration Program.

2. *Authority.* This memorandum is issued pursuant to Sec. 715 of Pub. L. 100–656 which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR).

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal Subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting not traditionally obtain a significant share of procurement awards.

4. *Policy.* The Small Business Competitiveness Demonstration Program is designed to provide for enhanced goals for small businesses in certain industry groups and to expand small business participation in a broader range of industry categories. The program is to be conducted under the authority of section 15 of the Office of Federal Procurement Policy Act which provides for the test of unique and innovative procurement procedures and techniques. The goal of the program is to test the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups. The Act designates the SBA to act as the executive agent for OFPP in conducting the test. The procedures for implementing the test required by the Small Business Competitiveness Demonstration Program are set forth in the attached test plan.

5. *Implementation.* The participating agencies are required to implement the Small Business Competitiveness Demonstration Program and test set forth in this policy directive and the attached test plan commencing on January 1, 1989. This policy directive shall be implemented in the FAR. Such implementation shall be by a reference to this policy directive and the attached test plan which will be included in FAR Part 19. Pursuant to sec. 714(a) of Pub. L. 100–656, provisions of the FAR that are inconsistent with this policy directive and the attached test plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program and this policy will expire on December 31, 1992.

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.

Monika Edwards Harrison,

Associate Administrator for Procurement Assistance, Small Business Administration.

Small Business Competitiveness Demonstration Program Test Plan

I. Purpose

This document implements Title VII of the "Business Opportunity Development Reform Act of 1988," which establishes the Small Business Competitiveness Demonstration Program (the Program). There are three primary purposes for this Program. First, the Program seeks to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. Second, the Program attempts to demonstrate whether the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. Finally, the Program seeks to demonstrate whether expanded use of full and open competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to Title VII of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

III. Program Requirements

A. Applicability

1. The Program shall be conducted over a period of four (4) years, from January 1, 1989, through December 31, 1992. The Program will consist of two major components: (1) Four Designated Industry Groups, which test unrestricted competition, and (2) ten Targeted Industry Categories, which test enhanced small business participation. Solicitations issued from January 1, 1989

through December 31, 1992 are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216);

b. Refuse systems and related services under SIC codes 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C219, T002, T004, T008, T009, T014, and R404); and

d. Non-nuclear ship repair. (Currently, non-nuclear ship repair is not individually segmented from the shipbuilding and repair industry. However, SBA will segment the industry to clearly identify nuclear and non-nuclear ship repair, and will publish such segmentation. OFPP will provide an appropriate FPDS service code.)

3. Targeted industry categories for enhanced participation will be determined by each participating agency, in conjunction with the SBA.

4. Contract awards under the Federal Schedule Program are not covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the Defense Mapping Agency,
3. The Department of Energy,
4. The Department of Health and Human Services,
4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration, and
9. The Veterans' Administration.

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for each of the four designated industry groups. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Business Opportunity Development Reform Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act, section 1207 of the FY 87 National Defense Authorization Act, and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Full and Open Competition for Contracts in Excess of the Emerging Small Business Reserve Amount.

Subject to the requirements of the Competition in Contracting Act of 1984, participating agencies are required to use full and open competition for all solicitations issued on or after January 1, 1989, in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act or set aside under Section 1207 of the FY 87 National Defense Authorization Act). Each participating agency shall continue to use full and open competition as long as quarterly reviews show that the agency's 40 percent goals are being attained. The continued use of full and open competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount.

a. If any participating agency's quarterly review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goals for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses to the extent necessary for the agency to attain its goals for that industry. Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under section 1207 of the FY 87 National Defense Authorization Act) shall be in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall be responsible for determining the extent to which restricted competition shall be employed in order to attain their small business participation goals; successive failures to meet small business participation goals warrant more aggressive measures. (For example, if any agency only misses a goal by five percent, the agency may conclude that it can attain its goal by restricting competition for a portion of its procurements, rather than all of them. Agencies are expected to exercise this discretion judiciously, and make appropriate adjustments if they miss their goal again.) Agencies shall return to the use of full and open competition upon determining that their contract awards to small business concerns meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstituting full and open competition) shall be made as soon as practicable, but no later than the beginning of the quarter following completion of the review indicating the need for such change.

3. Reserve Program for Emerging Small Businesses.

a. The emerging small business reserve amount is $25,000, or such higher amount as OFPP sets in the event that emerging small business concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. Any required adjustments to the emerging small business reserve amount will be made semi-annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists,

requirements will be processed in accordance with FAR Subpart 13.105 or in accordance with FAR Subpart 19.5 or 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over $25,000, requirements over $25,000 will be processed in accordance with paragraphs D.1 and D.2, above.

c. The use of small purchase procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups.

a. The provision set forth in Attachment A entitled "Small Business Concern Representation For The Small Business Competitiveness Demonstration Program (NOV 1988)" shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The clause set forth in Attachment A entitled "Notice of Emerging Small Business Set-Aside" shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. Each Solicitation under the Program that utilizes small purchase procedures shall include the applicable SIC code and size standard for the procurement. The exception for small purchases in FAR subpart 19.303(a) is hereby waived for the Program.

d. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs For Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category; and, in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 CFR § 121.3(a)(vii)(C) and 121.5(a)).

5. Participating agencies shall report on the results of the expansion program regarding the ten targeted categories on the same quarterly schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms.

7. The provision set forth in Attachment A entitled "Small Business Size Representation For Targeted Industry Categories Under The Small Business Competitiveness Demonstration Program (NOV 1988)" shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

8. The face of each award issued in any of ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor its attainment of its small business participation goals on a quarterly basis. Written reports must be made to OFPP and SBA as to whether goals have been attained for each industry group, as specified in paragraph IV.A.3. below. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service. Reports shall be submitted within 60 days after the end each quarter.

2. Agencies shall monitor their goal attainment for the first three quarters based on aggregate data for the following time periods:

a. First quarterly review: 1/1/89–3/31/89.

b. Second quarterly review: 1/1/89–6/30/89.

c. Third quarterly review: 1/1/89–9/30/89.

Thereafter, monitoring is to be based on aggregate data for the four preceding quarters.

3. Attainment of goals for the four designated industry groups will be monitored by each participating agency based on awards in the individual codes comprising the industry, as goals (instituting restricted competition or resinstituting full and open competition) will be accomplished by adjusting each of the industry groups as follows:

a. Construction (excluding dredging)—

i. Major Group 15.

ii. Major Group 16.

iii. Major Group 17.

b. Refuse Systems and related services.

c. Architectural and engineering services (including surveying and mapping).

d. Non-nuclear ship repair.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) all U.S. business firms (b) small U.S. business concerns and (c) emerging small U.S. business concerns.

5. OFPP and SBA will closely monitor the Program using data from the FPDS to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry

group. Data shall be retrieved in the format set forth at Attachment B. In the event that goal achievement for any individual code falls below 35 percent, the agency will be required to reinstitute set-asides for the individual code, even if overall goal achievement in the industry group is 40 percent or more.

6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act, Section 1207 of the FY 87 National Defense Authorization Act, and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment For The Four Designated Industry Groups

1. Refuse and Related Systems.

The Business Opportunity Development Reform Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SICs 4212.

1. Refuse and Related Systems.

The Business Opportunity Development Reform Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SICs 4212 and 4953 include services that should not be included in the Program. The Program is designed to test small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buidings, and other federal facilities, and garbage processing and recycling activities, should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services.

a. The statute designates SICs 8711, 8712, 8713, and 7389 (if identified as mapping), as the codes for tracking architectural and engineering services, which includes surveying and mapping. Since SIC 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:

C217 Mapping Incidental to A&E services
T002 Cartography services
T004 Charting services
T008 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS services codes to monitor A&E services under SICs 8711 and 8712:

C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect-Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine Architect-Engineering Services
C219 Other Architect and Engineering Services

c. Since SIC 8713 includes all surveying, participating agencies shall identify surveying by using FPDS code C218 (surveying incidental to A&E services) or R404 (land surveys, cadastral services—non-construction).

3. Non-nuclear Ship Repair.

Goal attainment for non-nuclear ship repair shall be monitored using an appropriate FPDS service code to be provided by OFPP.

4. Construction.

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment B.

V. Data Collection Requirements

Participating agencies shall maintain and report procurement data to the FPDS in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of $25,000

For contract awards in excess of $25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns. However, the FPDS reporting requirements are being revised to:

1. Distinguish awards resulting from solicitations issued under the Program from awards resulting from solicitations issued prior to January 1, 1989, in the four designated industry groups. A distinction must be made between contract actions awarded from solicitations issued under the Program and contract actions awarded from solicitations issued prior to January 1, 1989.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of $25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry groups and the ten targeted industry categories. Section 714(c) of the Business Opportunity Development Reform Act of 1988 requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories.

5. The number of employees will be based on the average of the pay periods for the last twelve months. The volume of sales will be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

6. Specific details outlining the FPDS changes will be included in an amendment to the October 1988 FPDS Reporting Manual.

B. Awards of $25,000 or Less

During the term of the Program, each award of $25,000 or less made by a participating agency for the procurement

of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of $25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of $500 or less are not reportable to the FPDS.

C. Subcontracting Activity

1. The OFPP Administrator must devise and implement, during the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small disadvantaged business concerns for services in the four designated industry groups and products or services in the ten targeted industry categories. The Test Subcontracting Reporting System must, even if limited to only a small number of buying activities or products or services, effectively capture the full range of small businesses participation at all tiers.

2. The simplified system should be implemented the beginning of FY 1990 (October 1989). OFPP will be working with officials from participating agencies' Small and Disadvantaged Business Utilization Office to develop the requirements for the simplified subcontracting system.

Attachment A—Clause No. 1

Insert the following provision (clause no. 1) in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups. Insert this clause as Alternate I in addition to the clause at FAR 52.219–1.

Small Business Concern Representation for the Small Business Competitiveness Demonstration Program (Dec. 1988)

(a) *Definition.* "Emerging small business", as used in this solication, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) (Complete only if Offeror has certified itself under the clause at FAR 52.219–1 as a small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it —— is, —— is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past twelve months *or* Offeror's average annual gross revenue for the last three fiscal years. (Check one of the following.)

No. of Employees
_____50 or fewer
_____51–100
_____101–250
_____251–500
_____501–750
_____751–1,000
_____over 1,000

Ave. annual gross revenues
_____$1 million or less
_____$1,000,001–$2 million
_____$2,000,001–$3.5 million
_____$3,500,001–$5 million
_____$5,000,001–$10 million
_____$10,000,001–$17 million
_____Over $17 million

Clause No. 2

A. Insert the following provision (clause no. 2) in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

Notice of Emerging Small Business Set-Aside (Dec 1988)

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

B. When using other than small purchase procedures, insert the clause at 52.219–14 in all solicitations and resulting contracts restricted to emerging small businesses.

Clause No. 3

Insert the following provision (clause no. 3) in full text in all solicitations issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000. Insert this clause as Alternate II in addition to the clause at FAR 52.219–1.

Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program (Dec 1988)

(Complete only if the Offeror has certified itself under the clause at FAR 52.219–1 to be a small business concern under the size standards of this solicitation.)

Offeror represents and certifies as follows:

Offeror's number of employees for the past twelve months *or* Offeror's average annual gross revenue for the last three fiscal years. (Check one of the following.)

No. of employees
_____50 or fewer
_____51–100
_____101–250
_____251–500
_____501–750
_____751–1,000
_____over 1,000

Ave. annual gross revenues
_____$1 million or less
_____$1,000,001–$2 million
_____$2,000,001–$3.5 million
_____$3,500,001–$5 million
_____$5,000,001–$10 million
_____$10,000,001–$17 million
_____Over $17 million

Attachment B

REPORT ON SMALL BUSINESS PARTICIPATION UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM FOR DESIGNATED INDUSTRY GROUPS

[Fiscal Year —— Quarter ——]

Designated groups	Total U.S. business actions/dollars	Small business actions/dollars*	Percentage of dollars	Emerging small business actions/dollars	Percentage of dollars
Agency:					
Subagency (If applicable):					
I. Construction (excluding dredging):					
SIC Group 15:					
1521					
1522					
1531					
1541					
1542					
SIC Group 16:					
1611					
1622					
1623					
1629					
SIC Group 17:					
1711					
1721					
1731					
1741					
1742					
1743					
1751					
1752					
1761					
1771					
1781					
1791					
1793					
1794					
1795					
1796					
1799					
II. Refuse Systems and Related Services:					
PSC S205					
SIC 7389:					
PSC C217					
PSC T002					
PSC T004					
PSC T008					
PSC T009					
PSC T014					
SIC 8711 or SIC 8712:					
PSC C111					
PSC C112					
PSC C113					
PSC C114					
PSC C115					
PSC C116					
PSC C117					
PSC C118					
PSC C119					
PSC C121					
PSC C122					
PSC C123					
PSC C124					
PSC C129					
PSC C130					
PSC C211					
PSC C212					
PSC C213					
PSC C214					
PSC C215					
PSC C216					
PSC C219					
SIC 8713:					
PSC C218					
PSC R404					
IV. Non-nuclear Ship Repair					

*Small business dollars include dollars to emerging small businesses.

[FR Doc. 88-29989 Filed 12-28-88; 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Modifications in Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice converts to the Harmonized System product definitions for imports of certain specialty steel subject to increased tariffs or quotas, and makes modifications to the Harmonized Tariff schedule of the United States to implement such conversion.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassidy, Office of the United States Trade Representative, (202) 395-4510 or Michael Rollin, Office of Agreements Compliance, Import Administration, Department of Commerce, (202) 377-4037.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5679 of July 16, 1987 (58 FR 27308) provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5679 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the TSUS headnote of items proclaimed by the President in order to implement such actions.

On January 1, 1989, the TSUS will be replaced by the Harmonized Tariff Schedule of the United States (HTS). Accordingly, the U.S. Trade Representative has determined that the following revisions to Chapter 99, subchapter III, of the HTS are required for continued implementation of Proclamation 5679 after December 31, 1988.

Replace the entire text of U.S. note 4(a)(ii) with the following:

The term *"razor blade steel of the type described in U.S. note 4(a)(ii) to this subchapter"* refers to products of stainless steel of the type described in U.S. note 4(a)(ix) to this subchapter, which are flat rolled, not over 0.254mm in thickness and not over 2.286cm in width—and, when cold rolled, are over 1.27cm in width—contain by weight not less than 11.5 percent, and not over 14.7 percent chromium, and are certified at the time of entry to be used in the manufacture of razor blades. The terms *"concrete reinforcing bars and rods," "chipper knife steel"* and *"ball bearing steel"* are defined as provided in additional U.S. notes 1(c), 1(f) and 1(h), respectively, the chapter 72:

Replace the entire text of U.S. note 4(a)(vi) with the following:

The term *"flapper valve steel"* refers products of stainless steel of the type described in U.S. note 4(a)(ix) to this subchapter, which are flat rolled, not over 1.27mm in thickness and not over 30.48 cm in width—and, when cold rolled, are over 1.27cm in width—and are certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture of stainless steel flapper valves for compressors;

Replace the entire text of U.S. note 4(a)(vii) with the following:

The term *"rotor steel for hysteresis motors"* refers to products of tool steel of the type described in U.S. note 4(a)(xi) to this subchapter, which are flat rolled, not over 1.27mm in thickness and not over 30.48cm in width—and, when cold rolled, are over 1.27cm in width—contain by weight not less than 0.5 percent carbon and not less than 5.5 percent tungsten, and are certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture of rotor rings or cups for hysteresis motors;

Replace the period (".") at the end of U.S. note 4(a)(ix) with a semicolon (";").

Insert the following new U.S. notes after U.S. note 4(a)(ix):

4(a)(x) The term *"alloy steel or the type described in U.S. note 4(a)(x) to this subchapter"* refers to steel which contains one or more of the following elements in the quantity, by weight, respectively indicated:

over 1.65 percent manganese, or
over 0.25 percent phosphorus, or
over 0.35 percent sulfur, or
over 0.60 percent silicon, or
over 0.60 percent copper, or
over 0.30 percent aluminum, or
over 0.20 percent chromium, or
over 0.30 percent cobalt, or
over 0.35 percent lead, or
over 0.50 percent nickel, or
over 0.30 percent tungsten, or
over 0.10 percent of any other metallic element;

4(a)(xi) The term *"tool steel of the type described in U.S. note 4(a)(xi) to this subchapter"* refers to alloy steel of the type described in U.S. note 4(a)(x) to this subchapter containing the following combination of elements in the quantity, by weight, respectively indicated:

(A) Not less than 1.0 percent carbon and over 11.0 percent chromium; or
(B) Not less than 0.3 percent carbon and 1.25 percent of 11.0 percent inclusive chormium; or
(C) Not less than 0.85 percent carbon and 1.0 percent to 1.8 percent inclusive manganese; or
(D) 0.9 percent to 1.2 percent inclusive chromium and 0.9 percent to 1.4 percent inclusive molybdenum; or
(E) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or
(F) not less than 0.5 percent carbon and not less than 5.5 percent tungsten;

4(a)(xii) The term *"high speed tool steel of the type described in U.S. note 4(a)(xii) to this subchapter"* refers to all tool steel of the type described in U.S. note 4(a)(xi) to this subchapter containing by weight not less than 0.5 percent carbon and not less than 3.5 percent molybdenum, or not less than 0.5 percent carbon and not less than 5.5 percent tungsten;

4(a)(xiii) The term *"plate of the type described in U.S. note 4(a)(xiii) to this subchapter"* refers to products which are flat rolled, whether or not corrugated or crimped, 4.7625mm or more in thickness and over 20.32cm in width when hot rolled or over 30.48cm in width when cold rolled;

4(a)(xiv) The term *"sheet of the type described in U.S. note 4(a)(xiv) to this subchapter"* refers to products which are flat rolled, whether or not corrugated or crimped, less than 4.7625mm in thickness and over 30.48cm in width;

4(a)(xv) The term *"strip of the type described in U.S. note 4(a)(xv) to this subchapter"* refers to products which are flat rolled, whether or not corrugated or crimped, less than 4.7625mm in thickness, not over 30.48cm in width and, if cold rolled, over 1.27cm in width;

4(a)(xvi) The term *"wire of the type described in U.S. note 4(a)(xvi) to this subchapter"* refers to products which are either cold drawn, in coils, of any cross-sectional configuration and not over 17.8562mm in maximum cross-sectional dimension; or in coils with a cold rolled finish, of solid rectangular cross section, not over 6.35mm in thickness and not over 1.27cm in width.

4(a)(xvii) The term *"wire rod of the type described in U.S. note 4(a)(xvii) to this subchapter"* refers to products which are hot rolled, in coils, approximately round in cross section, and at least 5.08mm but not exceeding 18.796mm in diameter.

Replace the entire text of subheading 9903.72.00 with the following:

Flat rolled products and bars and rods which have been flat rolled, all the foregoing of stainless steel of the type described in U.S. note 4(a)(ix) to this subchapter, under 4.7625mm in thickness and, if cold rolled, over 1.27mm in width (except when: over 30.48cm in width and coated, plated or clad with metal; 30.48cm or under in width and electrolytically coated or plated with base metal other than tin, lead or zinc; cut, pressed or stamped to nonrectangular shape; worked after rolling other than by corrugation or crimping; as provided for in U.S. note 4(g)(i) to this subchapter; razor blade steel of the type described in U.S. note 4(a)(ii) to this subchapter; cladding grade 434 stainless steel flat-rolled products over 30.48cm in width; cold-rolled flat-rolled products of stainless steel over 180.34cm in width; stainless steel of the type described in U.S. note 4(a)(v) to

this subchapter; and flapper valve steel) provided for in subheading 7219.12, 7219.13, 7219.14, 7219.22, 7219.23, 7219.24, 7219.31, 7219.32, 7219.33, 7219.34, 7219.35, 7219.90, 7220.11, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.90, 7220.90, 7222.10, 7222.20, 7222.30 or 7223.00.50, all the foregoing, whether or not entitled to duty-free treatment under subheading 9808.00.30 * * *

Replace the entire text of subheading 9903.72.01 with the following:

Flat-rolled products and bars and rods which have been flat-rolled, all the foregoing of stainless steel of the type described in U.S. note 4(a)(ix) to this subchapter, 4.7625mm or more in thickness, over 20.32cm in width if hot rolled or over 30.48cm in width if cold rolled (except if: coated, plated or clad with metal; cut, pressed or stamped to nonrectangular shape; worked after rolling other than by corrugation or crimping; as provided for in U.S. note 4(g)(i) to this subchapter; and stainless steel of the type described in U.S. note 4(a)(v) to this subchapter) provided for in subheading 7219.11, 7219.12, 7219.21, 7219.22, 7219.31, 7219.90, 7220.11, 7220.20.10, 7220.90, 7222.10, 7220.20 or 7222.30, all the foregoing, whether or not entitled to duty-free treatment under subheading 9808.00.30 * * *

Replace the entire text of the superior heading, at the first indentation, to subheadings 9903.72.10, 9903.72.12 and 9903.72.14 with the following:

Bars and rods, flat-rolled products and wire, all the foregoing of stainless steel of the type described in U.S. note 4(a)(ix) to this subchapter (except if: worked after rolling other than by corrugation or crimping; plate, sheet, strip, wire and wire rod of the type described in U.S. notes 4(a)(xiii), 4(a)(xiv), 4(a)(xv), 4(a)(xvi) and 4(a)(xvii), respectively, to this subchapter; concrete reinforcing bars and rods; and stainless steel of the type described in U.S. note 4(a)(v) to this subchapter) provided for in subheading 7220.11, 7220.20.10, 7220.20.60, 7220.90, 7221.00, 7220.10, 7222.20, 7222.30, 7223.00.10, 7223.00.50 or 7223.00.90:

Replace all quota quantities for subheadings 9903.72.10, 9903.72.12, and 9903.72.14 with the following:

Item	Articles	Quota Quantity (in kilograms) If entered during the restraint period: July 20 through January 19	January 20 through July 19
9903.72.10	If entered during the period from October 20, 1987, through July 19, 1988 inclusive:		
	Austria	n/a	97,977
	Canada	[2] 250,386	501,678
	Japan	[2] 3,213,281	6,427,470
	Korea	[2] 439,989	880,885
	Mexico	[2] 25,401	51,710
	Spain	[2] 997,913	1,995,827
	Sweden	[2] 308,446	616,892
	Taiwan	[2] 22,680	45,360
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	[2] 99,791	97,070
9903.72.12	If entered during the period from July 20, 1988, through July 19, 1989 inclusive:		
	Austria	97,070	97,977
	Canada	512,565	512,565
	Japan	6,572,621	6,572,621
	Korea	891,772	892,679
	Mexico	58,060	58,968
	Spain	2,041,187	2,041,187
	Sweden	630,500	631,407
	Taiwan	46,267	47,174
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	107,956	104,327
9903.72.14	If entered during the period from July 20, 1989, through September 30, 1989 inclusive:		
	Austria	39,009	[3]
	Canada	211,376	[3]
	Japan	2,707,974	[3]
	Korea	367,414	[3]
	Mexico	24,494	[3]
	Spain	840,969	[3]
	Sweden	259,457	[3]
	Taiwan	19,051	[3]
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	44,453	[3]

Replace the entire text of the superior heading, at the first indentation, to subheadings 9903.72.20, 9903.72.22 and 9903.72.24 with the following:

Bars and rods of stainless steel of the type described in U.S. note 4(a) (ix) to this subchapter, approximately round in cross-section, at least 5.08mm but not exceeding 18.796mm in diameter (except concrete reinforcing bars and rods and stainless steel of the type described in U.S. note 4(a)(v) to this subchapter) provided for in subheading 7221.00:

Replace all quota quantities for subheadings 9903.72.20, 9903.72.22, and 9903.72.24 with the following:

Item	Articles	Quota Quantity (in kilograms) If entered during the restraint period: July 20 through January 19	January 20 through July 19
9903.72.20	If entered during the period from October 20, 1987, through July 19, 1988 inclusive:		
	Austria	n/a	25,401
	Japan	[2] 1,439,717	2,879,434
	Korea	[2] 238,592	476,277
	Spain	[2] 421,845	844,598
	Sweden	[2] 899,936	1,799,873
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	[2] 87,998	151,501
9903.72.22	If entered during the period from July 20,1988, through July 19, 1989 inclusive:		
	Austria	48,988	25,401
	Japan	2,944,752	2,944,752
	Korea	489,885	490,792
	Spain	862,742	863,649
	Sweden	1,840,697	1,840,697
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	129,729	151,501
9903.72.24	If entered during the period from July 20, 1989, through September 30, 1989 inclusive:		
	Austria	9,979	([3])
	Japan	1,212,918	([3])
	Korea	355,620	([3])
	Spain	355,620	([3])
	Sweden	758,414	([3])
	Other, except as provided in U.S. note 4(g) (ii) to this subchapter	63,504	([3])

Replace the entire text of the superior heading, at the first indentation, to subheadings 9903.72.30, 9903.72.32 and 9903.72.34 with the following:

Flat-rolled products, bars and rods and wire, all the foregoing of tool steel of the type described in U.S. note 4(a)(xi) to this subchapter (except if: worked after rolling other than by corrugation or crimping; plate of the type described in U.S. note 4(a)(xiii) to this subchapter which has been coated, plated or clad with metal or cut, pressed or stamped to nonrectangular shape; sheet of the type described in U.S. note 4(a)(xiv) to this subchapter which has been coated, plated or clad with metal or cut, pressed or stamped to nonrectangular shape; strip of the type described in U.S. note 4(a)(xv) to this subchapter which has been coated or plated with base metal other than tin, lead or zinc or cut, pressed or stamped to nonrectangular shape; concrete reinforcing bars and rods; wire of the type described in U.S. note 4(a)(xvi) to this subchapter other than round wire of high speed tool steel as described in U.S. note 4(a)(xii) to this subchapter; chipper knife steel; band saw steel; ball bearing steel; rotor steel for hysteresis motors; and tool steel of the type described in U.S. note 4(a)(viii) to this subchapter) provided for in subheading 7208.11, 7208.12, 7208.13.10, 7208.13.50, 7208.14.10, 7208.14.50, 7208.21.10, 7208.21.50, 7208.22.10, 7208.22.50, 7208.23.10, 7208.23.50, 7208.24.10, 7208.24.50, 7208.31, 7208.32, 7208.33.10, 7208.33.50, 7208.34.10, 7208.34.50, 7208.35.10, 7208.35.50, 7208.41, 7208.42, 7208.43, 7208.44, 7208.45, 7208.90, 7209.11, 7209.12, 7209.13, 7209.14, 7209.21, 7209.22, 7209.23, 7209.24.50, 7209.31, 7209.32, 7209.33, 7209.34, 7209.41, 7209.42, 7209.43, 7209.44, 7209.90, 7210.70.30, 7210.90.90, 7211.11, 7211.12, 7211.19.10, 7211.19.50, 7211.21, 7211.22, 7211.29.10, 7211.29.30, 7211.29.50, 7211.29.70, 7211.30.10, 7211.30.30, 7211.30.50, 7211.49.10, 7211.49.30, 7211.49.50, 7211.90, 7212.10, 7212.21, 7212.29, 7212.30.10, 7212.30.30, 7212.30.50, 7212.40.10, 7212.40.50, 7212.50, 7212.60, 7213.20, 7213.41.30, 7213.41.60, 7213.49, 7213.50, 7214.10, 7214.30, 7214.50, 7214.60, 7215.10, 7215.30, 7215.40, 7215.90.10, 7215.90.30, 7215.90.50, 7217.21.10, 7217.21.30, 7217.21.50, 7217.22.10, 7117.22.50, 7217.23.10, 7217.23.50, 7217.29.10, 7217.29.50, 7217.31.10, 7217.31.30, 7217.31.50, 7217.32.10, 7217.32.50, 7217.33.10, 7217.33.50, 7217.39.10, 7217.39.50, 7219.11, 7219.12, 7219.13, 7219.14, 7219.21, 7219.22, 7219.23, 7219.24, 7219.31, 7219.32, 7219.33, 7219.34, 7219.35, 7219.90, 7220.11, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, 7220.90, 7221.00, 7222.10, 7222.20, 7222.30, 7223.00.10, 7223.00.50, 7223.00.90, 7225.20, 7225.30.10, 7225.30.30, 7225.30.50, 7225.30.70, 7225.40.10, 7225.40.30, 7225.40.50, 7225.40.70, 7225.50.10, 7225.50.60, 7225.50.70, 7225.50.80, 7225.90, 7226.20, 7226.91.10, 7226.91.30, 7226.91.50, 7226.91.70, 7226.91.80, 7226.92.10, 7226.92.30, 7226.92.50, 7226.92.70, 7226.92.80, 7226.99, 7227.10, 7227.90.10, 7227.90.20, 7227.90.60, 7228.10, 7228.30.60, 7228.30.80, 7228.40, 7228.50.10, 7228.50.50, 7228.60.10, 7228.60.60, 7228.60.80, 7229.10, 7229.90.10, 7229.90.50, 7229.90.90:

Change all quota quantities for subheadings 9903.72.30, 9903.72.32, and 9903.72.34 to the following:

Item	Articles	Quota Quantity (in kilograms) If entered during the restraint period: July 20 through January 19	January 20 through July 19
9903.72.30	If entered during the period from October 20, 1987, through July 19, 1988 inclusive:		
	Canada	[2] 360,156	719,405
	Japan	[2] 1,048,716	2,098,340
	Korea	[2] 345,641	691,282
	Mexico	[2] 58,060	117,935
	Poland	[2] 77,111	155,130
	Spain	[2] 40,824	83,462
	Sweden	[2] 1,979,497	3,958,995
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	[2] 76,204	147,873
9903.72.32	If entered during the period from July 20, 1988, through July 19, 1989 inclusive:		
	Canada	735,734	736,642
	Japan	2,144,607	2,145,514
	Korea	713,055	712,147
	Mexico	126,100	126,100
	Poland	151,501	152,409
	Spain	85,276	85,276
	Sweden	4,048,807	4,048,807
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	148,780	147,873
9903.72.34	If entered during the period from July 20, 1989, through September 30, 1989 inclusive:		
	Canada	303,003	([3])
	Japan	883,607	([3])
	Korea	293,931	([3])
	Mexico	51,710	([3])
	Poland	62,596	([3])
	Spain	35,381	([3])
	Sweden	1,667,423	([3])
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	61,689	([3])

Change all quota quantities for subheadings 9903.72.40, 9903.72.42, and 9903.72.44 to the following:

Item	Articles	Quota Quantity (in kilograms) If entered during the restraint period: July 20 through January 19	January 20 through July 19
9903.72.40	If entered during the period from November 20, 1987, through July 19, 1988 inclusive:		
	Canada	997,913	1,995,827
9903.72.42	If entered during the period from July 20, 1988, through July 19, 1989 inclusive:		
	Canada	1,995,827	1,995,827
9903.72.44	If entered during the period from July 20, 1989, through September 30, 1989 inclusive:		
	Canada	798,331	([3])

I have determined that the above changes in the import relief are appropriate to carry out the authority granted by the President to the United States Trade Representative and the obligations of the United States, with due consideration to the interests of the domestic producers of such specialty steel. This action is subject to further modification.

Judith Hippler Bello,

Acting United States Trade Representative.

[FR Doc. 88-29943 Filed 12-28-88; 8:45 am]

BILLING CODE 3190-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval Under the Paperwork Reduction Act of Collection of Information Contained in a Proposed Rule

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for the recordkeeping requirement contained in the PBGC's proposed regulation on payment of premiums, published on October 5, 1988 (53 FR 39200). The preamble to that proposed rule failed to mention that OMB approval was being sought for the recordkeeping requirement. Therefore, the effect of this notice is to advise the public of the PBGC's request for OMB approval.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

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

SUPPLEMENTARY INFORMATION: Pursuant to the Pension Benefit Guaranty Corporation's Payment of Premiums regulation (29 CFR Part 2610), all premium payers are required to file a PBGC Form 1 with their premium payments. Single-employer plans are also required to submit Schedule A to Form 1, which deals with the computation of the variable rate portion of the single-employer plan premium. Because the Form 1 and Schedule A require the reporting of only the summary data on which the premium computation is based, the PBGC cannot rely solely on the form for verifying whether a plan has paid the correct premium. In particular, it is not possible to determine whether a plan's unfunded vested benefits (the basis for computing the variable rate portion of the single-employer plan premium) have been correctly determined or whether a plan has properly claimed one of the regulatory exemptions from the calculation of the variable rate premium.

Accordingly, the PBGC has established a recordkeeping requirement incident to premium payments, § 2610.11 of the proposed revision to Part 2610 published on October 5, 1988 (53 FR 39200). Pursuant to this provision, plan administrators must retain for a period of six years after the premium due date all records and data necessary to validate or support the plan's premium payment. These records must be available to the PBGC at its request for audit purposes. The record retention period is six years becasue that is the statute of limitations applicable to suits by PBGC for unpaid premiums under section 4003(e) of the Employee Retirement Income Security Act of 1974, as amended.

Under proposed § 2610.11, the recordkeeping requirement is imposed on the plan administrator, although the plan administrator need not keep physical custody of the pertinent records. Actuarial records, for example, may be retained at the office of the plan's actuary, as long as the plan administrator can obtain these records if requested to do so by PBGC.

The PBGC estimates that the annual burden of this recordkeeping requirement will be approximately 37,125 hours. This is based on 112,500 plans that pay annual premiums to PBGC, and ⅓ of a hour per plan needed to comply with the recordkeeping provision. The PBGC estimates that the total annual cost to the public will be no more than $3,712,500, assuming a cost of $100/hour for professional time. (In practice, it is likely that a portion of the burden hours will be attributable to clerical, rather than professional staff time.)

Issued at Washington, DC, this 22nd day of December, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-30008 Filed 12-28-88; 8:45 am]

BILLING CODE 7708-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, January 10, 1988, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommitte on Diagnostic and Therapeutic Practices will be meeting in Regency Room F, First Concourse, at 7:30 a.m. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting also at 7:30 a.m. in Regency Room A. The Full Commission will convene at 10:00 a.m. in Regency Room F.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 88-30137 Filed 12-28-88; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

(Rel. No. 34-26368; File No. SR-OCC-88-2)

Self-Regulatory Organization; Proposed Rule Change By The Options Clearing Corp. Relating to Index Participations; Amendment No. 2

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on December 19, 1988, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission an amendment to a 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

File No. SR-OCC-88-2 proposes Rules pursuant to which OCC would issue, clear and settle "Index Participations" or "IPs." The Philadelphia Stock

Exchange, Inc. ("PHLX") and the American Stock Exchange, Inc. ("Amex") have amended their respective IP filings, and the Chicago Board Options Exchange, Inc. ("CBOE") has filed proposed IP rules with the Commission, since OCC filed its Amendment No. 1 to SR-OCC-88-2. This amendment to SR-OCC-88-2 conforms OCC's proposed IP rules to the proposed rules filed by the three Exchanges. In addition, OCC is filing with this amendment the form of a proposed Agreement between it and the three Exchanges that would govern certain aspects of the relationship between OCC and the Exchanges with respect to IPs.

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

The primary purposes of this amendment are to make OCC's proposed IP rules consistent with the proposed rules of PHLX, Amex, and CBOE, and to file with the Commission the form of a proposed Agreement governing certain aspects of the relationship between OCC and the three Exchanges with respect to IPs.

1. Changes to Conform OCC's Rules to Rules Proposed by PHLX and CBOE

PHLX has amended its proposed IP rules to provide that the "cash-out privilege"—the right of a holder of IPs to receive an amount in cash determined by reference to the index on which the IPs are based—will be available to holders of IPs on any business day. CBOE's proposed IP rules provide that the cash-out privilege will be available on one business day every six months. (Amex's proposed IP rules continue to provide that the cash-out privilege will be available on one business day every calendar quarter.) Changes are made to OCC's By-Laws and Rules to accommodate this diversity. The days on which the cash-out privilege is available for IPs traded on each Exchange are stated in Interpretations added to OCC's Rules.

PHLX has also amended its filing to provide that exercise of the cash-out privilege would entitle an exercising holder to an "aggregate cash-out value" computed in a somewhat different manner depending on the day of exercise. If the exercise is effected on the business day before an "IP dividend equivalent day" (the third Friday in March, June, September and December, or such other day as the Exchange may specify, formerly called the "IP cash-out day" in OCC's proposed By-Laws and Rules, and given a new name since this is not longer the only day on which the cash-out privilege may be exercised), PHLX's filing provides that the aggregate cash-out value will be based on the opening values on the IP dividend equivalent day of the stocks in the underlying index. If the exercise is effected on any other business day, PHLX's filing provides that the aggregate cash-out value will be based on the closing index value on the business day following the exercise, reduced by one-half of one percent. OCC's proposed By-Laws are amended to accommodate this difference.

CBOE has provided in its filing that, for each class of IPs traded on it, each writer as well as each holder would be entitled to a cash-out privilege. (These IPs are therefore referred to in OCC's proposed rules as "two-way IPs.") The writer's cash-out privilege would entitle the writer to pay the cash-out value for a short position and thereby to extinguish the short position. Holders of two-way IPs would have a corresponding obligation, upon assignment of a writer's exercise notice, to extinguish long IP positions in exchange for payment of the cash-out value. Changes are made to OCC's By-Laws and Rules to implement this concept.

2. Changes to Conform OCC's Rules to Rules Proposed by Amex

The special feature of the IPs proposed for trading by Amex is that a holder of one or more "delivery units" of the IPs would be entitled to exercise a "delivery privilege" in lieu of exercising the cash-out privilege. Amex states in its filing that it anticipates that, at least initially, a delivery unit for IPs based on the S&P 500 would be 500 minimum trading units (*i.e.*, 50,000 IPs), and that a delivery unit for IPs based on the Major Market Index would be 250 minimum trading units (*i.e.*, 25,000 IPs). These figures are reflected in an Interpretation added to OCC's By-Laws. As described in Amex's proposed rules, exercise of the delivery privilege would entitled the exercising holder to receive the basket of stocks in the index underlying the class of IPs, in the proportions that the stocks are represented in the index, but excluding fractional shares, any stock as to which the exercising holder would receive less than ten shares per delivery unit, and any stock that does not open for trading on the trading day following the day of the exercise. A holder that exercises the delivery privilege would be obligated to pay a "delivery fee" to the person making delivery of the stocks (either a writer or the "physical delivery facilitator," as described below). In OCC's proposed rules, IPs for which the delivery privilege is available are referred to as "physical IPs"; the basket of stock to be delivered upon exercise of the delivery privilege is referred to as the "deliverable stock"; and the amount of cash that the exercising holder would receive in lieu of receiving fractional shares, stocks with less than ten deliverable shares, and stocks that do not open on the trading day following the day of the exercise is referred to as the "cash differential."

Amex also provides in its filing that a writer of one or more delivery units of physical IPs may volunter to make delivery of stock (*i.e.*, may become a "physical assignment volunteer") by submitting a "physical assignment volunteer notice." On the night following the day in each calendar quarter when delivery privilege exercise notices and physical assignment volunteer notices could be submitted to OCC (that day being referred to herein as "T"), OCC would compare the number of delivery units for which exercise notices were submitted with the number of delivery units for which physical assignment volunteer notices were submitted. If the number of delivery units for which physical assignment volunteer notices were submitted was larger, OCC would (using the same procedures that it uses for random allocation of assignments) reject the excess physical assignment volunteer notices. If the number of delivery units for which physical assignment volunteer notices were submitted was smaller, OCC would accept all of the submitted physical assignment volunteer notices, and would require non-volunteering physical IP writers (selected using OCC's random allocation procedures) to extinguish enough short positions to make up the imbalance. These writers would be required to pay the aggregate cost-out value (*i.e.*, the same amount of money required upon assignment of a cash-out privilege exercise) to OCC in respect of the extinguished positions.

OCC would, before the opening of trading on the business day after T (*i.e.*, "T+1") notify a "physical delivery facilitator" of the amount of the imbalance. The physical delivery facilitator for each class of IPs would be an OCC Clearing Member, designated by Amex, and, at least initially, the specialist on the Amex floor for that class. The physical delivery facilitator would, at the opening in each of the stocks in the underlying index on T+1, buy the necessary shares to make up the baskets of deliverable stock. (The physical delivery facilitator would buy at the opening because the aggregate cash-out value paid by the non-volunteering physical IP writers would be based on the value of the underlying index calculated using the opening values.) The physical delivery facilitator would be required to put up "additional margin" as defined in OCC's Rules—margin to cover OCC's exposure to an adverse market move during the day—on the morning of T+1 with respect to the delivery units for which it was required to buy deliverable stock on that morning.[1]

After the close of business on T+1, OCC would report the net amount of each of the deliverable stocks to be delivered or received by each Clearing Member to the designated stock clearing corporation of the Clearing Member. (This report cannot be made earlier because, as noted above, only stocks that open for trading on T+1 are to be delivered.) OCC will match delivering and receiving Clearing Members and report the matched delivers and receives to the stock clearing corporations as buy and sell stock trades with a zero trade price. These trades would clear through the stock clearing corporations in the ordinary five business day settlement cycle, so that final settlement of a delivery privilege exercise would take place on the sixth business day after the exercise (*i.e.*, "T+6"). OCC has in effect with each of the stock clearing corporations an "Option Exercise Settlement Agreement" governing the relationship between OCC and that stock clearing corporation with respect to the settlement of options. A side letter extending the terms of these Agreements to IPs will be necessary, and OCC will provide the Commission with the form of that side letter in the near future.

On the second business day after T (*i.e.*, "T+2"), the assigned non-volunteering writers would pay OCC the aggregate cast-out value at the same time that writers assigned exercisers of the cash-out privilege would pay the same value. (An assigned non-volunteering writer of physical IPs, in other words, would be subject to exactly the same obligation regardless of whether the assigned exercise as an exercise of a cash-out privilege or a exercise privilege.) Following receipt of the aggregate cash-out value, OCC would release the margin held in respect of these positions. However, OCC would continue to require margin from Clearing Members with the obligation to deliver stock until the business day after T+6. (The physical delivery Facilitator, however, would be entitled to a margin credit equal to the sum of the aggregate cash-out values paid to OCC minus the sum of the cash differentials to be paid out of such aggregate cash-out values, since OCC would be holding that amount pending settlement with the physical delivery facilitator on T+6.)

On T+6, settlement of the deliverable stock would be effected at the designated stock clearing corporations as described above. In addition, the cash differentials and delivery fees would be netted together with other payments owned by or to OCC and settled at 9:00 a.m., if a net amount were owed to OCC, or 10:00 a.m, if a net amount were owned by OCC.

In order to implement the procedures described above, definitions of the terms "physical IP," "delivery privilege," "delivery unit," "physical assignment volunteer," "physical assignment volunteer notice," and "physical delivery facilitator" are added to OCC's By-Laws. OCC's margin rules are amended to reflect the margin requirements described above. A reference to IPs is added to OCC's Rule on designated Stock clearing corporations, since physical IPs will be settled through stock clearing corporations.

References to the delivery privilege are added throughout OCC's Rules. In particular, a new paragraph (b) is added to proposed Rule 1903 to describe the procedure for physical assignment volunteers, and a new paragraph (c) is added to proposed Rule 1905 to describe the procedures for accepting or rejecting physical assignment volunteer notices described above. In addition, a new paragraph (b) in Rule 1906 defines the exercise settlement date for exercises of the delivery privilege, and a new paragraph (b) in Rule 1907 describes the procedures for settlement of delivery privilege exercises described above.

Two new paragraphs in Rule 1908 describe the close-out procedures relating to delivery privilege exercises. The first paragraph provides that, if a delivering Clearing Member defaults, one or more receiving Clearing Members designated by OCC would buy in the deliverable stock for the account and liability of OCC. The second paragraph provides that, if a receiving Clearing Member is suspended, one or more delivering Clearing Members designated by OCC would sell out the deliverable stock and pay the proceeds of the sale to OCC. Both paragraphs provide that settlements of cash differentials and delivery fees would occur in accordance with OCC's usual settlement procedures.

3. The Supplemental Agreement

OCC is also filing with this amendment the form of a proposed Agreement that would be entered into by OCC and the three Exchanges that have filed proposed IP rules. The Agreement supplements the Restated Participant Exchange Agreement (the "RPEA") between OCC and each of the Exchanges that provides for trading in options, in that it would govern the same aspects of the relationship in respect of IPs that the RPEA governs in respect of options, and is therefore called the "Supplemental Agreement." The Supplemental Agreement, among other things, expresses the commitment of OCC to issue all IPs in respect of opening transactions accepted by it in accordance with its By-Laws and Rules, contains indemnification provisions, and describes the information required by OCC on a daily basis in respect of IPs. The Supplemental Agreement provides that any Exchange that is a party to the RPEA may become a party to the Supplemental Agreement by executing a Declaration of Endorsement and Adoption of Supplemental Agreement substantially in the form attached to the Supplemental Agreement.

4. Statutory Basis for the Proposed Rule Change

The proposed changes to OCC's Rules and By-Laws are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the "Act") because they make more precise the application of OCC's By-Laws and Rules to IPs proposed for trading on PHLX, Amex and CBOE. The proposed Supplemental Agreement is consistent with the purposes and requirements of the Act because it structures the relationship

[1] The physical delivery facilitator would not be required on T+1 to put up "premium margin"—margin to cover the value of the delivery units as of the close on T—because the assigned non-volunteering writers would be obligated to OCC for that amount, and that obligation would be secured by the margin deposits of those writers. The margin requirements for assigned non-volunteering writers on T+1 would continue to include additional margin in order to cover OCC's exposure to an adverse market move in the opening prices on that day.

between OCC and the various Exchanges on which IPs will be traded in parallel with the existing relationship between OCC and the various Exchanges on which options are traded.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29966 Filed 12-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26386; File No. SR-PHLX-88-35]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Market Circuit Breaker Proposal

Pursuant to 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that, on November 10, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds the following new rule that will be effective for a pilot period ending on October 31, 1989. The text of the rule change is as follows:

Trading Halts Due to Extraordinary Market Volatility

Rule 133. If the Dow Jones Industrial Average reaches a value 250 or more points below its closing value on the previous trading day, trading in stocks shall halt on the Exchange and may not reopen for one hour. If, on the same day, the average subsequently reaches a value 400 or more points below that closing value, trading in stocks shall halt on the Exchange and may not reopen for two hours.[1]

[1] The PHLX also commits to halt trading in equity related options contemporaneous with a halt in stock trading resulting from the implementation of the Exchange's circuit breaker proposal. The PHLX will file a formal rule change specifically providing for a halt of trading in equity related options in connection with activation of the Exchange's circuit breaker trading halt policy. Letter from William W. Uchimoto, General Counsel, PHLX, to Joseph Furey, Esq., Branch Chief, Division of Market Regulation, Commission, dated December 20, 1988.

* * * *Supplementary Material:*

.10 The restrictions in this Rule shall apply whenever the Dow Jones Industrial Average reaches the trigger values notwithstanding the fact that, at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.20 The reopening of trading following a trading halt under this Rule shall be conducted pursuant to procedures adopted by the Exchange.

.30 If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of trading for a day, trading in stocks shall halt for the remainder of the day: *provided, however,* that if the 250-point trigger is reached between one hour and one-half hour before the scheduled closing, or the 400-point trigger is reached between two hours and one hour before the scheduled closings, the Exchange may use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

.40 Nothing in this Rule should be construed to limit the ability of the Exchange to othewise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

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 changes 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

The purpose of the proposed rule change is to coordinate with the other securities and relevant futures self-regulatory organizations ("SROs") to provide a mechanism to address periods of extreme downward volatility in the stock market. The rule change is in response to a substantially identical rule adopted by the New York Stock

Exchange ("NYSE") which, among other things, conditioned its effectiveness on the adoption of companion rule changes by other SROs, including the PHLX. Accordingly, the PHLX specifically conditions the effectiveness of this rule change on the effectiveness of the NYSE's proposed rule change relating to this matter, SR-NYSE-88-23. In particular, PHLX specifically ties the effectiveness of the pilot period of its rule change to the pilot period that the NYSE's parallel rule change is effective. This rule change is based on a view that the trading halts required by the rule will promote stability in the stock market by allowing market participants time to reestablish an equilibrium between buying and selling interest and to help ensure that all market participants have a reasonable opportunity to become aware of and respond to significant downward market price movements.

The proposal is consistent with the requirments of the Act and the rules and regulations thereunder. Specifically, the proposal is consistent with § 6(b)(5) of the Act in that it is calculated to promote just and equitable principles of trade, and, in general, will protect investors and the public interest.

(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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission grant accelerated effectiveness to the proposed rule change pursuant to Section 19(b)(2) of the Act.[2] The Exchange's request is based on its desire to have the proposed rule change take effect concurrently with similar rule changes adopted by the NYSE and other self-regulatory organizations. The Commission finds that the proposed rule change filed by the PHLX 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[3] and the rules and regulations thereunder. The proposal will permit the Exchange to coordinate with the other securities self-regulatory organizations and futures exchanges in providing a mechanism to address periods of extreme downward volatility in the stock market. The Commission finds good cause for approving the PHLX proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The proposal is substantially identical to the NYSE circuit breaker proposal contained in File No. SR-NYSE-88-23 that was published for the full thirty-day period and was approved by the Commission in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. In light of the absence of any adverse comments on the NYSE'S filing and the Commission's view of the benefits that may accrue from adoption of coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

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 also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved for a pilot period ending October 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: December 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29969 Filed 12-28-88; 8:45 am]

BILLING CODE 8010-01-M

[2] Letter from William W. Uchimoto, Acting General Counsel, PHLX, to Mary Revell, Esq., Division of Market Regulation, Commission, dated November 25, 1988.

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-26387; File No. PHLX 88-41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Immediate Effectiveness of Proposed Rule Change Relating to Signature Guarantee Fee Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 5, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), submits a proposed rule change amending the PHLX's Signature Guarantee Fee Schedule from a fixed rate of $250.00 annually per participant to an allocated schedule based upon monthly deposit volume by participant at Philadelphia Depository Trust Co. The amended fee schedule is necessary to recover increased administrative and insurance costs. The fee schedule is allocated on a monthly deposit volume basis as indicated in the table below.

Monthly deposits	Monthly rate
0 to 20	$21
20 to 100	50
Over 100	100

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 Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to amend the Signature Guarantee Minimum Fee Schedule. The schedule allocated costs amongst all participants at a flat rate of $250.00 annually since 1975. Since that time Exchange insurance and administrative costs have risen dramatically. In order to equitably allocate a reasonable rate amongst member organizations participating in the Signature Guarantee Program, the Exchange is proposing a rate increase allocated on a monthly deposit volume basis. The minimum rate on an annualized basis would be raised to $252.00 with a maximum rate of $1,200.00 annually.

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organizations 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

December 22, 1988.

[FR Doc. 88–29967 Filed 12–28–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24789]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 22, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 17, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Holdings, Inc. (70–7541)

Holdings, Inc. ("Holdings"), One Quality Street, Lexington, Kentucky 40507, a newly organized Kentucky corporation, has filed an application pursuant to sections 3(a)(1), 9(a)(2), and 10 of the Act.

Holdings requests an order of the Commission (i) approving the acquisition by Holdings of all the outstanding shares of common stock of Kentucky Utilities Company ("KU"), a Kentucky corporation, and the indirect acquisition of 100% of the outstanding shares of capital stock of Old Dominion Power Company ("ODP"), a Virginia corporation, and 20% of the outstanding shares of capital stock of Electric Energy, Inc. ("EEI"), an Illinois corporation, through the ownership by KU of said shares and (ii) granting Holdings and its suibsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2). The application states that the proposed reorganization is a reasonable response to the changing business environment in the electric utility industry and will improve opportunities for investment in non-utility activities, while ensuring thjat there will be no adverse impact on KU's customers.

Holdings was recently incorporated for the purpose of accomplishing a proposed share exchange pursuant to an Agreement and Plan of Exchange (the "Agreement"). Holdings does not own any utility assets and currently is not a holding company under the Act.

KU is an exempt holding company and a public-utility company engaged in producing and selling electric energy in central, southeastern, and western

Kentucky. At December 31, 1987, it furnished electric service to about 375,400 customers in over 600 communities and adjacent suburban and rural areas located in 77 counties in those areas of Kentucky, and also to 26 customers in Claiborne County, Tennessee. KU's total consolidated operating revenues for 1987 were $553.2 million.

ODP is a public-utility company which furnishes electric service in five counties in southwestern Virginia. At December 31, 1987, it furnished electric service to about 26,500 customers in 54 communities and adjacent rural areas located in those five counties. ODP's total operating revenues for 1987 were $39.5 million.

KU owns 20% (accounted for under the equity method) of EEI, which owns a 1,000,000 KW generating station at Joppa, Illinois. EEI was organized by KU and other utility companies (the "Sponsoring Companies") in 1950 for the primary purpose of supplying a substantial portion of the electric energy requirements of an installation of the Department of Energy ("DOE") at Paducah, Kentucky. All of the electricity sold by EEI is sold to DOE and the Sponsoring Companies. EEI does not sell electricity to private consumers and does not have any equity securities outstanding in the hands of the public. EEI had outstanding at December 31, 1987, $31.6 million in short-term notes under two revolving credit agreements with banks.

As of and for the year ended December 31, 1987, ODP represented about 7.1% of consolidated operating revenues of KU, 0.8% of consolidated net income, 4.3% of consolidated total assets.

KU's investment of $2,141,000 in its 20% stock interest in EEI was less than 1% of KU's consolidated total assets, exclusive of such investment, as of March 31, 1988. During the year ended December 31, 1987, KU received $403,000 for its share of the equity in EEI's net income, which amounted to less than 0.5% of KU's net income for said period.

Holdings and KU intend that, as a result of the corporate reorganization, Holdings will own all the outstanding common stock of KU. KU will continue to own 100% of the capital stock of ODP and 20% of the capital stock of EEI. Holders of KU preferred stock and first mortgage bonds will continue as security holders of KU. KU proposes to submit the corporate reorganization to its shareholders for their approval at their next annual meeting, scheduled for April 25, 1989. The Kentucky Public Service Commission and the Tennessee Public Service Commission have approved the proposed corporate reorganization. KU has submitted an application to the Federal Energy Regulatory Commission seeking its approval of the corporate reorganization.

KU is exempt from the provisions of the Act by reason of an order entered under Section 3(a)(2). *Kentucky Utilities Co.*, 29 S.E.C. 289 (1949). KU's acquisition of the common stock of EEI was approved by the Commission in *Central Illinois Public Service Co.*, 32 S.E.C. 202, 204, (1951) and *Electric Energy, Inc.*, 28 S.E.C. 658, 660 (1958). KU states that it has maintained its exemption from the provisions of the Act through the annual filing of a Form U-3A-2. Holdings believes that it and its subsidiary companies will meet the requirements for an exemption under Section 3(a)(1) of the Act following the proposed corporate reorganization.

Public Service Company of Oklahoma (70-7601)

Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74102, an electric utility subsidiary company of Central and South West Corporation, a registered holding company has filed an application pursuant to Sections 9(a) and 10 of the Act.

PSO is requesting approval of its proposal to purchase power-conditioning products and to market such products to its residential, commercial, and industrial customers. PSO proposes to enter into an agreement (the "License Agreement") for the purchase of power-conditioning products and services from The Bayboro Corporation ("Bayboro"), a subsidiary of Talquin Corporation, which is a subsidiary of Florida Progress Corporation. Bayboro was formed in 1986 to market power-conditioning products and services to commercial businesses and electric utility companies, and developed the first successful full-service, utility, power-conditioning program in the United States. Bayboro markets its power-conditioning program under the trade names "Flash Warden," developed for residential customers, and "Stedi-State," developed for commercial and industrial customers. The power-conditioning products comprising the Flash Warden and Stedi-State systems consist of surge suppressors and standby-power supplies which maintain the integrity of power supply in the event of lightning or other power surges, or power failures. The Stedi-State system also includes power-line conditioners that protect sensitive electronic equipment from various wave-shape distortions.

Pursuant to the License Agreement, PSO would purchase power conditioning products directly from Bayboro on an as-needed basis. In addition, Bayboro would provide PSO additional resources and services such as program implementation support marketing materials, marketing training for PSO employees, and technical consulting services during the term of the License Agreement.

PSO anticipates that marketing of the Flash Warden and Stedi-State systems will be conducted by current PSO employees in PSO's Marketing and Sales Department. PSO currently anticipates that it will make expenditures of approximately $550,000 (including startup expenses), $890,000, and $950,000 during the first three years of the power conditioning program. In addition, PSO estimates revenue from the sales of Flash Warden and Stedi-State system of $1,534,000, $2,773,000, and $3,033,000, while the cost of merchandise sold is estimated to be $813,000, $1,470,000, and $1,630,000, during the first three years of the power-conditioning program.

PSO believes that implementation of the proposed power-conditioning program will enable it to provide systems and services to solve its customers' power quality problems. In addition, PSO believes that the proposed power-conditioning program can be operated at margins that will provide PSO with a positive cash flow and a reasonable rate of return.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29968 Filed 12-28-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Order 88-12-44; Docket 46034]

Order Instituting U.S.-Australia Service Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the *U.S.-Australia Service Proceeding* to award new certificate authority to operate scheduled combination service between the United States and Australia, Order 88-12-44, Docket 46034.

SUMMARY: The Department has decided to institute the *U.S.-Australia Service Proceeding* to select a primary and a backup carrier for certification to engage in scheduled foreign air transportation

of persons, property and mail between the United States and Australia. Under the terms of the United States-Australia Air Transport Agreement and related *ad referendum* Memoranda, the United States may designate only one additional carrier during the next three years to provide scheduled combination service to Australia. Four U.S. carriers have applied for certificate authority to serve Australia. In the face of these competitive and mutually exclusive applications, the Department has decided to institute an oral evidentiary proceeding before an Administrative Law Judge to select a primary and a backup carrier to provide new U.S.-Austrialia service. All other U.S. carriers interested in serving Australia are invited to file applications for the certificate authority at issue in the proceeding.

DATES: Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration are due not later than January 9, 1989. Answers are due not later than January 17, 1989.

ADDRESS: Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration should be filed in Docket 46034, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 46034, the Department's Office of Administrative Law Judges and Mr. Robert Goldner, P-7, at the same address.

Dated: December 23, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-29971 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Electronic Tariff Filing System Advisory Committee; Reestablishment

SUMMARY: OST announces the reestablishment of the Electronic Tariff Filing System Advisory Committee.

The purpose of the Committee is to make continuing recommendations on the technical, operational, and policy issues involved in the implementation of the proposed automated tariff filing and information system.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, Office of International Aviation, P-44, Department of Transportation, 400 7th St. SW., Washington, DC 20590, telephone (202) 366-2414.

Dated: December 22, 1988.

Douglas V. Leister,

Executive Director, ETS Advisory Committee, Office of International Aviation.

[FR Doc. 88-29898 Filed 12-28-88; 8:45 am]

BILLING CODE 4910-62-M

Privacy Act of 1974

The Department of Transportation (DOT) herewith publishes a proposal to alter a system of records.

Any person of agency may submit written comments on the proposed altered system to the U.S. Coast Guard (G-PS), ATTN: Mr. Herbert Levin, 2100 Second Street, SW., Washington, DC 20593-0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, December 16, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement; Department of Transportation; Office of the Secretary; on Behalf of the United States Coast Guard for Alteration of the Family Advocacy Case Record System

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the Family Advocacy Case Record System, DOT/CG-631, to cover all records maintained by the Coast Guard pertaining to the Family Advocacy Program for Coast Guard active duty, reserve, and retired personnel.

The purpose of this notice is to revise the system to include decentralized locations for Family Advocacy Program records at the District, Maintenance and Logistics Command (MLC), or Headquarters Unit Social Worker's office. Additional locations include the duty station of the District, MLC, or Headquarters Unit Family Advocacy Representative under whose jurisdiction an incident occurred. This revision will also allow individuals under contract to the Coast Guard to use the records in the performance of their official duties relating to family support programs.

The changes include amendment to: System location and Routine uses of records maintained in the system, including categories of users and the purposes of such uses.

Since this proposal is an amendment of an existing record system, the probable or potential efect of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate heading in the attached **Federal Register** system of records notice.

The purpose of this report is to comply with the Office of Management and Budget Circular, A-130, Appendix I, dated December 24, 1985.

DOT/CG 631

SYSTEM NAME:

Family Advocacy Case Record System.

SYSTEM LOCATION:

Commandant (G-PS), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC 20593.

Decentralized segments may be maintained at the District, Maintenance and Logistics Command (MLC), or Headquarters Unit Social Worker's office, at the duty station of the sponsor, and at selected medical facilities. Decentralized segments may also be maintained at the duty station of the District, MLC, or Headquarters Unit Family Advocacy Representative (FAR) under whose jurisdiction an incident occurred.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve and retired personnel and dependents entitled to care at Coast Guard or any other military medical and dental facility whose abuse or neglect is brought to the attention of appropriate authorities, and persons suspected of abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of suspected and confirmed cases of family member abuse or neglect, investigative reports, correspondence, family advocacy committee reports, follow up and evaluation reports, and any other supportive data assembled relevant to individual family advocacy program files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To Federal, State and Local government or private agencies for coordination of family advocacy programs, medical care, mental health treatment, civil or criminal law enforcement, and research into the

causes and prevention of family domestic violence.

b. To individuals or organizations providing family support program care under contract to the Federal Government.

c. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Records are retrieved through indices and cross indices of all individuals and relevant incident data. Types of indices used, but not limited to include: name, social security number, and types of incidents.

SAFEGUARDS:

Records are maintained in various kinds of locked filing equipment in specified monitored or controlled access rooms or areas. Records are accessible only to authorized personnel. Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

a. Records will be maintained at a decentralized location until the case is closed or the sponsor is separated.

b. Upon case closure or separation of the sponsor, the record will be transferred to Commandant (G–PS). The record will be retained for 5 years from case closure or date of last action. At the end of 5 years the record will be destroyed, except for information concerning certain minor Coast Guard dependents. Information concerning minor Coast Guard dependents who were victims or suspected victims of child abuse, neglect or sexual abuse will be retained until the dependent attains majority.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Personnel and Training (G–P), Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

a. Central location: Notarized written requests should contain the full name and social security number of the member and be addressed to Commandant (G–TIS), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

b. Decentralized locations: Notarized written request should contain the full name and social security number of the member and be addressed to the MLC, district, or unit where the individual is assigned.

RECORD ACCESS PROCEDURES:

Access may be obtained by writing to Commandant (G–TIS) at the address in Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Reports from medical personnel, educational institutions, law enforcement agencies, public and private health and welfare agencies, Coast Guard personnel and private individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Part of this system may be exempt under 5 U.S.C. 552a(k) (2) and (5) which provide in part the exemption of investigatory material compiled for law enforcement purposes or solely for the purposes of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

[FR Doc. 88–29972 Filed 12–28–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–88–50]

Petition for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice 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 the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the 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.

FOR FURTHER INFORMATION CONTACT: 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.

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 December 22, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

Docket No. 045CE

Petitioner: Fairchild Aircraft Corporation

Regulations Affected: 14 CFR 23.53(c)(6), 23.53(c)(7), and 23.67(e)(1)(i)

Description of Relief Sought/ Disposition: To allow petitioner to certificate their Model SA227–CC METRO IIIC airplane in the commuter category based, in part, on previous FAA approval of compliance with the ICAO Annex 8 provisions of SFAR 41.

Denial, August 5, 1988, Exemption No. 4935

Docket No. 046CE

Petitioner: British Aerospace

Regulations Affected: 14 CFR 23.471, 23.473, 23.477, 23.479, 23.481, 23.483, 23.485, 23.493, 23.497, 23.499, 23.505, 23.509, 23.511, 23.721, 23.723, 23.725, 23.726, 23.727, 23.729, 23.731, 23.733, 23.735, and 23.737

Description of Relief Sought/ Disposition: Petitioner requested an exemption from certain ground load and landing gear requirements of Part 23 to permit certification of their Jetstream 3200 Series airplanes in the commuter category while meeting certain transport category ground load and landing gear requirements.

Grant, August 24, 1988, Exemption No. 4927

[FR Doc. 88–29891 Filed 12–28–88; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160, 406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the twelfth meeting of

RTCA Special Committee 160 on 406 MHz emergency locator transmitters (ELT) to be held January 17–19, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of prior meeting's minutes, RTCA Paper No. 444–88/SC160–137; (3) review and discuss EUROCAE WG–29 activities; (4) report on problems of frequency interference in the 406 MHz band; (5) review of task assignments from last meeting; (6) review of seventh draft of the MOPS, RTCA Paper No. 446–88/SC160–138; (7) task assignments; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 21, 1988.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 88–29892 Filed 12–28–88; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. IP88–; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Firestone Tire and Rubber Co.

Firestone Tire and Rubber Company (Firestone) of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(f) of Federal Motor Vehicle Safety Standard No. 109 "New Pneumatic Tires", requires the words "tubeless" or "tube type" to be permanently molded into or onto both sidewalls of tires as applicable. Firestone manufactured 19,231 P235/6OR 14 Daytona Radial WSW tires without the word "tubeless" stamped on the non serial sidewalls of the tires. However, Firestone impounded 111 of these tires, so the total number effected by this petition is 19,120. These tires were produced during 1987 through November 18, 1988.

Firestone supports its petition for inconsequential noncompliance with the following:

All tires manufactured in the affected size/type are tubeless. Firestone does not manufacture this tire in a tube type configuration; therefore, they would be sold as tubeless.

If a consumer made a decision to utilize any affected tire as tube type, and mount the tire using a tube, the tire would perform satisfactorily.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Tire and Rubber Company, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 30, 1989.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on December 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–29897 Filed 12–28–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0022.
Form Number: IRS Form 712.
Type of Review: Extension.
Title: Life Insurance Statement.
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 50,000.
Estimated Average Burden Hours Per Response:
Recordkeeping—18 hours and 25 minutes
Preparing the form—18 minutes
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 935,500 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–29899 Filed 12–28–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0082.
Form Number: ATF F 5120.24 (1582–A).
Type of Review: Extension.
Title: Drawback on Wine Exported.
Description: When proprietors export wines that have been produced, packaged, manufactured or bottled in the U.S., they file a claim for a drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.
Respondents: Individuals or households, Businesses or other for-profit, and Small businesses or organizations.
Estimated Number of Recordkeepers: 900.
Estimated Burden Hours Per Response: 1 hour and 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,025 hours.
OMB Number: 1512–0144.
Form Number: ATF F 5100.12 (2736).
Type of Review: Extension.
Title: Specific Transportation Bond-Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.
Description: ATF F 5100.12 (2736) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond describes the customs bonded warehouse, the surety company, amount of bond and coverage, specific shipment of spirits or wine to be covered.
Respondents: Businesses or other for-profit, and Small businesses or organizations.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–29900 Filed 12–28–88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 33-88]

Treasury Notes of December 31, 1990, Series AJ-1990

Washington, December 22, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of December 31, 1990, Series AJ-1990 (CUSIP No. 912827 WZ 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 3, 1989, and will accrue interest from that date, payable on a semiannual basis on June 30, 1989, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, December 28, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 27, 1988, and received no later than Tuesday, January 3, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of

customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yields will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, January 3, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 29, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 3, 1989. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payments has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-30027 Filed 12-28-88; 10:56 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 34-88]

Treasury Notes of December 31, 1992, Series Q-1992

Washington, December 22, 1988.

I. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of December 31, 1992, Series Q-1992 (CUSIP No. 912827 XA 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes

may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 3, 1989, and will accrue interest from that date, payable on a semiannual basis on June 30, 1989, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239-1500, prior to 1:00 p.m., Eastern Standard time, Thursday, December 29, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, December 28, 1988, and received no later than Tuesday, January 3, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to other whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, January 3, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately

available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 29, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 3, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General provisions

6.1. As fiscal agents of the Untied States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-30028 Filed 12-28-88; 10:56 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 250
Thursday, December 29, 1988

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, January 9, 1989.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. Notice of Proposed Rulemaking Concerning ADEA Statute of Limitations Tolling for Private Litigants

Closed Session

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Date: December 27, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued December 27, 1988.

[FR Doc. 88–30103 Filed 12–27–88; 3:56 pm]

BILLING CODE 6750–06–M

INTERNATIONAL TRADE COMMISSION

USITC SE–89–01

TIME AND DATE: Wednesday, January 4, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   Certain grain oriented silicon steel (Docket No. 1479).
5. Inv. No. 731–TA–390 (F) (Digital Readout Systems and Subassemblies thereof from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

December 22, 1988.

[FR Doc. 88–30042 Filed 12–27–88; 11:03 am]

BILLING CODE 7020–02–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Wednesday, December 21, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Part of this meeting will be open to the public. The remainder of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public
  Proposed changes in casehandling procedures
Portion closed to the public
  Personnel matters
  Board cases

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC.

Dated, Washington, DC, December 23, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88–30037 Filed 12–27–88; 11:03 am]

BILLING CODE 7445–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Thursday, January 12, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED:

Closed to the Public 1:30 P.M. to 3:00 P.M.

1. Proposed Guidelines Under Pilot Equity Program
2. Delegations of Authority
3. Claims Report
4. FY 1989 and FY 1990 Budget Negotiations
5. Operating Results and New Directions
6. Finance and Insurance Reports
7. President's Report

FURTHER MATTERS TO BE CONSIDERED:

Open to the Public 3:00 P.M.

1. Approval of the Minutes of the Previous Board Meeting
2. Scheduling of Future Meetings of the Board
3. Treasurer's Report
4. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457–7079.

Margaret A. Kole,

OPIC Corporate Secretary.

December 27, 1988.

[FR Doc. 88–30124 Filed 12–27–88; 4:03 pm]

BILLING CODE 3210–01–M

federal register

Thursday
December 29, 1988

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 209, 213 through 229, and 231 through 236
Amendments to Railroad Safety Regulations to Increase Standard Civil Penalty Assessment Amounts; Final Rule and Statements of Policy

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 231, 232, 233, 234, 235, and 236

[FRA Docket No. RSEP-3, Notice No. 2]

RIN 2130-AA47

Amendments To Railroad Safety Regulations To Increase Standard Civil Penalty Assessment Amounts

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule and statements of policy.

SUMMARY: FRA issues a final rule and statements of policy to conform its railroad safety regulations to certain provisions of the Rail Safety Improvement Act of 1988. Specifically, the rule amends the regulations to revise the schedules of civil penalties (which are statements of agency policy) to reflect the higher penalty amounts available under the amended rail safety statutes by increasing the initial assessment amounts for violation of specific regulations. FRA also issues a general statement of policy explaining the civil penalty process and the agency's policy on exercising its expanded enforcement authority over individuals.

DATE: The final rule and policy statements will become effective January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, FRA, Washington, DC 20590 (Telephone: 202-366-0628); or Edward English, Chief, Maintenance Programs Division, Office of Safety, FRA, Washington, DC 20590 (Telephone: 202-366-9186).

SUPPLEMENTARY INFORMATION:

Changes Effected by the Rail Safety Improvement Act of 1988

The Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. No. 100-342), enacted on June 22, 1988, made many basic changes, two of which are pertinent here, to the federal railroad safety statutes. (Those statutes include the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older safety statutes": The Safety Appliance Acts, 45 U.S.C. 1-16; the Locomotive Inspection Act, 45 U.S.C. 22-34; the Accident Reports Act, 45 U.S.C. 38-43; the Hours of Service Act, 45 U.S.C. 61-64b; and the Signal Inspection Act, 49 App. U.S.C. 26.)

The first relevant change brought about by the RSIA was the amendment of the safety statutes to authorize the assessment of civil penalties against individuals who willfully violate the rail safety statutes or regulations, and to permit the Federal Railroad Administration to suspend or disqualify an individual whose violation of the safety laws is shown to make that individual unfit for performance of safety-sensitive functions in the rail industry. (Only the civil penalty aspects of this change are addressed here.)

Second, the RSIA raised the maximum civil penalty that FRA may assess under the safety laws. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may now be assessed.

The Effect of the Interim Rule and Policy Statements

Section 3(b) of the RSIA provides:

> Within 30 days after enactment of this Act the Secretary of Transportation * * * shall issue interim rules, regulations, orders, or standards containing penalty schedules applicable to railroads and individuals reflecting the changes made by the amendments in subsection (a). The Secretary shall issue final rules, regulations, orders, or standards with respect to such penalty schedules within six months after such date of enactment.

On July 22, 1988, FRA issued the first notice in this docket (53 FR 28594, July 28, 1988), effective August 1, 1988, which: (i) Amended the rail safety regulations to make them applicable to individuals as well as railroads; (ii) amended the schedules of civil penalties to increase the maximum penalties to $20,000; and (iii) issued an Interim Statement of Agency Policy explaining how the civil penalty process works and how FRA intended to administer its new enforcement authority over individuals. FRA stated in that notice that, within the six months allotted by the RSIA, it would issue another notice providing line-by-line revisions of the penalty schedules to reflect the higher penalty ceiling now in place and would, at the same time, make any necessary changes to its interim rule and statements of policy.

Public Participation

In this notice, FRA issues those detailed penalty schedules and revisions to the interim rule and policy statements as promised in the first notice. Because these amendments, like the earlier ones, do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Given the obvious Congressional intent to require prompt implementation of the RSIA provisions authorizing higher penalties and sanctions against individuals, any delay necessitated by notice and comment procedures would be contrary to the public interest. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule (January 1, 1989).

In addition to the reasons just stated, notice and comment procedures are unnecessary with regard to the revisions to the penalty schedules and statement of policy issued by this notice because the schedules themselves are statements of agency policy that, like the general statement of policy, are excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Statements of policy are also an exception to the general requirement of publication at least 30 days prior to the effective date. *See* 5 U.S.C. 553(d)(2). Moreover, in reporting out the bill that was enacted as the RSIA, the conference committee stated: "The conferees view these penalty schedules as a matter committed to agency discretion by law." H.Rep. No. 100-637, 100th Cong., 2d Sess. at 21 (1988). Although not required by law to do so, FRA invited public comment on its interim rule and policy statements. Only one comment (discussed below) was received.

Of course, in the future FRA could provide notice of and opportunity to comment on any or all of its schedules. The Federal Railroad Safety Act of 1970 makes this option available; it provides that FRA "shall include in, or make applicable to," each regulation a civil penalty within the statutory range. 45 U.S.C. 438(b). Where the notice and comment option is followed, the schedules ultimately adopted would be regulatory law rather than statements of policy.

Effect of This Notice

This notice amends the penalty schedules and, where necessary, the text of the railroad safety regulations (seventeen separate parts are amended here) to give effect to the full range of civil penalties now permitted to be assessed for violation of specific regulations.

The penalty schedules are statements of agency policy that specify the civil penalty that FRA will ordinarily assess for the violation of a particular regulation and reserve FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The rail safety statutes, of course, authorize FRA to adjust the penalty initially assessed after considering any defenses and a wide variety of mitigating factors. Accordingly, the penalty actually collected may range from the $250 minimum set by the safety statutes to the amount initially assessed (and, where a valid defense is shown to exist during negotiations, the claim would be terminated and no amount would be collected). Nevertheless, the schedules provide members of the regulated community with some idea of the amount they are likely to be assessed for a given violation.

Given the complexity of amending the hundreds of individual entries in FRA's penalty schedules, combined with the desire to promptly give effect to the expanded authority granted by the RSIA, Congress required that the penalty schedules be amended in a two-stage process. Section 3(b) of the RSIA required FRA to issue interim penalty schedules within 30 days of enactment and final penalty schedules within six months of enactment. Notice No. 1 of this docket accomplished the first task. The changes effected by this notice constitute the detailed penalty schedules discussed in section 3(b). Like the interim schedules, these schedules reserve FRA's right to assess a penalty up to $20,000 per violation in appropriate circumstances. These schedules contain different penalties for two categories of violations: Normal and willful. The normal penalties apply only to railroads, while the willful column applies to willful violations by railroads or individuals.

Most of the penalty schedules list the CFR section or subsection with the corresponding penalties listed in columns next to it. However, in Part 231, the section listed in the left-hand column of the schedule is taken not directly from the CFR but from the FRA "defect code" for that CFR Part. Defect codes were developed by FRA to facilitate computerization of inspection data by providing a digital format for every CFR citation. The CFR uses the normal method for distinguishing subparagraphs and further breakdowns of text, i.e., sequential letters and numbers. Also, in a regulatory text, a number of specific requirements may be contained in a single paragraph without internal subdivision. In a defect code, each possible type of noncompliance is assigned a two- or three-digit identifier in place of its CFR text identifier. Thus, a defect code citation may provide greater precision and differentiation than a CFR citation. Of course, the defect codes are coextensive with the CFR, so the actual offense charged would be a violation of the relevant CFR provision; there is no attempt to make conduct illegal unless the CFR specifically so provides.

Part 231 is a special case. There, the penalty schedule uses a defect code that, although no more expansive than Part 231 itself, does not track the CFR in terms of section numbers. The reason is simple: FRA is not content with the organization of Part 231, which remains largely as drafted decades ago. It states safety appliance requirements by type of car, with repetitious incorporation by reference of the requirements for other car types. The defect code (like the amended safety appliance regulations FRA hopes to issue in the future) is organized by the type of safety appliance, making it far easier to use. In this part only, then, the penalty citation will track the defect code and not the CFR. However, as always, every defect code citation is based on and, if necessary, can be traced to a specific regulatory and/or statutory provision. For the sake of convenience and clarity, however, the charging documents will contain the defect code citation.

This notice also issues as an appendix to Part 209 a final Statement of Policy that addresses FRA's exercise of its authority to collect penalties from individuals and its policy on assessment of maximum penalties. This statement covers FRA's definition of "willful" and explains the informal procedures FRA uses to assess penalties and negotiate final penalty amounts with individuals. This statement also contains a useful summary of FRA's overall civil penalty enforcement process. All those interested in that process are urged to become familiar with the statement. The policy statement also addresses the extent of FRA's jurisdiction over railroads and the enforcement authority available to FRA in addition to civil penalties, subjects not discussed in the interim statement.

Finally, this notice makes technical amendments necessary to re-issue, under the authority of the Federal Railroad Safety Act of 1970, the recordkeeping requirements of Subpart B of Part 228 of 490 CFR (which pertain to records of employees' hours of service and reporting instances of excess service under the Hours of Service Act). Section 208(d)(1) of the Safety Act (added by the 1980 amendments to the safety laws, Pub. L. No. 96–423) authorizes FRA to issue, *inter alia*, recordkeeping and reporting requirements in furtherance of the substantive requirements of the older safety statutes. The 1980 amendments also added to the Safety Act section 209(e), which provides for criminal penalties for falsification of records or other knowing and willful violation of recordkeeping requirements. Previously, FRA had been forced to rely on similar authority provided under the Interstate Commerce Act as the basis for civil and criminal penalties for recordkeeping violations related to compliance with the older safety statutes. As revised, the authority citation for Part 228 no longer refers to the Interstate Commerce Act, and the relevant penalty provisions (§§ 228.21 and 228.23) rely on the authority added to the Safety Act in 1980.

Readers should note that this notice does not issue procedural regulations for exercise of the authority, provided by section 3(a) of the RSIA, to suspend or disqualify an individual from safety-sensitive functions. In another proceeding (docket RSEP–6, notice No. 1, 53 FR 49695; December 9, 1988), FRA has proposed to amend Part 209 of 49 CFR to include such procedures.

To the extent that this notice does not amend the interim rule and statements, they will become final with publication of this notice.

Discussion of Comments Received

FRA has received only one set of comments on its interim rule and statements of policy. The commenter, a commuter railroad authority, merely posed questions rather than advance a particular position on an issue raised by the interim rule. Those questions, which concerned individual liability for safety violations, were: What role will the National Transportation Safety Board play in determining a "willful" violation? Will the Board's findings as to the causes of accidents be used to justify the placement of fines? Where an individual protests a direct order to violate a safety law, who will determine what the direct order was—the NTSB

investigator, the FRA inspector, or the operating railroad?

FRA believes that these questions are based on certain fundamental misconceptions. First, the NTSB plays no role in the enforcement of the federal railroad safety laws. In the rail area, NTSB's role is limited to investigating serious railroad accidents, reporting on the Board's view as to causal factors, and making appropriate recommendations to private or public bodies. While it may happen that an NTSB investigator may come upon evidence of a safety violation and be called on by FRA to provide relevant testimony in an enforcement proceeding, such an occurrence is very unlikely. Very few of FRA's penalty actions arise from accident investigations. Most result from FRA's routine inspections and complaint investigations. Moreover, FRA exercises concurrent jurisdiction with the NTSB in investigating railroad accidents, and FRA's inspectors often investigate the most serious accidents along with, and sometimes on behalf of, the Board. In the rare circumstance where the NTSB had access to facts indicating safety violations and FRA did not, the Board would undoubtedly share that information with FRA, and would not wait until issuance of its report to do so. Only if FRA could not independently corroborate that information through its own observations or relevant documents would it consider calling on the Board investigator to provide testimony.

The commenter also apparently misunderstood the nature of the protest that the RSIA permits an individual to lodge and document in the face of a direct order to violate the law. Where the evidence demonstrates that such an order has been given, one who files such a protest will be presumed to have lacked the mental state (willfulness) necessary to have made his or her actions subject to a civil penalty. However, the mere lodging and documentation of such a protest will not conclusively establish that a direct order to violate the safety laws had been given. That will be a factual question to be resolved in light of all the evidence, of which the documented protest will be one part. FRA will look to anyone with pertinent knowledge on the nature of the order to provide that information. FRA has included discussion of this point in its final statement of agency policy.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule and policy statement have been evaluated in accordance with existing policies and procedures. They are considered to be non-major under Executive Order 12291. Because of the substantial public interest associated with issuance of this rule, it is considered significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive or procedural regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and a statement of its enforcement policy in the event of noncompliance. Accordingly, preparation of a regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the enforcement of FRA's rules but are not required to do so.

Paperwork Reduction Act

There are no information collection requirements contained in this rule and policy statement.

Environmental Impact

FRA has evaluated this rule and policy statement in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule and statement of policy will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Parts 209, 213 through 229, and 231 through 236

Railroad safety, Penalties.

Therefore, in consideration of the foregoing, Parts 209, 213 through 229, and 231 through 236, Title 49, Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

1. Part 209 is amended as follows:

A. The authority citation for Part 209 is revised to read as follows:

Authority: 45 U.S.C. 6, 10, and 13, as amended; 45 U.S.C. 34, as amended, 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438 and 439, as amended; 49 U.S.C. 103(c); 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808, 1809, and 1810; and 49 CFR 1.49(s).

§ 209.1 [Amended]

B. Section 209.1 is amended by (1) inserting the first sentence of the introductory text the following: "Appendix A to this part contains a statement of agency policy concerning enforcement of those laws."; (2) removing from paragraph (a) the parenthetical "(49 CFR 1.49(t))" and inserting in its place "(49 CFR 1.49(s))"; (3) removing from paragraph (b) the language "45 U.S.C. 421, 431–441 (49 CFR 1.49(n))" and inserting in its place "45 U.S.C. 421 *et seq.* (49 CFR 1.49(m))"; and (4) in paragraph (c), removing all language after the word "Act" and inserting in its place: "49 App. U.S.C. 1655(e) (49 CFR 1.49 (c), (d), (f), and (g)).".

C. Appendix A to Part 209 is revised to read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement Of The Federal Railroad Safety Laws

The Federal Railroad Administration ("FRA") enforces the federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.49 (c), (d), (f), (g), and (m). Those statutes include the Federal Railroad Safety Act of 1970 ("Safety Act"), 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older safety statutes": The Safety Appliance Acts, 45 U.S.C. 1–16; the Locomotive Inspection Act, 45 U.S.C. 22–34; the Accident Reports Act, 45 U.S.C. 38–43; the Hours of Service Act, 45 U.S.C. 61–64b; and the Signal Inspection Act, 49 App. U.S.C. 26. Regulations implementing those statutes are found at 49 CFR Parts 213 through 236. The Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. FRA also enforces the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, as it pertains to the shipment or transportation of hazardous materials by rail.

The Civil Penalty Process

The front lines in the civil penalty process are the FRA safety inspectors: FRA employs over 300 inspectors, and their work is supplemented by approximately 100 inspectors from states participating in enforcement of the federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the nation's railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, he or she prepares a violation report, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence provided in or with the report.

In determining which instances of noncompliance merit penalty recommendations, the inspector considers:

(1) The inherent seriousness of the condition or action;

(2) The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;

(3) Any actual harm to persons or property already caused by the condition or action;

(4) The offending person's (*i.e.*, railroad's or individual's) general level of current compliance as revealed by the inspection as a whole;

(5) The person's recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved;

(6) Whether a remedy other than a civil penalty (ranging from a warning on up to an emergency order) is more appropriate under all of the facts; and

(7) Such other factors as the immediate circumstances make relevant.

The civil penalty recommendation is reviewed at the regional level by a specialist in the subject matter involved, who requires correction of any technical flaws and determines whether the recommendation is consistent with national enforcement policy in similar circumstances. Guidance on that policy in close cases is sometimes sought from Office of Safety headquarters. Violation reports that are technically and legally sufficient and in accord with FRA policy are sent from the regional office to the Office of Chief Counsel.

The exercise of this discretion at the field and regional levels is a vital part of the enforcement process, ensuring that the exacting and time-consuming civil penalty process is used to address those situations most in need of the deterrent effect of penalties. FRA exercises that discretion with regard to individual violators in the same manner it does with respect to railroads.

The Office of Chief Counsel's Safety Division reviews each violation report it receives from the regional offices for legal sufficiency and assesses penalties based on those allegations that survive that review. Historically, the Division has returned to the regional offices less than five percent of the reports submitted in a given year, often with a request for further work and resubmission.

Where the violation was committed by a railroad, penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors. The railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of civil penalties in amounts that fit the actual offense without resort to time-consuming and expensive litigation. Over its history, FRA has had to request that the Attorney General bring suit to collect a penalty on only a very few occasions.

Once penalties have been assessed, the railroad is given a reasonable amount of time to investigate the charges. Larger railroads usually make their case before FRA in an informal conference covering a number of case files that have been issued and investigated since the previous conference. Thus, in terms of the negotiating time of both sides, economies of scale are achieved that would be impossible if each case were negotiated separately. The settlement conferences, held either in Washington or another mutually agreed on location, include technical experts from both FRA and the railroad as well as lawyers for both parties. In addition to allowing the two sides to make their cases for the relative merits of the various claims, these conferences also provide a forum for addressing current compliance problems. Smaller railroads usually prefer to handle negotiations through the mail or over the telephone, often on a single case at a time. Once the two sides have agreed to an amount on each case, that agreement is put in writing and a check is submitted to FRA's accounting division covering the full amount agreed on.

Cases brought under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, are, due to certain statutory requirements, handled under more formal administrative procedures. *See* 49 CFR Part 209, Subpart B.

Civil Penalties Against Individuals

The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" who fails to comply with the regulations or statutes. *E.g.*, section 3 of the RSIA, amending section 209 of the Safety Act. However, the RSIA also provided that civil penalties may be assessed against individuals "only for willful violations."

Thus, any individual meeting the statutory description of "person" is liable for a civil penalty for a willful violation of, or for willfully causing the violation of, the safety statutes or regulations. Of course, as has traditionally been the case with respect to acts of noncompliance by railroads, the FRA field inspector exercises discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance. The inspector has a range of options, including an informal warning, a more formal warning letter issued by the Safety Division of the Office of Chief Counsel, recommendation of a civil penalty assessment, recommendation of disqualification or suspension from safety-sensitive service, or, under the most extreme circumstances, recommendation of emergency action.

The threshold question in any alleged violation by an individual will be whether that violation was "willful." (Note that section 3(a) of the RSIA, which authorizes suspension or disqualification of a person whose violation of the safety laws has shown him or her to be unfit for safety-sensitive service, does not require a showing of willfulness. Regulations implementing that provision are found at 49 CFR Part 209, Subpart D.) FRA proposed this standard of liability when, in 1987, it originally proposed a statutory revision authorizing civil penalties against individuals. FRA believed then that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads. FRA also believed that even a reasonable care standard (*e.g.*, the Hazardous Materials Transportation Act's standard for civil penalty liability, 49 U.S.C. 1809(a)) would subject individuals to civil penalties in more situations than the record warranted. Instead, FRA wanted the authority to penalize those who violate the safety laws through a purposeful act of free will.

Thus, FRA considers a "willful" violation to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law. Accordingly, neither a showing of evil purpose (as is sometimes required in certain criminal cases) nor actual knowledge of the law is necessary to prove a willful violation, but a level of culpability higher than negligence must be demonstrated. *See Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111 (1985); *Brock* v. *Morello Bros. Constr., Inc.* 809 F.2d 161 (1st Cir. 1987); and *Donovan* v. *Williams Enterprises, Inc.*, 744 F.2d 170 (D.C. Cir. 1984).

Reckless disregard for the requirements of the law can be demonstrated in many ways. Evidence that a person was trained on or made aware of the specific rule involved—or, as is more likely, its corresponding industry equivalent—would suffice. Moreover, certain requirements are so obviously fundamental to safe railroading (*e.g.*, the prohibition against disabling an automatic train control device) that any violation of them, regardless of whether the person was actually aware of the prohibition, should be seen as reckless disregard of the law. *See Brock, supra*, 809 F.2d 164. Thus, a lack of subjective knowledge of the law is no impediment to a finding of willfulness. If it were, a mere denial of the content of the particular regulation would provide a defense. Having

proposed use of the word "willful," FRA believes it was not intended to insulate from liability those who simply claim—contrary to the established facts of the case—they had no reason to believe their conduct was wrongful.

A willful violation entails knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will suffice to show objectively what the alleged violator must have known of the facts based on reasonable inferences drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal air brake test that was not in fact performed would not be able to defend against a charge of a willful violation simply by claiming subjective ignorance of the fact that the test was not performed. If the facts, taken as a whole, demonstrated that the person was responsible for doing the test and had no reason to believe it was performed by others, and if that person was shown to have acted with actual knowledge of or reckless disregard for the law requiring such a test, he or she would be subject to a civil penalty.

This definition of "willful" fits squarely within the parameters for willful acts laid out by Congress in the RSIA and its legislative history. Section 3(a) of the RSIA amends the Safety Act to provide:

For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

As FRA made clear when it recommended legislation granting individual penalty authority, a railroad employee should not have to choose between liability for a civil penalty or insubordination charges by the railroad. Where an employee (or even a supervisor) violates the law under a direct order from a supervisor, he or she does not do so of his or her free will. Thus, the act is not a voluntary one and, therefore, not willful under FRA's definition of the word. Instead, the action of the person who has directly ordered the commission of the violation is itself a willful violation subjecting that person to a civil penalty. As one of the primary sponsors of the RSIA said on the Senate floor:

This amendment also seeks to clarify that the purpose of imposing civil penalties against individuals is to deter those who, of their free will, decide to violate the safety laws. The purpose is not to penalize those who are ordered to commit violations by those above them in the railroad chain of command. Rather, in such cases, the railroad official or supervisor who orders the others to violate the law would be liable for any violations his order caused to occur. One example is the movement of railroad cars or locomotives that are actually known to contain certain defective conditions. A train crew member who was ordered to move such equipment would not be liable for a civil penalty, and his participation in such movements could not be used against him in any disqualification proceeding brought by FRA.

133 Cong. Rec. S.15899 (daily ed. Nov. 5, 1987) (remarks of Senator Exon).

It should be noted that FRA will apply the same definition of "willful" to corporate acts as is set out here with regard to individual violations. Although railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of "willful" set forth above. In such cases—as in all civil penalty cases brought by FRA—the aggregate knowledge and actions of the railroad's managers, supervisors, employees, and other agents will be imputed to the railroad. Thus, in situations that FRA decides warrant a civil penalty based on a willful violation, FRA will have the option of citing the railroad and/or one or more of the individuals involved. In cases against railroads other than those in which FRA alleges willfulness or in which a particular regulation imposes a special standard, the principles of strict liability and presumed knowledge of the law will continue to apply.

The RSIA gives individuals the right to protest a direct order to violate the law and to document the protest. FRA will consider such protests and supporting documentation in deciding whether and against whom to cite civil penalties in a particular situation. Where such a direct order has been shown to have been given as alleged, and where such a protest is shown to have been communicated to the supervisor, the person or persons communicating it will have demonstrated their lack of willfulness. Any documentation of the protest will be considered along with all other evidence in determining whether the alleged order to violate was in fact given.

However, the absence of such a protest will not be viewed as warranting a presumption of willfulness on the part of the employee who might have communicated it. The statute says that a person who communicates such a protest shall be deemed not to have acted willfully; it does not say that a person who does not communicate such a protest will be deemed to have acted willfully. FRA would have to prove from all the pertinent facts that the employee willfully violated the law. Moreover, the absence of a protest would not be dispositive with regard to the willfulness of a supervisor who issued a direct order to violate the law. That is, the supervisor who allegedly issued an order to violate will not be able to rely on the employee's failure to protest the order as a complete defense. Rather, the issue will be whether, in view of all pertinent facts, the supervisor intentionally and voluntarily ordered the employee to commit an act that the supervisor knew would violate the law or acted with reckless disregard for whether it violated the law.

FRA exercises the civil penalty authority over individuals through informal procedures very similar to those used with respect to railroad violations. However, FRA varies those procedures somewhat to account for differences that may exist between the railroad's ability to defend itself against a civil penalty charge and an individual's ability to do so. First, when the field inspector decides that an individual's actions warrant a civil penalty recommendation and drafts a violation report, the inspector or the regional director informs the individual in writing of his or her intention to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of Chief Counsel. This ensures that the individual has the opportunity to seek counsel, preserve documents, or take any other necessary steps to aid his or her defense at the earliest possible time.

Second, if the Office of Chief Counsel concludes that the case is meritorious and issues a penalty demand letter, that letter makes clear that FRA encourages discussion, through the mail, over the telephone or in person, of any defenses or mitigating factors the individual may wish to raise. That letter also advises the individual that he or she may wish to obtain representation by an attorney and/or labor representative. During the negotiation stage, FRA considers each case individually on its merits and gives due weight to whatever information the alleged violator provides.

Finally, in the unlikely event that a settlement cannot be reached, FRA sends the individual a letter warning of its intention to request that the Attorney General sue for the initially proposed amount and giving the person a sufficient interval (*e.g.*, 30 days) to decide if that is the only alternative.

FRA believes that the intent of Congress would be violated if individuals who agree to pay a civil penalty or are ordered to do so by a court are indemnified for that penalty by the railroad or another institution (such as a labor organization). Congress intended that the penalties have a deterrent effect on individual behavior that would be lessened, if not eliminated, by such indemnification.

Although informal, face-to-face meetings are encouraged during the negotiation of a civil penalty charge, the RSIA does not require that FRA give individuals or railroads the opportunity for a formal, trial-type administrative hearing as part of the civil penalty process. FRA does not provide that opportunity because such administrative hearings would be likely to add significantly to the costs an individual would have to bear in defense of a safety claim (and also to FRA's enforcement expenses) without shedding any more light on what resolution of the matter is fair than would the informal procedures set forth here. Of course, should an individual or railroad decide not to settle, that person would be entitled to a trial *de novo* when FRA, through the Attorney General, sued to collect the penalty in the appropriate United States district court.

Penalty Schedules; Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation

deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may be assessed.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation, the schedule shows two amounts within the $250 to $10,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—Part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

The schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. The Senate report on the bill that became the RSIA stated:

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances.

S. Rep. No. 100-153, 100th Cong., 2d Sess. 8 (1987).

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $20,000 per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury. This authority to assess a penalty for a single violation above $10,000 and up to $20,000 is used only in very exceptional cases to penalize egregious behavior. Where FRA avails itself of this right to use the higher penalties in place of the schedule amount it so indicates in its penalty demand letter.

The Extent And Exercise Of FRA's Safety Jurisdiction

The Safety Act and, as amended by the RSIA, the older safety statutes apply to "railroads." Section 202(e) of the Safety Act defines railroad as follows:

The term "railroad" as used in this title means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Prior to 1988, the older safety statutes had applied only to common carriers engaged in interstate or foreign commerce by rail. The Safety Act, by contrast, was intended to reach as far as the Commerce Clause of the Constitution (i.e., to all railroads that affect interstate commerce) rather than be limited to common carriers actually engaged in interstate commerce. In reporting out the bill that became the 1970 Safety Act, the House Committee on Interstate and Foreign Commerce stated:

The Secretary's authority to regulate extends to all areas of railroad safety. This legislation is intended to encompass all those means of rail transportation as are commonly included within the term. Thus, "railroad" is not limited to the confines of "common carrier by railroad" as that language is defined in the Interstate Commerce Act.

H.R. Rep. No. 91-1194, 91st Cong., 2d Sess. at 16 (1970).

FRA's jurisdiction was bifurcated until, in 1988, the RSIA amended the older safety statutes to make them coextensive with the Safety Act by making them applicable to railroads and incorporating the Safety Act's definition of the term (*e.g.*, 45 U.S.C. 16, as amended). The RSIA also made clear that FRA's safety jurisdiction is not confined to entities using traditional railroad technology. The new definition of "railroad" emphasized that all non-highway high speed ground transportation systems—regardless of technology used—would be considered railroads.

Thus, with the exception of self-contained urban rapid transit systems, FRA's statutory jurisdiction extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways, and will extend to future railroads using other technologies not yet in use. For policy reasons, however, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Based on its knowledge of where the safety problems were occurring at the time of its regulatory action and its assessment of the practical limitations on its role, FRA has, in each regulatory context, decided that the best option was to regulate something less than the total universe of railroads.

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation, *i.e.*, "plant railroads" such as those in steel mills that do not go beyond the plant's boundaries. *E.g.*, 49 CFR 225.3 (accident reporting regulations). Other regulations (*e.g.*, 49 CFR 213.3, track safety regulations) exclude not only plant railroads but all other railroads that are not part of, or operated over, the "general railroad system of transportation," *i.e.*, the network of standard gage railroads over which the interchange of goods and passengers throughout the nation is possible—including even certain railroads not physically connected to the continental system, such as a freight railroad in Alaska with which other American railroads interchange cars by means of intermediate modes of transport. (Note that FRA proposed the "general system" language now found in section 202(e) of the Safety Act, and its construction of that language is not bound by construction of similar phrases used in other statutes, *e.g.*, 45 U.S.C. 151 First; those similar phrases are generally part of provisions in those laws limiting their reach—unlike that of the amended safety laws—to "common carriers engaged in interstate commerce.")

Of course, even where a railroad operates outside the general system, other railroads that are definitely part of that system may have occasion to enter the first railroad's property (*e.g.*, a major railroad goes into a chemical or auto plant to pick up or set out cars). In such cases, the railroad that is part of the general system remains part of that system while inside the installation; thus, all of its activities are covered by FRA's regulations during that period. The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Of course, in the opposite situation, where the plant railroad itself operates beyond the plant boundaries on the general system, it becomes a railroad with respect to those particular operations, during which its equipment, crew, and practices would be subject to FRA's regulations.

In some cases, the plant railroad leases track immediately adjacent to its plant from the general system railroad. Assuming such a lease provides for, and actual practice entails, the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant, the lease would remove the plant railroad's operations on that trackage from the general system for purposes of FRA's regulations, as it would make that trackage part and parcel of the industrial installation. (As explained above, however, the track itself would have to meet FRA's standards if a general system railroad operated over it. *See* 49 CFR 213.5 for the rules on how an owner of track may assign responsibility for it.) A lease or practice that permitted other types of movements by general system railroads on that trackage would, of course, bring it back into the general system, as would operations by the plant railroad indicating it was moving cars on such trackage for other than its own purposes (*e.g.*, moving cars to neighboring industries for hire).

It is important to note that FRA's exercise of its regulatory authority on a given matter does not preclude it from subsequently amending its regulations on that subject to bring in railroads originally excluded. More

important, the self-imposed restrictions on FRA's exercise of regulatory authority in no way constrain its exercise of emergency order authority under section 203 of the Safety Act. That authority was designed to deal with imminent hazards not dealt with by existing regulations and/or so dangerous as to require immediate, *ex parte* action on the government's part. Thus, a railroad excluded from the reach of any of FRA's regulations is fully within the reach of FRA's emergency order authority, which is coextensive with FRA's statutory jurisdiction over all railroads.

Extraordinary Remedies

While civil penalties are the primary enforcement tool under the federal railroad safety laws, more extreme measures are available under certain circumstances. FRA has authority to issue orders directing compliance with the Federal Railroad Safety Act, the Hazardous Materials Transportation Act, the older safety statutes, or regulations issued under any of those statutes. *See* 45 U.S.C. 437(a) and (d), and 49 App. U.S.C. 1808(a). Such an order may issue only after notice and opportunity for a hearing in accordance with the procedures set forth in 49 CFR Part 209, Subpart C. FRA inspectors also have the authority to issue a special notice requiring repairs where a locomotive or freight car is unsafe for further service or where a segment of track does not meet the standards for the class at which the track is being operated. Such a special notice may be appealed to the regional director and the FRA Administrator. *See* 49 CFR Part 216, Subpart B.

FRA may, through the Attorney General, also seek injunctive relief in federal district court to restrain violations or enforce rules issued under the railroad safety laws. *See* 45 U.S.C. 439 and 49 App. U.S.C. 1810.

FRA also has the authority to issue, after notice and an opportunity for a hearing, an order prohibiting an individual from performing safety-sensitive functions in the rail industry for a specified period. This disqualification authority is exercised under procedures found at 49 CFR Part 209, Subpart D.

Criminal penalties are available for willful violations of the Hazardous Materials Transportation Act or its regulations. *See* 49 App. U.S.C. 1809(b), and 49 CFR 209.131, 133. Criminal penalties are also available under 45 U.S.C. 438(e) for knowingly and willfully falsifying, destroying, or failing to complete records or reports required to be kept under the various railroad safety statutes and regulations. The Accident Reports Act, 45 U.S.C. 39, also contains criminal penalties.

Perhaps FRA's most sweeping enforcement tool is its authority to issue emergency safety orders "where an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons * * *" 45 U.S.C. 432(a). After its issuance, such an order may be reviewed in a trial-type hearing. See 49 CFR 211.47 and 216.21 through 216.27. The emergency order authority is unique because it can be used to address unsafe conditions and practices whether or not they contravene an existing regulatory or statutory requirement. Given its extraordinary nature, FRA has used the emergency order authority sparingly.

PART 213—[AMENDED]

2. Part 213 is amended as follows:

A. The authority citation for Part 213 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 213.15 [Amended]

B. Section 213.15 is amended by (1) removing the paragraph designator "(a)" before the first paragraph; (2) removing all of paragraph (b); and (3) adding at the end of the remaining text the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 213 is revised to read as follows:

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES[1]

Section	Violation	Willful violation
Subpart A—General:		
213.4(a) Excepted track[2]	$2,500	$5,000
213.4(b) Excepted track[2]	2,500	5,000
213.4(c) Excepted track[2]	2,500	5,000
213.4(d) Excepted track[2]	2,500	5,000
213.4(e):		
1 Excepted track	5,000	7,500
2 Excepted track	7,000	10,000
32 Excepted track	7,000	10,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	1,000	2,000
213.9 Classes of track: Operating speed limits	2,500	5,000
213.11 Restoration or renewal of track under traffic conditions	2,500	5,000
213.13 Measuring track not under load	1,000	2,000
Subpart B—Roadbed:		
213.33 Drainage	2,500	5,000
213.37 Vegetation	1,000	2,000
Subpart C—Track geometry:		
213.53 Gage	5,000	7,500
213.55 Alinement	5,000	7,500
213.57 Curves; elevation and speed limitations	2,500	5,000

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
213.59 Elevation of curved track; runoff	2,500	5,000
213.63 Track surface	5,000	7,500
Subpart D—Track surface:		
213.103 Ballast; general	2,500	5,000
213.109 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties	1,000	2,000
(d) Joint ties	2,500	5,000
213.113 Defective rails	5,000	7,500
213.115 Rail end mismatch	2,500	5,000
213.121 (a) Rail joints	2,500	5,000
213.121 (b) Rail joints	2,500	5,000
213.121 (c) Rail joints	5,000	7,500
213.121 (d) Rail joints	2,500	5,000
213.121 (e) Rail joints	2,500	5,000
213.121 (f) Rail joints	2,500	5,000
213.121 (g) Rail joints	5,000	7,500
213.123 Tie plates	1,000	2,000
213.127 Track spikes	2,500	5,000
213.133 Turnouts and track crossings generally	1,000	2,000
213.135 Switches:		
(a) through (g)	2,500	5,000
(h) chipped or worn points	5,000	7,500
213.137 Frogs	2,500	5,000
213.139 Spring rail frogs	5,000	7,500
213.141 Self-guarded frogs	2,500	5,000
213.143 Frog guard rails and guard faces; gage	2,500	5,000
Subpart E—Track appliances and track-related devices:		
213.205 Derails	2,500	5,000
Subpart F—Inspection:		
213.233 Track inspections	2,000	4,000
213.235 Switch and track crossings inspections	2,000	4,000
213.237 Inspection of rail	2,500	5,000
213.239 Special inspections	2,500	5,000
213.241 Inspection records	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

[2] In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of Part 213 until such noncompliance is remedied.

PART 215—[AMENDED]

3. Part 215 is amended as follows:

A. The authority citation for Part 215 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 215.7 [Amended]

B. Section 215.7 is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 215 is revised to read as follows:

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart A—General:		
215.9 Movement for repair:		
(a), (c)	([1])	([1])
(b)	$2,500	$5,000
215.11 Designation of qualified persons	2,500	5,000
215.13 Pre-departure inspection	2,000	4,000
Subpart B—Freight Car Components:		
215.103 Defective wheel:		
(a) Flange thickness of:		
(1) 7/8" or less but more than 13/16"	2,500	5,000
(2) 13/16" or less	5,000	7,500
(b) Flange height of:		
(1) 1½" or greater but less than 1⅝"	2,500	5,000
(2) 1⅝" or more	5,000	7,500
(c) Rim thickness of:		
(1) [1] 11/16" or less but more than ⅝"	2,500	5,000
(2) ⅝" or less	5,000	7,500
(d) Wheel rim, flange plate hub width:		
(1) Crack of less than 1"	2,500	5,000
(2) Crack of 1" or more	5,000	7,500
(3) Break	5,000	7,500
(e) Chip or gouge in flange of:		
(1) 1½" or more but less than 1⅝" in length; and ½" or more but less than ⅝" in width	2,500	5,000
(2) 1⅝" or more in length; or ⅝" or more in width	5,000	7,500
(f) Slid flat or shelled spot(s):		
(1)(i) One spot more than 2½", but less than 3", in length	2,500	5,000
(ii) One spot 3" or more in length	5,000	7,500
(2)(i) Two adjoining spots each of which is more than 2" but less than 2½" in length	2,500	5,000
(ii) Two adjoining spots both of which are at least 2" in length, if either spot is 2½", or more in length	5,000	7,500
(g) Loose on axle	6,000	8,500
(h) Overheated; discoloration extending:		
(1) more than 4" but less than 4½"	2,500	5,000
(2) 4½" or more	5,000	7,500
(i) Welded	5,000	7,500
215.105 Defective axle:		
(a)(1) Crack of 1" or less	2,500	5,000
(2) Crack of more than 1"	5,000	7,500
(3) Break	6,000	8,500
(b) Gouge in surface that is between the wheel seats and is more than ⅛" in depth	2,500	5,000
(c) End collar with crack or break	2,500	5,000
(d) Journal overheated	5,000	7,500
(e) Journal surface has: a ridge; a depression; a circumferential score; corrugation; a scratch; a continuous streak; pitting; rust; or etching	2,500	5,000
215.107 Defective plain bearing box; general:		
(a)(1) No visible free oil	1,500	3,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(2) Lubricating pad dry (no expression of oil observed when pad is compressed)	5,000	7,500
(b) Box lid is missing, broken, or open except to receive servicing	1,000	2,000
(c) Contains foreign matter that can be expected to damage the bearing or have a detrimental effect on the lubrication of the journal and bearing	2,500	5,000
215.109 Defective plain bearing box: journal lubrication system:		
(a) Lubricating pad has a tear	1,000	2,000
(b) Lubricating pad scorched, burned, or glazed	2,500	5,000
(c) Lubricating pad contains decaying or deteriorating fabric	2,500	5,000
(d) Lubricating pad has an exposed center core or metal parts contacting the journal	2,500	5,000
(e) Lubricating pad is missing or not in contact with the journal	5,000	7,500
215.111 Defective plain bearing:		
(a) Missing	5,000	7,500
(b) Bearing liner is loose or has piece broken out	2,500	5,000
(c) Overheated	5,000	7,500

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
215.113 Defective plain bearing wedge:		
(a) Missing	5,000	7,500
(b) Cracked	2,500	5,000
(c) Broken	5,000	7,500
(d) Not located in its design position	5,000	7,500
215.115 Defective roller bearing:		
(a)(1) Overheated	5,000	7,500
(2) (i) Cap screw(s) loose	2,500	5,000
(ii) Cap screw lock broken, missing or improperly applied	1,000	2,000
(3) Seal is loose or damaged, or permits leakage of lubricant	2,500	5,000
(b)(1) Not inspected and tested after derailment	2,500	5,000
(2) Not disassembled after derailment	2,500	5,000
(3) Not repaired or replaced after derailment	5,000	7,500
215.117 Defective roller bearing adapter:		
(a) Cracked or broken	2,500	5,000
(b) Not in its design position	5,000	7,500
(c) Worn on the crown	2,500	5,000
215.119 Defective freight car truck:		
(a)(1) A side frame or bolster that is broken	5,000	7,500
(2)(i) Side frame or bolster with crack of: ¼" or more, but less than 1"	2,500	5,000
(ii) 1" or more	5,000	7,500

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(b) A snubbing device that is ineffective or missing	2,500	5,000
(c) Side bearing(s):		
(1) Assembly missing or broken	5,000	7,500
(2) In contact except by design	5,000	7,500
(3), (4) Total clearance at one end or at diagonally opposite sides of:		
(i) more than ¾" but not more than 1"	2,500	5,000
(ii) more than 1"	5,000	7,500
(d) Truck spring(s):		
(1) Do not maintain travel or load	2,500	5,000
(2) Compressed solid	2,500	5,000
(3) Outer truck springs broken or missing:		
(i) Two outer springs	2,500	5,000
(ii) Three or more outer springs	5,000	7,500
(e) Truck bolster-center plate interference	5,000	7,500
(f) Brake beam shelf support worn	2,500	5,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
215.121 Defective car body:		
(a) Has less than 2½" clearance from the top of rail	2,500	5,000
(b) Car center sill is:		
(1) Broken	6,000	8,500
(2) Cracked more than 6"	2,500	5,000
(3) Bent or buckled more than 2½" in any 6' length	2,500	5,000
(c) Coupler carrier that is broken or missing	2,500	5,000
(d) Car door not equipped with operative safety hangers	5,000	7,500
(e)(1) Center plate not properly secured	5,000	7,500
(2) Portion missing	2,500	5,000
(3) Broken	5,000	7,500
(4) Two or more cracks	2,500	5,000
(f) Broken sidesill, cross-bearer, or body bolster	2,500	5,000
215.123 Defective couplers:		
(a) Shank bent out of alignment	1,000	2,000
(b) Crack in highly stressed junction area	2,500	5,000
(c) Coupler knuckle broken or cracked	2,500	5,000
(d) Coupler knuckle pin or thrower that is missing or inoperative	2,500	5,000
(e) Coupler retainer pin lock that is missing or broken	1,000	2,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(f) Coupler with following conditions: locklift inoperative; no anticreep protection; or coupler lock is missing, inoperative, bent, cracked, or broken	2,500	5,000
215.125 Defective uncoupling device	2,500	5,000
215.127 Defective draft arrangement:		
(a) Draft gear that is inoperative	2,500	5,000
(b) Yoke that is broken	2,500	5,000
(c) End of car cushioning unit is leaking or inoperative	2,500	5,000
(d) Vertical coupler pin retainer plate missing or has missing fastner	5,000	7,500
(e) Draft key or draft key retainer that is inoperative or missing	5,000	7,500
(f) Follower plate that is missing or broken	2,500	5,000
215.129 Defective cushioning device	2,500	5,000
Subpart C—Restricted equipment:		
215.203 Restricted cars	2,500	5,000
Subpart D—Stencilling:		
215.301 General	1,000	2,000
215.303 Stencilling of restricted cars	1,000	2,000
215.305 Stencilling of maintenance-of-way	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single freight car that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $10,000 per day. However, a failure to perform, with respect to a particular freight car, the predeparture inspection required by § 215.13 of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the car. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Failure to observe any condition for movement set forth in paragraphs (a) and (c) of § 215.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the freight car at the time of movement.

Maintenance-of-way equipment not stenciled in accordance with § 215.305 is subject to all requirements of this part. See § 215.3(c)(3).

PART 216—[AMENDED]

4. Part 216 is amended as follows:

A. The authority citation for Part 216 is revised to read as follows:

Authority: 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 22–34, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

PART 217—[AMENDED]

5. Part 217 is amended as follows:

A. The authority citation for Part 217 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

§ 217.5 [Amended]

B. Section 217.5 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Appendix A to Part 217 is revised to read as follows:

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
217.7 Filing of operating rules:		
(a)	$2,500	$5,000
(b)	2,500	5,000
217.9 Program of operational tests and inspections and recordkeeping:		
(a)	5,000	7,500
(b) and (c)	2,500	5,000
(d)	1,000	2,000
217.11 Program of instruction on operating rules:		
(a)	5,000	7,500
(b)	2,500	5,000
(c)	2,500	5,000
217.13 Annual report:		
(a) and (c)	1,000	2,000
(b) and (d)	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 218—[AMENDED]

6. Part 218 is amended as follows:

A. The authority citation for Part 218 continues to read as follows:

Authority: 49 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 218.9 [Amended]

B. Section 218.9 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Section 218.41 is revised to read as follows:

§ 218.41 Noncompliance with hump operations rule.

A person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who fails to comply with a railroad's operating rule issued pursuant to § 218.39 of this part is subject to a penalty, as provided in Appendix A of this part.

D. Appendix A to Part 218 is revised to read as follows:

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Blue signal protection of workmen:		
218.23 Blue signal display	$5,000	$7,500
218.25 Workmen on a main track	5,000	7,500
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch	2,000	4,000
(b) through (e)	5,000	7,500
218.29 Alternate methods of protection:		
(a)(1) protection provided except that signal not displayed at switch	2,000	4,000
(a)(2) through (a)(8)	5,000	7,500
(b)(1) protection provided except that signal not displayed at switch	2,000	4,000
(b)(2) through (b)(4)	5,000	7,500

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(c) use of derails	5,000	7,500
(d) emergency repairs	5,000	7,500
218.30 Remotely controlled switches:		
(a) and (b)	5,000	7,500
(c)	1,000	2,000
Subpart C—Protection of trains and locomotives:		
218.35 Yard limits:		
(a) and (b)	5,000	7,500
(c)	1,000	2,000
218.37 Flag protection:		
(a)	5,000	7,500
(b) and (c)	5,000	7,500
218.39 Hump operations	5,000	7,500
218.41 Noncompliance with hump operations rule	5,000	7,500
Subpart D—Prohibition against tampering with safety devices:		
218.55 Tampering [Reserved]:		
218.57 Operating or permitting operation of disabled equipment [Reserved]:		
(a) Knowingly		
(b) Willfully		
218.59 Operation of disabled equipment [Reserved]:		

[1] Except as provided for in section 218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 219—[AMENDED]

7. Part 219 is amended as follows:

A. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 219.9 [Amended]

B. Section 219.9(d) is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Appendix A to Part 219 is revised to read as follows:

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Prohibitions:		
219.101 Alcohol and drug use:		
(i) Employee violates prohibition	(—)	$10,000
(ii) Employee is required or permitted to violate prohibition	(—)	10,000
(iii) Failure to exercise due diligence to assure compliance	$2,500	5,000
Subpart C:—Post-accident testing:		
219.201 Events for which testing is required:		
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident; by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted	5,000	7,500
(ii) required employee to provide samples in reliance on Subpart C where not required (including failure to make reasonable inquiry or exercise good faith judgment	5,000	10,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
219.203 Responsibilities of Railroads and Employees:		
(b) Delay in obtaining samples account failure to make every reasonable effort	2,500	5,000
(c) Place of sample collection; by whom	2,500	5,000
(d) Failure to notify FRA of an employee injury requiring FRA intervention	2,500	5,000
219.205 Sample collection and handling:		
(i) Failure to promptly forward samples	2,500	5,000
(ii) Failure to provide information sheet(s) with samples	1,000	2,000
(iii) Failure to observe other requirements with respect to sample collection, marking and handling	2,500	5,000
219.207 Fatality:		
(a) Failure to contact custodian and request assistance	2,500	5,000
(b) Failure to notify FRA where intervention needed	2,500	5,000
219.209 Reports of tests and refusals:		
(a) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report (samples not provided)	1,000	2,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
219.213 Unlawful refusals, consequences:		
(a) Failure to take action against employee who refuses to provide samples	2,500	5,000
(b), (c) Failure to provide timely notice and proper hearing	2,500	5,000
Subpart D—Authorization to test for cause:		
219.301 Testing for reasonable cause: Employee required to submit to testing without reasonable cause	5,000	7,500
219.303 Breath testing procedures and safeguards	2,500	5,000
219.305 Urine test procedures and safeguards	2,500	5,000
219.307 Standards for urine assays	2,500	5,000
219.309 Presumption of impairment, notice: Failure to provide effective notice of presumption from positive urine test	2,500	5,000
Subpart E—Identification of troubled employees:		
219.401 Requirements for policies:		
(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E	5,000	7,500
(ii) Failure to implement as to individual employee	2,500	5,000
219.407 Alternate policies: Failure to file agreement or other document or provide timely notice of revocation	1,000	2,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
Subpart F—Pre-employment drug screen:		
219.501 Pre-employment drug screens:		
(a) Failure to perform pre-employment drug screen prior to employing applicant in covered service	2,500	5,000
(b)(i) Failure to provide prior notice of drug screen	2,500	5,000
(ii) Maintaining record of declination of test	500	1,000
(c) Failure to test for specific substances as required by FRA	2,500	5,000
(d) Failure to conduct second test on positive sample	2,500	5,000
219.503 Notification; records:		
(a) Failure to provide notice of positive test and opportunity for response	2,000	4,000
(b) Failure to maintain and make available to FRA records of tests conducted	2,500	5,000
219.505 Refusals: Applicant who refuses test employed in covered service	2,500	5,000
Subpart G—Random drug testing:		
219.601 (i) Failure to implement and/or submit to FRA for approval a random drug testing program that satisfies requirements of this subpart and subpart H	5,000	7,500

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(ii) other violation	1,000	2,000
219.603 (i) Failure to facilitate conduct of required random drug testing by failing to take all practical steps to require employee participation or by otherwise failing to comply with Subpart G such that test cannot be conducted	2,500	5,000
(ii) Required employee to provide samples in reliance on subpart G based on other than random selection	5,000	7,500
(iii) Required employee to submit to testing without observance of procedures and safeguards contained in subparts G and H	5,000	7,500
(iv) Failure to take action against employee who refuses to provide sample	2,500	5,000
(v) Failure to provide timely notice and proper hearing	2,500	5,000
(vi) other violation	1,000	2,000
219.605 (1) Failure to provide notice of positive test results	2,000	4,000
(ii) other violation	1,000	2,000
219.607 Failure to retain or provide records	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 220—[AMENDED]

8. Part 220 is amended as follows:

A. The authority citation for Part 220 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 220.7 [Amended]

B. Section 220.7 is amended by adding at the end thereof the following: "See Appendix C to this part for a statement of agency civil penalty policy."

C. Appendix C to Part 220 is revised to read as follows:

APPENDIX C TO PART 220—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
220.21 Railroad Operating rules; radio communications:		
(a)	$5,000	$7,500
(b)	2,500	5,000
220.23 Publication of radio information	2,500	5,000
220.25 Instruction of employees	5,000	7,500
220.27 Identification	1,000	2,000
220.29 Statement of letters and numbers	1,000	2,000
220.31 Initiating a transmission	1,000	2,000
220.33 Receiving a transmission	1,000	2,000
220.35 Ending a transmission	1,000	2,000
220.37 Voice test	5,000	7,500
220.39 Continuous monitoring	2,500	5,000
220.41 Notification on failure of train radio	2,500	5,000
220.43 Communication consistent with the rules	2,500	5,000
220.45 Complete communications	2,500	5,000
220.47 Emergencies	2,500	5,000
220.49 Switching, backing or pushing	5,000	7,500
220.51 Signal indications	5,000	7,500
220.61 Transmission of train orders by radio	5,000	7,500

[1] A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 221—[AMENDED]

9. Part 221 is amended as follows:

A. The authority citation for Part 221 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 221.7 [Amended]

B. Section 221.7 is amended by adding at the end thereof the following: "See Appendix C to this part for a statement of agency civil penalty policy."

C. Appendix C to Part 221 is revised to read as follows:

APPENDIX C TO PART 221—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
221.13 Marking device display:		
(a) device not present, not displayed, or not properly illuminated	$5,000	$7,500
(d) device too close to rail	1,000	2,000
221.14 Marking devices: Use of unapproved or noncomplying device	2,500	5,000
221.15 Marking device inspection:		
(a) Failure to inspect at crew change	2,500	5,000
(b), (c) improper inspection	2,500	5,000
221.16 Inspection procedure:		
(a) Failure to obtain protection	5,000	7,500
(b) Improper protection	2,500	5,000
221.17 Movement of defective equipment		(1)

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A. Where the conditions for movement of defective equipment set forth in § 221.17 of this part are not met, the movement constitutes a violation of § 221.13 of this part.

PART 223—[AMENDED]

10. Part 223 is amended as follows:

A. The authority citation for Part 223 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 223.7 [Amended]

B. Section 223.7 is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 223 is revised to read as follows:

APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
223.9 New or rebuilt equipment:		
(a) Locomotives	$2,500	$5,000
(b) Cabooses	2,500	5,000
(c) Passenger cars	2,500	5,000
223.11(c) Existing locomotives	2,500	5,000
(d) repair of window	1,000	2,000
223.13(c) Existing cabooses	2,500	5,000

APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(d) Repair of window	1,000	2,000
223.15(c) Existing passenger cars	2,500	5,000
(d) repair of window	1,000	2,000
223.17 Identification of units	500	1,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 225—[AMENDED]

11. Part 225 is amended as follows:

A. The authority citation for Part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (m).

§ 225.29 [Amended]

B. Section 225.29 is amended by removing the last sentence and adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 39 and 438(e)."

C. Appendix B to Part 225 is revised to read as follows:

APPENDIX B TO PART 225—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	$1,000	$2,000
225.11 Reports of accidents/incidents	2,500	5,000
225.13 Late reports	2,500	5,000
225.17(d) Alcohol or drug involvement	2,500	5,000
225.23 Joint operations	(1)	(1)
225.25 Recordkeeping	2,500	5,000
225.27 Retention of records	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; (2) a missing or incomplete supplementary record of a particular employee's injury of illness; or (3) a missing or incomplete annual summary for a particular establishment. Each day a violation continues is a separate offense.

PART 228—[AMENDED]

12. Part 228 is amended as follows:

A. The authority citation for Part 228 is revised to read as follows:

Authority: 45 U.S.C. 61-64b, as amended; 45 U.S.C. 437 and 438, as amended; Pub. L. 100-342; 49 App. U.S.C. 1655(e), as amended; and 49 CFR 1.49 (d) and (m).

B. Section 228.21 is revised to read as follows:

§ 228.21 Civil penalty.

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (*e.g.*, requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

C. Section 228.23 is revised to read as follows:

§ 228.23 Criminal penalty.

Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine up to $5,000, imprisonment for up to two years, or both, in accordance with 45 U.S.C. 438(e).

D. A new Appendix B to Part 228 is added to read as follows:

APPENDIX B—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Records and Reporting:		
228.9 Railroad records	$500	$1,000
228.11 Hours of duty records	500	1,000
228.17 Dispatcher's record	500	1,000
228.19 Monthly reports of excess service	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 229—[AMENDED]

13. Part 229 is amended as follows:

A. The authority citation for Part 229 continues to read as follows:

Authority: 45 U.S.C. 22-34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (g).

§ 229.7 [Amended]

B. Section 229.7(b) is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 229 is revised to read as follows:

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES[1]

Section	Violation	Willful violation
Subpart A—General		
229.7 Prohibited acts: Safety deficiencies not governed by specific regulations: To be assessed on relevant facts	$1,000-5,000	$2,000-7,500
229.9 Movement of noncomplying locomotives	(1)	(1)
229.11 Locomotive identification	1,000	2,000
229.13 Control of locomotives	2,500	5,000
229.17 Accident reports	2,500	5,000
229.19 Prior Waivers	(1)	(1)
Subpart B—Inspection and tests		
229.21 Daily inspection:		
(a)(b):		
(1) Inspection overdue	2,000	4,000
(2) Inspection report not made, improperly executed, or not retained	1,000	2,000
(c) Inspection not performed by a qualified person	1,000	2,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
229.23 Periodic inspection General		
(a)(b):		
(1) Inspection overdue	2,500	5,000
(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	2,500	5,000
(c)(d):		
(1) Form missing	1,000	2,000
(2) Form not properly displayed	1,000	2,000
(3) Form improperly executed	1,000	2,000
(e) Replace Form FRA F 6180-49A by April 2	1,000	2,000
(f) Secondary record of the information reported on Form FRA F 6180.49A	1,000	2,000
229.25 Tests: Every periodic inspection	2,500	5,000
229.27 Annual tests	2,500	5,000
229.29 Biennial tests	2,500	5,000
229.31:		
(a) Biennial hydrostatic tests of main reservoirs	2,500	5,000
(b) Biennial hammer tests of main reservoirs	2,500	5,000
(c) Drilled telltale holes in welded main reservoirs	2,500	5,000
(d) Biennial tests of aluminum main reservoirs	2,500	5,000
229.33 Out-of-use credit	1,000	2,000
Subpart C—Safety Requirements		
229.41 Protection against personal injury	2,500	5,000
229.43 Exhaust and battery gases	2,500	5,000
229.45 General condition: To be assessed based on relevant facts	1,000–5,000	2,000–7,500
229.46 Brakes: General	2,500	5,000
229.47 Emergency brake valve	2,500	5,000
229.49 Main reservoir system:		
(a)(1) Main reservoir safety valve	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
(2) Pneumatically actuated control reservoir	2,500	5,000
(b)(c) Main reservoir governors	2,500	5,000
229.51 Aluminum main reservoirs	2,500	5,000
229.53 Brake gauges	2,500	5,000
229.55 Piston travel	2,500	5,000
229.57 Foundation brake gear	2,500	5,000
229.59 Leakage	2,500	5,000
229.61 Draft system	2,500	5,000
229.63 Lateral motion	2,500	5,000
229.64 Plain bearing	2,500	5,000
229.65 Spring rigging	2,500	5,000
229.67 Trucks	2,500	5,000
229.69 Side bearings	2,500	5,000
229.71 Clearance above top of rail	2,500	5,000
229.73 Wheel sets	2,500	5,000
229.75 Wheel and tire defects:		
(a),(d) Slid flat or shelled spot(s):		
(1) One spot 2½" or more but less than 3" in length	2,500	5,000
(2) One spot 3" or more in length	5,000	7,500
(3) Two adjoining spots each of which is 2" or more in length but less than 2½" in length	2,500	5,000
(4) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	5,000	7,500
(b) Gouge or chip in flange of:		
(1) more than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	2,500	5,000
(2) 1⅝" or more in length and ⅝" or more in width	5,000	7,500
(c) Broken rim	5,000	7,500
(e) Seam in tread	2,500	5,000
(f) Flange thickness of:		
(1) ⅞" or less but more than 13/16"	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
(2) 13/16" or less	5,000	7,500
(g) Tread worn hollow	2,500	5,000
(h) Flange height of:		
(1) 1½" or greater but less than 1⅝"	2,500	5,000
(2) 1⅝" or more	5,000	7,000
(i) Tire thickness	2,500	5,000
(j) Rim thickness:		
(1) Less than 1" in road service and ¾" in yard service	2,500	5,000
(2) 15/16" or less in road service and 11/16" in yard service	5,000	7,500
(k) Crack of less than 1"	5,000	7,500
(1) Crack of less than 1"	2,500	5,000
(2) Crack of 1" or more	5,000	7,500
(3) Break	5,000	7,500
(l) Loose wheel or tire	5,000	7,500
(m) Welded wheel or tire	5,000	7,500
229.77 Current collectors	2,500	5,000
229.79 Third rail shoes and beams	2,000	4,000
229.81 Emergency pole; shoe insulation	2,500	5,000
229.83 Insulation or grounding	5,000	7,500
229.85 Door and cover plates marked "Danger"	2,500	5,000
229.87 Hand operated switches	2,500	5,000
229.89 Jumpers; cable connections:		
(a) Jumpers and cable connections; located and guarded	2,500	5,000
(b) Condition of jumpers and cable connections	2,500	5,000
229.91 Motors and generators	2,500	5,000
229.93 Safety cut-off device	2,500	5,000
229.95 Venting	2,500	5,000
229.97 Grounding fuel tanks	2,500	5,000
229.99 Safety hangers	2,500	5,000
229.101 Engines:		
(a) Temperature and pressure alarms, controls, and switches	2,500	5,000
(b) Warning notice	2,500	5,000
(c) Wheel slip/slide protection	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
229.103 Safe working pressure; factor of safety	2,500	5,000
229.105 Steam generator number	500	1,000
229.107 Pressure gauge	2,500	5,000
229.109 Safety valves	2,500	5,000
229.111 Water-flow indicator	2,500	5,000
229.113 Warning notice	2,500	5,000
229.115 Slip/slide alarms	2,500	5,000
229.117 Speed indicators	2,500	5,000
229.119 Cabs, floors, and passageways:		
(a)(1) Cab set not securely mounted or braced	2,500	5,000
(2) Insecure or improper latching device	2,500	5,000
(b) Cab windows of lead locomotive	2,500	5,000
(c) Floors, passageways, and compartments	2,500	5,000
(d) Ventilation and heating arrangement	2,500	5,000
(e) Continuous barrier	2,500	5,000
(f) Containers for fuses and torpedoes	2,500	5,000
229.121 Locomotive cab noise	2,500	5,000
229.123 Pilots, snowplows, end plates	2,500	5,000
229.125 Headlights	2,500	5,000
229.127 Cab lights	2,500	5,000
229.129 Audible warning device	2,500	5,000
229.131 Sanders	1,000	2,000
Subpart D—Design Requirements		
229.141 Body structure, MU locomotives	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $10,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under Subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Failure to observe any condition for movement set forth in § 229.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

PART 231—[AMENDED]

14. Part 231 is amended as follows:

A. The authority citation for Part 231 continues to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c) and (g).

§ 231.0 [Amended]

B. Section 231.0 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A to Part 231 is added to read as follows:

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES[1]

FRA safety appliance defect code section[2]	Violation	Willful violation
110.A1 Hand Brake or Hand Brake Part Missing	$5,000	$7,500
110.A2 Hand Brake or Hand Brake Part Broken	5,000	7,500
110.A3 Hand Brake or Hand Brake Part Loose or Worn	2,500	5,000
110.B1 Hand Brake Inoperative	5,000	7,500
110.B2 Hand Brake Inefficient	2,500	5,000
110.B3 Hand Brake Improperly Applied	2,500	5,000
110.B4 Hand Brake Incorrectly located	2,500	5,000
110.B5 Hand Brake Shaft Welded or Wrong Dimension	2,500	5,000
110.B6 Hand Brake Shaft Not Retained in Operating Position	2,500	5,000
110.B8 Hand Brake or Hand Brake Parts Wrong Design	2,500	5,000
114.B2 Hand Brake Wheel or Lever Has Insufficient Clearance Around Rim or Handle	2,500	5,000
114.B3 Hand Brake Wheel/Lever Clearance Insufficient to Vertical Plane Through Inside Face of Knuckle	2,500	5,000
120.A1 Brake Step Missing Except by Design	5,000	7,500
120.A2 Brake Step or Brace Broken or Decayed	2,500	5,000
120.A3 Brake Step or Brace Loose	2,500	5,000
120.B1 Brake Step or Brace Bent	2,500	5,000
120.B2 Brake Step or Wrong Dimensions	2,500	5,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES[1]—Continued

FRA safety appliance defect code section[2]	Violation	Willful violation
120.C1 Brake Step Improperly Applied	2,500	5,000
120.C2 Brake Step Improperly Located	2,500	5,000
120.C3 Brake Step With Less Than 4" Clearance to Vertical Plane Through Inside Face of Knuckle	2,500	5,000
120.C4 Brake Step Obstructed or Otherwise Unsafe	2,500	5,000
124.A1 Running Board Missing or Part Missing Except By Design	5,000	7,500
124.A2 Running Board Broken or Decayed	5,000	7,500
124.A3 Running Board Loose Presents a Tripping Hazard or Other Unsafe Condition	2,500	5,000
124.A4 Running Board Wrong Material	2,500	5,000
124.B1 Running Board Bent to the Extent that It is Unsafe	2,500	5,000
124.B2 Running Board Wrong Dimensions	2,500	5,000
124.B3 Running Board Wrong Location	2,500	5,000
124.C1 Running Board Improperly Applied	2,500	5,000
124.C2 Running Board Obstructed	2,500	5,000
126.A1 End Platform Missing or Part Except By Design	5,000	7,500
126.A2 End Platform Broken or Decayed	5,000	7,500
126.A3 End Platform Loose	2,500	5,000
126.B1 End Platform or Brace Bent	2,500	5,000
126.B2 End Platform Wrong Dimensions	2,500	5,000
126.C1 End Platform Improperly Applied	2,500	5,000
126.C2 End Platform With Less Than Required Clearance to Vertical Plane Through Inside Knuckle	2,500	5,000
126.C3 End Platform Improperly Located	2,500	5,000
126.C4 End Platform Obstructed	5,000	7,500
128.A1 Platform or Switching Step Missing	5,000	7,500
128.A2 Platform or Switching Step Broken or Decayed	5,000	7,500
128.A3 Platform or Switching Step Loose	2,500	5,000
128.B1 Platform or Switching Step Bent	2,500	5,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]—Continued

FRA safety appliance defect code section [2]	Violation	Willful violation
128.B2 Platform or Switching Step Does Not Meet the Required Location or Dimensions	2,500	5,000
128.C1 Platform or Switching Step Improperly Applied or Repaired	2,500	5,000
128.C2 Platform or Switching Step Obstructed	2,500	5,000
128.D1 Switching Step Back Stop or Kick Plate Missing	2,500	5,000
128.D2 Switching Step Not Illuminated When Required	2,500	5,000
128.D3 Non-Illuminated Step Not Painted Contrasting Color	1,000	2,000
130.A1 Sill Step or Additional Tread, Missing	5,000	7,500
130.A2 Sill Step or Additional Tread, Broken	5,000	7,500
130.A3 Sill Step or Additional Tread, Loose	2,500	5,000
130.B1 Sill Step or Additional Tread, Bent	2,500	5,000
130.B2 Sill Step or Additional Tread, Having Wrong Dimensions or Improperly Located	2,500	5,000
130.B3 Sill Step Improperly Applied	2,500	5,000
132.A1 Side Missing Step	5,000	7,500
132.A2 Side Door Step Broken	5,000	7,500
132.A3 Side Door Step Loose	2,500	5,000
132.B1 Side Door Step Bent	2,500	5,000
132.B2 Side Door Step Having Wrong Dimensions	2,500	5,000
134.A1 Ladder Missing	5,000	7,500
134.A2 Ladder Broken	5,000	7,500
134.A3 Ladder Loose	2,500	5,000
134.B1 Ladder Bent	2,500	5,000
134.B2 Ladder Having Wrong Dimensions	2,500	5,000
134.C1 Ladder Improperly Applied	2,500	5,000
134.C2 Ladder Having Insufficient Clearance or Improperly Located	2,500	5,000
134.C3 Ladder Wrong Design	2,500	5,000
134.C4 Ladder Wrong Material	2,500	5,000
134.D1 End Clearance Insufficient	2,500	5,000
136.A1 Ladder Tread or Handholds Missing	5,000	7,500

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]—Continued

FRA safety appliance defect code section [2]	Violation	Willful violation
136.A2 Ladder Tread or Handhold Broken	5,000	7,500
136.A3 Ladder Tread or Handhold Loose Except By Design	2,500	5,000
136.B1 Ladder Tread or Handhold Bent to The Extent That It May Be Unsafe	2,500	5,000
136.B2 Ladder Tread or Handhold Wrong Dimensions	2,500	5,000
136.C1 Ladder Tread or Handhold Improperly Applied	2,500	5,000
136.C2 Ladder Tread or Handhold Having Wrong Clearance	2,500	5,000
136.C3 Ladder or Handhold Improperly Located	2,500	5,000
136.C4 Ladder Tread or Handhold Obstructed	2,500	5,000
136.C5 Ladder Tread Without Footguards	2,500	5,000
138.A1 Hand or Safety Railing Missing	5,000	7,500
138.A2 Hand or Safety Railing Broken	5,000	7,500
138.A3 Hand or Safety Railing Loose Except by Design	2,500	5,000
138.B1 Hand or Safety Railing Bent	2,500	5,000
138.B2 Hand or Safety Railing Wrong Dimensions	2,500	5,000
138.C1 Hand or Safety Railing Improperly Applied	2,500	5,000
138.C2 Hand or Safety Railing Having Less Than the Required Clearance	2,500	5,000
138.C3 Hand or Safety Railing Improperly Located	2,500	5,000
140.A1 Uncoupling Lever Missing	2,500	5,000
140.A2 Uncoupling Lever Broken or Disconnected	2,500	5,000
140.B1 Uncoupling Lever Bent Will not Safely and Reasonably Function As Intended	2,500	5,000
140.C1 Uncoupling Lever Bracket Bent Lever Will Not Function Properly	2,500	5,000
140.C2 Uncoupling Lever Bracket Broken or Missing	2,500	5,000
140.D1 Uncoupling Lever Wrong Dimension	2,500	5,000
140.D2 Uncoupling Lever With Improper Handle Clearance	2,500	5,000
144.A1 Coupler Missing	5,000	7,500

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]—Continued

FRA safety appliance defect code section [2]	Violation	Willful violation
144.B1 Coupler Height Incorrect	2,500	5,000
144.C1 Coupler Inoperative	2,500	5,000
145.A1 Kick Plates Missing	2,500	5,000
145.A2 Kick Plates Broken	2,500	5,000
145.B1 Kick Plates Wrong Dimensions	2,500	5,000
145.B2 Kick Plates Improper Clearance	2,500	5,000
145.B3 Kick Plates Insecure Or Improperly Applied	2,500	5,000
146.A Notice or Stencil not Posted on Cabooses with Running Boards Removed	500	1,000
146.B Safe Means not Provided to Clean or Maintain Windows of Caboose	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

[2] This schedule uses section numbers from FRA's Safety Appliance Defect Code, a restatement of the CFR text in a reorganized format. For convenience, and as an exception to FRA's general policy, penalty citations will cite the defect code rather than the CFR. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR and/or statutory citation in place of the defect code section cited in the penalty demand letter.

PART 232—[AMENDED]

15. Part 232 is amended as follows:

A. The authority citation for Part 232 is revised to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8–12, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

§ 232.0 [Amended]

B. Section 232.0 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Appendix A to Part 232 is revised to read as follows:

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
232.1 Power brakes, minimum percentage	$5,000	$7,000
232.2 Drawbars; standard height	2,500	5,000
232.3 Power brakes and appliances for operating power brake systems	2,500	5,000

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
Rules for Inspection, Testing and Maintenance of Air Brake Equipment:		
232.10 General rules—locomotives:		
(b) Air brake equipment not inspected or tested to assure it is in a safe and suitable condition	2,500	5,000
(c) Compressor not tested for capacity	2,500	5,000
(d) Main reservoir not tested	2,500	5,000
(e) Air gauges not tested; if inaccurate not repaired or replaced	2,500	5,000
(f)(1) Operating portion of air brake equipment, dirt collectors, and filters not cleaned, repaired, and tested	2,500	5,000
(2) Hand brakes, parts and connections not inspected or suitably stenciled	1,000	2,000
(g) Date of testing or cleaning of air brake equipment not displayed in the cab	1,000	2,000
(h)(1) Minimum brake cylinder piston travel insufficient	2,500	5,000
(2) Maximum brake cylinder piston travel excessive	2,500	5,000
(i)(1) Foundation brake rigging, safety supports and brake shoes	2,500	5,000
(2) Foundation brake rigging or safety supports have improper clearance to the rails	2,500	5,000
(j)(1) Main reservoir leakage	2,500	5,000
(2) Brake pipe leakage	2,500	5,000
(3) Brake cylinder leakage	2,500	5,000
(4) Main reservoir safety valve	2,500	5,000
(5) Governor	2,500	5,000
(6) Compressor governor when used in connection with automatic air brake system	2,500	5,000
(k) Communicating signal system on locomotive	1,000	2,000
(l) Enginemen taking charge of locomotive	2,500	5,000
(m) Drain cocks on air compressors of steam locomotives	2,500	5,000
(n) Air pressure regulating devices	2,500	5,000
232.11 Train air brake system tests:		
(b) Communicating signal system on passenger train	2,500	5,000
(c) Effective and operative air brakes	2,500	5,000
(d) Condensation from yard line or motive power	2,500	5,000
232.12 Initial terminal road train air brake tests:		
(a) Total failure to perform initial terminal test	10,000	(1)
(b) 1,000 mile inspection not performed	5,000	10,000
(c)–(j) partial failure to perform initial terminal test	2,500	5,000
232.13 Road train and intermediate terminal train air brake tests:		
(a) Passenger trains: locomotive is detached	5,000	7,500
(b) Freight trains: locomotive is detached	5,000	7,500
(c)(1) Locomotive or caboose is changed, or one or more cars are cut off from the rear end or head end	5,000	7,500
(2) Brake pipe pressure restored	5,000	7,500
(3) Electropneumatic application and release test	5,000	7,500
(d)(1) Cars are added at a point other than a terminal	5,000	7,500
(2)(i) Cars added at a terminal and have not been charged and tested	5,000	7,500
(ii) Cars added at a terminal and have not been charged and tested	5,000	7,500
(3) Brake pipe pressure restored at the rear of freight train	5,000	7,500
(e)(1) Transfer train and yard train movements	2,500	5,000
(2) Transfer train and yard train movements exceeding 20 miles	5,000	7,500
(f) Locomotives, cars or train standing on a yard	5,000	7,500
(h) Device is used to comply with test requirement	2,500	5,000
232.14 Inbound brake equipment inspection:		
(a) Inspection of trains upon arrival at terminals	1,000	2,000
(b) Special instructions provide for immediate brake inspection and repairs	1,000	2,000
232.15 Double heading and helper service:		
(a) Engineman of the leading locomotive shall operate the brakes	5,000	7,500
(b) Electro-pneumatic brake valve	5,000	7,500
232.16 Running tests	2,500	5,000
232.17 Freight and passenger train car brakes:		
(a) Testing and repairing brakes on cars while in shop or on repair track:		
(1) Periodic attention on freight car air brake equipment while car is on repair track	5,000	7,500
(2)(i) Single car testing of freight cars	2,500	5,000

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(ii) Repair track tests of freight cars	2,500	5,000
(iii) Single car testing of freight cars	2,500	5,000
(iv) Car is released from a shop or repair track	2,500	5,000
(b)(1) Brake equipment on cars other than passenger cars	2,500	5,000
(2) Brake equipment on passenger cars	4,000	6,000
232.19 End of train device:		
(a) Location of front unit and rear unit	2,500	5,000
(b) Rear unit	2,500	5,000
(c) Reporting rate	2,500	5,000
(d) Operating environment	2,500	5,000
(e) Unique code	2,500	5,000
(f) Front unit	2,500	5,000
(g) Radio equipment	2,500	5,000
(h) Inspection	2,000	4,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 233—[AMENDED]

16. Part 233 is amended as follows:

A. The authority citation for Part 233 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

§ 233.11 [Amended]

B. Section 233.11 is amended by removing the last sentence (which begins "See") and adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A is added to Part 233 to read as follows:

APPENDIX A TO PART 233—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
233.5 Accidents resulting from signal failure	$2,500	$5,000
233.7 Signal failure reports	5,000	7,500
233.9 Annual reports	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 235—[AMENDED]

17. Part 235 is amended as follows:

A. The authority citation for Part 235 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

§235.9 [Amended]

B. Section 235.9 is amended by removing the last sentence (which begins "See") and adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A is added to Part 235 to read as follows:

APPENDIX A TO PART 235—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
235.5 Changes requiring filing of application	$5,000	$7,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 236—[AMENDED]

18. Part 236 is amended as follows:

A. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 236.0 is amended by revising the section title and adding paragraph (f) to read as follows:

§236.0 Applicability, minimum requirements, and civil penalties.

* * * * *

(f) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

C. Appendix A to Part 236 is revised to read as follows:

APPENDIX A TO PART 236—CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart A—Rules and Instructions—All Systems		
General:		
236.0 Applicability, minimum requirements	$2,500	$5,000
236.1 Plans, where kept	1,000	2,000
236.2 Grounds	1,000	2,000
236.3 Locking of signal apparatus housings:		
(a) Power interlocking machine cabinet not secured against unauthorized entry	2,500	5,000
(b) other violations	1,000	2,000
236.4 Interference with normal functioning of device	5,000	7,500
236.5 Design of control circuits on closed circuit principle	1,000	2,000
236.6 Hand-operated switch equipped with switch circuit controller	1,000	2,000
236.7 Circuit controller operated by switch-and-lock movement	1,000	2,000
236.8 Operating characteristics of electro-magnetic, electronic, or electrical apparatus	1,000	2,000
236.9 Selection of circuits through indicating or annunciating instruments	1,000	2,000
236.10 Electric locks, force drop type; where required	1,000	2,000
236.11 Adjustment, repair, or replacement of component	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.12 Spring switch signal protection; where required	1,000	2,000
236.13 Spring switch; selection of signal control circuits through circuit controller	1,000	2,000
236.14 Spring switch signal protection; requirements	1,000	2,000
236.15 Timetable instructions	1,000	2,000
236.16 Electric lock, main track releasing circuit:		
(a) Electric lock releasing circuit on main track extends into fouling circuit where turnout not equipped with derail at clearance point either pipe-connected to switch or independently locked, electrically	2,500	5,000
(b) other violations	1,000	2,000
236.17 Pipe for operating connections, requirements	1,000	2,000
Roadway Signals and Cab Signals—		
236.21 Location of roadway signals	1,000	2,000
236.22 Semaphore signal arm; clearance to other objects	1,000	2,000
236.23 Aspects and indications	1,000	2,000
236.24 Spacing of roadway signals	2,500	5,000
236.26 Buffing device, maintenance	1,000	2,000
Track Circuits—		
236.51 Track circuit requirements:		
(a) Shunt fouling circuit used where permissible speed through turnout greater than 45 m.p.h.	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(b) Track relay not in de-energized position or device that functions as track relay not in its most restrictive state when train, locomotive, or car occupies any part of track circuit, except fouling section of turnout of hand-operated main-track crossover	2,500	5,000
(c) other violations	1,000	2,000
236.52 Relayed cut-section	1,000	2,000
236.53 Track circuit feed at grade crossing	1,000	2,000
236.54 Minimum length of track circuit	1,000	2,000
236.55 Dead section; maximum length	1,000	2,000
236.56 Shunting sensitivity	2,500	5,000
236.57 Shunt and fouling wires:		
(a) Shunt or fouling wires do not consist of at least two discrete conductors	2,500	5,000
(b) other violations	1,000	2,000
236.58 Turnout, fouling section:		
(a) Rail joint in shunt fouling section not bonded	2,500	5,000
(b) other violations	1,000	2,000
236.59 Insulated rail joints	1,000	2,000
236.60 Switch shunting circuit; use restricted	2,500	5,000
Wires and Cables—		
236.71 Signal wires on pole line and aerial cable	1,000	2,000
236.73 Open-wire transmission line; clearance to other circuits	1,000	2,000
236.74 Protection of insulated wire; splice in underground wire	1,000	2,000
236.76 Tagging of wires and interference of wires or tags with signal apparatus	1,000	2,000
Inspections and Tests; All Systems—		
236.101 Purpose of inspection and tests; removal from service or relay or device failing to meet test requirements	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.102 Semaphore or search-light signal mechanism	1,000	2,000
236.103 Switch circuit controller or point detector	1,000	2,000
236.104 Shunt fouling circuit	1,000	2,000
236.105 Electric lock	1,000	2,000
236.106 Relays	1,000	2,000
236.107 Ground tests	1,000	2,000
236.108 Insulation resistance tests, wires in trunking and cables:		
(a) Circuit permitted to function on a conductor having insulation resistance value less than 200,000 ohms	2,500	5,000
(b) other violations	1,000	2,000
236.109 Time releases, timing relays and timing devices	1,000	2,000
236.110 Results of tests	1,000	2,000
Subpart B—Automatic Block Signal Systems		
236.201 Track circuit control of signals	1,000	2,000
236.202 Signal governing movements over hand-operated switch	1,000	2,000
236.203 Hand-operated crossover between main tracks; protection	1,000	2,000
236.204 Track signaled for movements in both directions, requirements	1,000	2,000
236.205 Signal control circuits; requirements	1,000	2,000
236.206 Battery or power supply with respect to relay; location	1,000	2,000
Subpart C—Interlocking		
236.207 Electric lock on hand-operated switch; control:		
(a) Approach or time locking of electric lock on hand-operated switch can be defeated by unauthorized use of emergency device which is not kept sealed in the non-release position	2,500	5,000
(b) other violations	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.301 Where signals shall be provided	1,000	2,000
236.302 Track circuits and route locking	1,000	2,000
236.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism	1,000	2,000
236.304 Mechanical locking or same protection effected by circuits	1,000	2,000
236.305 Approach or time locking	1,000	2,000
236.306 Facing point lock or switch-and-lock movement	1,000	2,000
236.307 Indication locking:		
236.308 Mechanical or electric locking or electric circuits; requisites	1,000	2,000
236.309 Loss of shunt protection; where required:		
(a) Loss of shunt of five seconds or less permits release of route locking of power-operated switch, movable point frog, or derail	2,500	5,000
(b) Other violations	1,000	2,000
236.310 Signal governing approach to home signal	1,000	2,000
236.311 Signal control circuits, selection through track relays or devices functioning as track relays and through signal mechanism contacts and time releases at automatic interlocking	1,000	2,000
236.312 Movable bridge, interlocking of signal appliances with bridge devices:		
(a) Emergency bypass switch or device not locked or sealed	2,500	5,000
(b) other violations	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.314 Electric lock for hand-operated switch or derail:		
(a) Approach or time locking of electric lock at hand-operated switch or derail can be defeated by unauthorized use of emergency device which is not kept sealed in non-release position	2,500	5,000
(b) other violations	1,000	2,000
Rules and Instructions—		
236.326 Mechanical locking removed or disarranged; requirement for permitting train movements through interlocking	1,000	2,000
236.327 Switch, movable-point frog or split-point derail	1,000	2,000
236.328 Plunger of facing-point	1,000	2,000
236.329 Bolt lock	1,000	2,000
236.330 Locking dog of switch and lock movement	1,000	2,000
236.334 Point detector	1,000	2,000
236.335 Dogs, stops and trunnions of mechanical locking	1,000	2,000
236.336 Locking bed	1,000	2,000
236.337 Locking faces of mechanical locking; fit	1,000	2,000
236.338 Mechanical locking required in accordance with locking sheet and dog chart	1,000	2,000
236.339 Mechanical locking; maintenance requirements	1,000	2,000
236.340 Electromechanical interlocking machine; locking between electrical and mechanical levers	1,000	2,000
236.341 Latch shoes, rocker links, and quadrants	1,000	2,000
236.342 Switch circuit controller	1,000	2,000
Inspection and Tests—		
236.376 Mechanical locking	1,000	2,000
236.377 Approach locking	1,000	2,000
236.378 Time locking	1,000	2,000
236.379 Route locking	1,000	2,000
236.380 Indication locking	1,000	2,000
236.381 Traffic locking	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.382 Switch obstruction test	1,000	2,000
236.383 Valve locks, valves, and valve magnets	1,000	2,000
236.384 Cross protection		
236.386 Restoring feature on power switches		
236.387 Movable bridge locking	1,000	2,000
Subpart D—Traffic Control Systems Standards		
236.401 Automatic block signal system and interlocking standards applicable to traffic control systems:		
236.402 Signals controlled by track circuits and control operator	1,000	2,000
236.403 Signals at controlled point	1,000	2,000
236.404 Signals at adjacent control points	1,000	2,000
236.405 Track signaled for movements in both directions, change of direction of traffic	1,000	2,000
236.407 Approach or time locking; where required	1,000	2,000
236.408 Route locking	1,000	2,000
236.410 Locking, hand-operated switch; requirements:		
(a) Hand-operated switch on main track not electrically or mechanically locked in normal position where signal not provided to govern movement to main track, movements made at speeds in excess of 20 m.p.h., and train or engine movements may clear main track	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(b) Hand-operated switch on signaled siding not electrically or mechanically locked in normal position where signal not provided to govern movements to signaled siding, train movements made at speeds in excess of 30 m.p.h., and train or engine movements may clear signaled siding	2,500	5,000
(c) Approach or time locking of electric lock at hand-operated switch can be defeated by use of emergency release device of electric lock which is not kept sealed in non-release position	2,500	5,000
(d) other violations	1,000	2,000
Rules and Instructions—		
236.426 Interlocking rules and instructions applicable to traffic control systems	1,000	2,000
236.476 Interlocking inspections and tests applicable to traffic control systems	1,000	2,000
Subpart E—Automatic Train Stop, Train Control and Cab Signal Systems Standards		
236.501 Forestalling device and speed control	1,000	2,000
236.502 Automatic brake application, initiation by restrictive block conditions stopping distance in advance	1,000	2,000
236.503 Automatic brake application; initiation when predetermined rate of speed exceeded	1,000	2,000
236.504 Operations interconnected with automatic block-signal system	1,000	2,000
236.505 Proper operative relation between parts along roadway and parts on locomotive	1,000	2,000
236.506 Release of brakes after automatic application	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.507 Brake application; full service	1,000	2,000
236.508 Interference with application of brakes by means of brake valve	1,000	2,000
236.509 Two or more locomotives coupled	1,000	2,000
236.511 Cab signals controlled in accordance with block conditions stopping distance in advance	1,000	2,000
236.512 Cab signal indication when locomotive enters blocks	1,000	2,000
236.513 Audible indicator	1,000	2,000
236.514 Interconnection of cab signal system with roadway signal system	1,000	2,000
236.515 Visibility of cab signals	1,000	2,000
236.516 Power supply	1,000	2,000
Rules and Instructions; Roadway—		
236.526 Roadway element not functioning properly	2,500	5,000
236.527 Roadway element insulation resistance	1,000	2,000
236.528 Restrictive condition resulting from open hand-operated switch; requirement	1,000	2,000
236.529 Roadway element inductor; height and distance from rail	1,000	2,000
236.531 Trip arm; height and distance from rail	1,000	2,000
236.532 Strap iron inductor; use restricted	1,000	2,000
236.534 Rate of pressure reduction; equalizing reservoir or brake pipe	1,000	2,000
236.551 Power supply voltage	1,000	2,000
236.552 Insulation resistance	1,000	2,000
236.553 Seal, where required	2,500	5,000
236.554 Rate of pressure reduction; equalizing reservoir or brake pipe	1,000	2,000
236.555 Repaired or rewound receiver coil	1,000	2,000
236.556 Adjustment of relay	1,000	2,000
236.557 Receiver; location with respect to rail	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.560 Contact element, mechanical trip type; location with respect to rail	1,000	2,000
236.562 Minimum rail current required	1,000	2,000
236.563 Delay time	1,000	2,000
236.564 Acknowledging time	1,000	2,000
236.565 Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading clock; requirement	1,000	2,000
236.566 Locomotive of each train operating in train stop, train control or cab signal territory; equipped	5,000	7,500
236.567 Restrictions imposed when device fails and/or is cut out en route:		
(a) Report not made to designated officer at next available point of communication after automatic train stop, train control, or cab signal device fails and/or is cut en route	5,000	7,500
(b) Train permitted to proceed at speed exceeding 79 m.p.h. where automatic train stop, train control, or cab signal device fails and/or is cut out en route when absolute block established in advance of train on which device is inoperative	5,000	7,500
(c) other violations	1,000	2,000
236.568 Difference between speeds authorized by roadway signal and cab signal; action	1,000	2,000
Inspection and Tests; Roadway—		
236.576 Roadway element	1,000	2,000
236.577 Test, acknowledgement, and cut-in circuits	1,000	2,000
Inspection and Tests; Locomotive—		
236.586 Daily or after trip test	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
236.587 Departure test:		
(a) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made on departure of locomotive from initial terminal if equipment on locomotive not cut out between initial terminal and equipped territory	5,000	7,500
(b) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made immediately on entering equipped territory, if equipment on locomotive cut out between initial terminal and equipped territory	5,000	7,500

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
(c) Automatic train stop, train control, or cab signal apparatus on locomotive making more than one trip within 24-hour period not given departure test within corresponding 24-hour period	5,000	7,500
(d) other violations	2,500	5,000
236.588 Periodic test	2,500	5,000
236.589 Relays	2,500	5,000
236.590 Pneumatic apparatus:		
(a) Automatic train stop, train control, or cab signal apparatus not inspected and cleaned at least once every 736 days	2,500	5,000
(b) other violations	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
Subpart F—Dragging Equipment and Slide Detectors and Other Similar Protective Devices; Standards		
236.601 Signals controlled by devices; location	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Issued in Washington, DC, on December 21, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89-29733 Filed 12-23-88; 8:45 am]

BILLING CODE 4910-06-M

federal register

Thursday
December 29, 1988

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 815 and 942 Permanent Program Performance Standards—Coal Exploration; Tennessee Federal Program—Requirements for Coal Exploration; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 815 and 942

Permanent Program Performance Standards—Coal Exploration; Tennessee Federal Program—Requirements for Coal Exploration

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending its rules pertaining to coal exploration operations. The amendments require a notice of intent for all coal exploration operations in which 250 tons of coal or less is removed, clarify limitations on commercial use or sale of coal obtained by exploration and clarify which permit information requirements pertain to exploration. The exploration rules for the Tennessee Federal program are also amended to bring them into conformance with the notice requirements adopted herein. The rules for all other Federal program States cross-reference the coal exploration rules at 30 CFR Part 772; therefore all changes to the Federal rules automatically apply in these States.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: 202-343-1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, at section 512, requires that each State or Federal program ensure that coal exploration operations that substantially disturb the natural land surface are conducted in accordance with exploration rules issued by the regulatory authority. Section 512 of SMCRA sets forth the notice, permit, reclamation, and other requirements for conducting coal exploration operations. In addition to the general requirement to file a notice of intent to conduct coal exploration, the removal of more than 250 tons of coal during exploration requires the specific written approval of the regulatory authority.

The informational requirements for a notice of intent to explore and for an exploration permit are contained in 30 CFR 772.11 and 772.12, and are distinct from the more expansive permit requirements for a surface coal mining operation contained in 30 CFR Parts 773, 777 through 780, and 783 through 785 of the OSMRE regulations. These differing requirements reflect the fact that the definition of surface coal mining operations in section 701(28) of SMCRA excludes coal exploration operations, which are subject to the requirements of section 512 of SMCRA.

OSMRE first promulgated rules establishing general requirements for coal exploration at 30 CFR Part 776, and permanent program performance standards for coal exploration at 30 CFR Part 815, on March 13, 1979 (44 FR 15311). These 1979 exploration rules were revised on September 8, 1983 (48 FR 40622), and Part 776 was redesignated as Part 772.

Challenges to these 1983 regulations resulted in a court ruling on July 15, 1985, *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144, (D.D.C. July 15, 1985) (*In Re: Permanent (II)*), and a suspension notice was issued by OSMRE on November 20, 1986 (51 FR 41961).

On June 22, 1988, OSMRE published in the **Federal Register** (53 FR 23532) a proposed rule to revise the coal exploration notice requirements, to revise various coal exploration permit requirements, to add requirements for approval of commercial sale or use of coal extracted during exploration for testing purposes, to clarify which permit information requirements pertain to exploration, and to revise the Tennessee Federal Program requirements to conform with the revised rules proposed in the rulemaking.

A public comment period commenced with publication of the proposed rule and ended on August 8, 1988. A public hearing that had been scheduled to be held in Washington, DC on August 1, 1988, was not held because no one requested to testify at the hearing.

II. Discussion of Comments and Rules Adopted

General Comments

Twelve sets of comments were received on the proposed rule.

Several commenters expressed general support for the rulemaking, although they included some specific suggestions for improvement that are addressed below. One commenter generally disagreed with the proposed rulemaking, and along with other commenters, commented on specific provisions of the proposed rule, expressing agreement or disagreement and suggesting changes.

One commenter suggested that after the rule is finalized, OSMRE immediately require States, under 30 CFR Part 732, to amend their approved regulatory program regulations to render them no less effective than the new Federal regulations. Another commenter stated that OSMRE should not automatically require State regulatory programs to be revised where such State programs adequately address regulation of coal exploration operations. Following promulgation of this final rule OSMRE will evaluate all permanent State regulatory programs approved under SMCRA as expeditiously as possible to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended to make them no less effective than the revised Federal rules, the individual states will be notified according to the provisions of 30 CFR 732.17.

One commenter stated that except for the narrative and map revisions, the proposed rules were meant to address isolated activities in perhaps two states, which should be addressed within the states where the problems occur. OSMRE disagrees with the commenter. Revised national standards pertaining to coal exploration are necessary to ensure application of minimum national standards for control of the potential harmful effects from coal exploration activities.

The U.S. Department of Agriculture Forest Service requested that the role of the Forest Service, or other land management agency, be recognized and acknowledged in authorizing exploration on lands under their jurisdiction. OSMRE's promulgation of revised exploration regulations at 30 CFR Part 772 does not limit or affect in any way the role and authority of the Forest Service to impose its own requirements to control or limit exploration operations on lands under its jurisdiction.

Section 772.11(a) Notice Requirements for Exploration; Removing 250 Tons or Less of Coal

Final § 772.11(a) is promulgated as proposed except that the proposed requirement that the provisions of § 772.14 apply to exploration under a notice of intent has not been adopted. Paragraph (a) requires any person who

conducts coal exploration operations where 250 tons or less of coal are removed to file a notice of intention to explore. Previous § 772.11(a) required a notice only for those operations which may substantially disturb the natural land surface. That rule was challenged in the District Court of the District of Columbia and was remanded on the grounds that OSMRE had failed to explain adequately its departure from the previous rule or to address adequately the concerns raised by commenters. *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) (*In Re: Permanent (II)*).

Three commenters supported the reinstatement of the notice requirement for all exploration operations. One stated that the operator should not be in the position to determine whether he is regulated or not. One said that to maintain administrative control over exploration operations OSMRE should adopt the proposed requirement that operators notify the regulatory authority of all exploration where coal will be removed. This commenter further stated that OSMRE should exempt the collection of environmental baseline data from the notice requirement unless the land is substantially disturbed. One commenter opposed the proposed requirement for a notice of intent for all exploration stating that "[a]ccepted canons of statutory interpretations dictate that the requirements of Section 512(a) [of SMCRA], including notice, pertain only to coal exploration which substantially disturbs the land," and that this was properly reflected in the 1983 rule. The commenter said that section 512(c) supports this interpretation since it only subjects exploration which substantially disturbs the surface to the penalty provisions of section 518.

In promulgating the final rule, OSMRE has considered the practical problems raised by the remanded rule, namely that for the regulatory authority to determine which proposed coal exploration operations may substantially disturb the natural land surface it must be informed of all proposed exploration. OSMRE has determined that coal exploration operators should not be in a position of making a determination of whether their operations substantially disturb the natural land surface and that the regulatory authority has the responsibility for making that determination. For effective monitoring and enforcement, the regulatory authorities should be informed of all exploration occurring within their jurisdictions, including exploration for environmental baseline data, and this can best be accomplished through notification by all who intend to explore.

As proposed, final § 772.11(a) provides that any person who intends to conduct coal exploration on lands designated as unsuitable for surface coal mining operations under Subchapter F, Areas Unsuitable for Mining, must apply for and receive an exploration permit under § 772.12. This revision does not change or add any regulatory requirement, but will alert anyone contemplating exploration on such lands that the requirements of § 772.12 apply, including the requirement that prior written approval be obtained from the regulatory authority, regardless of the tonnage to be removed.

One commenter expressed disapproval of the provision allowing coal exploration in areas that have been designated unsuitable for surface coal mining operations. OSMRE wishes to make clear that this is not a new regulatory proposal but merely a reiteration of the existing requirement in 30 CFR 772.12(a) that such exploration must have prior written approval from the regulatory authority.

Final § 772.11(a) further states that exploration under a notice of intent shall be subject to the compliance requirements prescribed under § 772.13. The proposed provision that exploration under a notice of intent would be subject to the limitations on commercial sale or commercial use of coal obtained by exploration prescribed under § 772.14 has not been adopted.

As pointed out by one commenter, 30 CFR 700.11(a)(2) exempts from the requirements for a permit for surface coal mining operations, "the extraction of 250 tons of coal or less by a person conducting a surface coal mining operation." Therefore, it would not be reasonable to require a person conducting coal exploration under a notice of intent to obtain a permit for a surface coal mining operation before commercial use or sale of 250 tons or less of coal.

The addition of the cross-reference to § 772.13 does not change or add, as one commenter understood it, any requirement, but merely clarifies the applicability of an existing requirement.

One commenter stated that the notice requirement fails to incorporate the statutory distinction which subjects only those activities which substantially disturb the surface to the reclamation provisions under SMCRA and suggested the addition of a new paragraph under § 772.11 to provide clarification. Sections 772.13 and 815.1 clearly provide that the standards of Part 815 apply only to those operations which substantially disturb the surface. Therefore, no paragraph need be added to § 772.11 to this effect.

Section 772.11(b)(3) Narrative or Map in a Coal Exploration Notice.

Previous § 772.11(b)(3) required either "a narrative or map" as part of a notice of intent to explore under § 772.11. The rule was challenged on the basis that it did not require a narrative description of the exploration area in all instances. The court found that either a map or a narrative would meet the statutory requirement of a "description" of the exploration area as required in section 512(a)(1) of SMCRA, but determined that the map provisions of § 772.11(b)(3) were not specific enough to satisfy the requirements of SMCRA. *In Re: Permanent (II)*, July 15, 1985 Mem. op. at 139-140.

As proposed and adopted, § 772.11(b)(3) continues to require either a narrative or a map describing the exploration area in a notice of intent to explore. In compliance with the court's ruling, this final rule defines the minimal information to be shown when a map is submitted in a notice of intent. Such maps must be at a scale of 1:24,000 or larger, and include the proposed area of exploration, the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines. OSMRE believes that these additional requirements satisfy the court's concerns that the regulation explain the level of detail to be provided in a map which serves as the description of an exploration area.

One commenter supported the continuation of the rule that provided the option to provide a narrative or a map. Another commenter supported the proposed map detail and further recommended that the detail set out in § 772.11(b)(3) should also apply to the narrative which has no specified level of detail. Although the final rule continues to provide the option of a narrative or a map for coal exploration notices of intent, OSMRE does not agree that the rule need contain any greater specificity for the narrative option, and will leave to the regulatory authority the determination of whether the narrative description sufficiently defines the proposed exploration.

One commenter stated that for accuracy and legibility, all maps should be required to be produced by the U.S. Geological Survey. OSMRE does not

agree that the regulations should require the submittal of a map from a specific provider. OSMRE does agree that any materials submitted by an operator to the regulatory authority should be accurate and legible, but it is not necessary to include such a requirement in these regulations. The regulatory authority is responsible for requiring submission of legible materials.

The commenter also suggested that the map requirements for notices should be identical to those for permits. OSMRE disagrees. SMCRA recognizes two levels of exploration activity by requiring written approval from the regulatory authority where more than 250 tons of coal would be removed. Accordingly, the regulations contain differing levels of detail for a permit requiring prior approval as opposed to a notice requiring no prior approval.

Two commenters suggested that the applicant should be required to provide all reasonably available knowledge and information about the exploration site. OSMRE believes that the exploration regulations contain sufficient detail to allow the regulatory authority to effectively monitor and enforce exploration operations and to review and determine the appropriateness of the proposed exploration and the subsequent reclamation.

Another commenter suggested that narratives and maps as well as any other relevant existing resource information, be provided in an exploration notice. This comment is not accepted because OSMRE agrees with Judge Flannery's 1980 decision on this issue specifically stating that OSMRE could not require both a narrative and a map (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, (D.D.C. May 16, 1980)). In his 1985 decision, Judge Flannery affirmed his earlier opinion and clarified that either a narrative or a map would meet the statutory definition of a description of the exploration area as required by § 512 of SMCRA (*In Re: Permanent (II), supra*).

Three commenters objected to the inclusion of "drill hole locations" in the map included with an exploration notice. The commenters stated that in some cases drill hole locations are not known in advance, since they will depend on results obtained from previous drill holes or other discoveries in the field. OSMRE recognizes that the exact drill hole locations will not always be known beforehand. Therefore, the final rule language has been modified to require the general location of drill holes on the map.

Section 772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations.

The headnote for § 772.12 is amended in this final rule for clarity at the suggestion of two commenters to indicate that any exploration which occurs on lands designated as unsuitable for surface coal mining operations is subject to the permit provisions of § 772.12. Lands designated as unsuitable includes lands designated unsuitable under SMCRA section 522(a) and those designated by Congress under section 522(e). The final rule, as proposed, adds a statement to § 772.12(a) to provide that exploration conducted outside a permit area during which more than 250 tons of coal is removed or which will take place on lands designated as unsuitable for mining, will be subject to the requirements of §§ 772.13 and 772.14. This revision does not add or change any regulatory requirement, but only clarifies existing requirements.

Two commenters stated that this rulemaking added the requirement to obtain an exploration permit for exploration in all section 522(e) areas, regardless of tonnage. Two other commenters stated that the permit requirement for exploration in all section 522(e) areas is not justified and OSMRE should exempt the permit requirement for the collection of environmental baseline data on lands designated unsuitable under § 761.11(d)-(g), unless the land is substantially disturbed. Two other commenters recognized the existing requirement for a permit for any exploration on unsuitable areas regardless of tonnage and stated that OSMRE should not change the requirement.

OSMRE wishes to make clear that existing exploration regulations in § 772.12(a) already contain the requirement for an exploration permit for all exploration in unsuitable areas regardless of tonnage removed and no change to it was proposed. This rulemaking only provides clarification that such exploration shall be subject to §§ 772.13 and 772.14.

Section 772.12(b)(3) Narrative in a Coal Exploration Permit Application.

As proposed and adopted, § 772.12(b)(3) requires that a narrative describing the exploration area be included in an exploration permit application. The option to provide a map describing the proposed exploration area instead of a narrative is deleted. Previous § 772.12(b)(3), which required a narrative or map to describe the exploration area, was challenged and remanded in *In Re: Permanent II* for the same reason that § 772.11(b)(3) was remanded, namely that the map provisions of § 772.12(b)(3) were not specific enough to satisfy section 512(a) of SMCRA which requires a description of the exploration area. However, the court in 1980 also ruled that either a narrative or a map, but not both, could serve as a description of the exploration area. On the basis of the court ruling that either a narrative or a map, but not both, could serve as a description of the exploration area, OSMRE has decided to require a narrative for that purpose. It is not necessary under § 772.12(b)(3) to provide for an optional narrative or map since either is sufficient.

One commenter stated that the rule as proposed required a narrative and a map of the exploration area and that OSMRE has not adequately explained the rationale for deleting the narrative or map option. The commenter referred to the existing map requirement under § 772.12(b)(12) and to the preamble to the proposed rule which stated that the map required under § 772.12(b)(12) would include the essential features that would be required to satisfy the court requirement concerning § 772.12(b)(3). If the map under (b)(12) is adequate to meet the requirements of § 772.12(b)(3), the commenter asked why then is a narrative also needed. The commenter said that OSMRE should (1) allow for either a narrative or the map under § 772.12(b)(12); (2) delete the requirement at § 772.12(b)(3) for a narrative; or (3) limit the required narrative to areas not substantially disturbed (not covered by the map required in § 772.12(b)(12)).

Although there is an existing map requirement included in § 772.12(b)(12), and it is thus correct that the revised rules require a narrative and map, only the narrative is required to provide a description of the exploration area. The purpose of the map, which existing § 772.12(b)(12) continues to require, is to show the areas of land to be disturbed by the proposed exploration and reclamation. Thus, as the court stated, the map under (b)(12) may not be the same as the map to describe the area of proposed exploration in accordance with §772.12(b)(3). Under the existing requirements of § 772.12(b)(12), an application for an exploration permit must include a map showing the locations of all areas to be disturbed by exploration, and specifically showing existing roads, occupied dwellings, topographic, and hydrologic features, roads and structures to be constructed,

the location of land excavations, exploration holes, etc. Exploratory surveying and sampling areas that would not cause land to be disturbed would not necessarily be included on the map. Any geochemical, soil, water, vegetation, or other sampling and survey activities must be included in the narrative description of the exploration area.

One commenter suggested that the narrative requirement of § 772.12(b)(3) must contain greater detail and must include all reasonably available information, as the narrative has no specified level of detail. OSMRE does not believe it is necessary to require any specific detail for a narrative, and will leave to the regulatory authority the determination of whether the narrative description sufficiently defines the proposed exploration.

Sections 772.12 (b)(14) and (d)(2)(iv) Exploration in Areas Unsuitable for Surface Coal Mining Operations Under Section 522(e)(1) of SMCRA.

The revisions proposed at § 772.12 (b)(14) and (d)(2)(iv) have not been adopted. Proposed § 772.12 (b)(14) would have required that an application for a permit for exploration activities within an area covered by § 761.11(a) contain documentation that the person has valid existing rights to conduct surface coal mining operations in the area. Proposed § 772.12 (d)(2)(iv) would have required that the regulatory authority shall, prior to approval of exploration in areas covered by 30 CFR 761.11(a), find in writing that the exploration will be conducted by or on behalf of a person who possesses valid existing rights to conduct surface coal mining operations within the proposed exploration area.

A number of commenters supported the proposed requirement for VER to obtain a permit to explore on SMCRA section 522(e)(1) (§ 761.11(a)) areas.

Two commenters took the position that there should be no exploration within any section 522(e) areas without proof of VER, and the proposed prohibition should be extended to all section 522(e) areas. One noted that the preamble failed to give any reason for the distinction between section 522(e)(1) areas and areas protected by section 522 (e)(2) through (e)(5). The commenters stated that unlike section 522(a)(1) of SMCRA, section 522(e) does not explicitly provide that exploration on section 522(e) areas is allowed. One said that had Congress intended the section 522(e) areas to be subject to exploration, it would have so provided in SMCRA. The commenter also stated that section 522(e) of SMCRA expressly bans surface coal mining operations subject to VER, but not subject to coal exploration, and the only exploration allowed by SMCRA on unsuitable lands is on areas designated pursuant to a petition filed under section 522(a).

One commenter expressed general support for the proposed requirement for VER prior to exploration in section 522(e)(1) areas and noted that the proposed rulemaking would have an immediate effect in the New River Gorge National River (NRGNR), a unit of the National Park System in southern West Virginia. The commenter referred to public testimony in the hearing records of the Subcommittee on Mining and Natural Resources of the House Committee on Interior and Insular Affairs, expressing concern over a number of coal exploration activities taking place in the NRGNR. The commenter viewed surface mining of any type or degree as an inappropriate land use activity for national park unit lands, but said that SMCRA properly recognizes the concept of valid existing rights to mine on those lands.

Two other commenters referenced problems with coal exploration activities in the NRGNR in West Virginia, and expressed the belief that the proposed rule would help to resolve those problems.

One commenter stated that the VER requirement is not supported by SMCRA, and OSMRE has never interpreted section 522(e) to require VER prior to exploration. The commenter noted that the definition of surface coal mining operations in SMCRA section 701(28) excludes coal exploration operations subject to section 512 of SMCRA and that the SMCRA prohibitions in section 522(e) apply only to surface coal mining operations. The commenter stated that the proposal to require VER prior to exploration was an unauthorized attempt to amend SMCRA by regulation. The commenter objected to the VER requirement and suggested that alternatives other than the proposed rule changes exist to address concerns of the National Park Service (NPS), such as closer coordination and consultation, and that the VER requirement is unreasonable because there is no discussion or consideration of such alternatives.

One commenter stated that the biggest problem is that a new VER rule has not yet been proposed and that rule would have much bearing on the applicability of the proposed VER requirement of the exploration rule. The commenter said that the VER definition has a tremendous bearing on the applicability of the proposed rule in national park and other 522(e) areas.

OSMRE has carefully reviewed and analyzed all of these comments and has considered the effects of future VER rulemaking activities on the proposed requirement to show VER to explore on section 522(e)(1) areas. Section 522(e) of SMCRA prohibits, subject to valid existing rights, surface coal mining operations except those which existed on the date of enactment of SMCRA, on lands designated in section 522 (e)(1) through (e)(5). The definition of surface coal mining operations in section 701(28) of SMCRA excludes coal exploration subject to section 512 of SMCRA. Therefore, there is merit to the argument that SMCRA does not ban exploration in these areas rather than the commenter's analysis that because specific language relating to exploration appears in section 522(a) of SMCRA, the absence of similar langauge in section 522(e) means that exploration is prohibited in areas covered by section 522(e). By its own terms, section 522(e) seems to be a prohibition which applies only to surface coal mining operations, and not to exploration. No need would exist to create an exception to allow exploration if the section does not apply to exploration. Although it is not clear why specific language was included in section 522(a) precluding unsuitability designations under that paragraph from preventing coal exploration under such designation, Congress may have included such language for clarity following a process to allow designations of "all or certain types" of surface coal mining operations. It is not necesssary, however, to determine conclusively the meaning of section 522(a) to interpret section 522(e).

Notwithstanding these or other arguments for or against the prohibition of exploration in section 522(e) areas absent a showing of VER, OSMRE finds that a forthcoming promulgation of a new definition of VER is a significant factor that must be considered in the context of the proposed VER requirement for exploration in section 522(e)(1) areas. Until a new definition of VER is promulgated, the applicability of the proposed VER requirement for exploration cannot be clearly predicted. Therefore, OSMRE has determined that it would not be appropriate at this time to promulgate a VER requirement for exploration within section 522(e)(1) areas. When a new VER rule is promulgated, OSMRE will reconsider the issue of whether a person conducting exploration operations within section 522(e)(1) areas should be required to demonstrate VER prior to conducting such exploration.

The following additional comments pertain to the proposal to require VER for coal exploration of section 522(e)(1) areas.

One commenter stated that there is "virtually no justification for proving the existence of coal reserves on section 522(e) lands, when further surface mining permits will be denied." OSMRE does not fully agree with the commenter. There are instances when there may be compelling reasons to explore when surface mining permits may be denied. Mineral valuation may legitimately be necessary for reasons other than pre-development such as for acquisition purposes or to allow assessment of potential "takings" claims.

One commenter stated that it is unclear whether the proposed rule requires VER for all exploration in section 522(e)(1) areas (less and more than 250 tons) and said it should not apply for 250 tons or less. Another commenter strongly supported the proposed rule's application of the permit requirement to lands that have been designated unsuitable, regardless of tonnage. The requirement for VER to explore on section 522(e)(1) areas has not been adopted, as discussed above; therefore these comments are moot.

Another commenter suggested that the regulations could be improved by clarifying that the NPS should be routinely consulted on all surface disturbances within 300 feet of park boundaries and in park boundary adjustments pending in Congress. These comments are beyond the scope of this rulemaking. This rulemaking only addressed exploration in section 522(e)(1) areas with respect to NPS lands.

Another commenter stated that OSMRE should revise § 772.12 to eliminate "excess tonnage" (more than 250 tons) permits in section 522(e) areas even if VER is proved. OSMRE disagrees with the commenter because eliminating exploration permits allowing removal of more than 250 tons in those areas would prevent those operators from conducting exploration as provided for by section 512 of SMCRA.

The commenter also stated that the proposed rule ignores revision to § 762.14, which, in the commenter's view, is the source for allowing exploration in section 522(e) areas. OSMRE disagrees. Section 762.14 concerns exploration on lands in a State that have been designated unsuitable under the petition process described in section 522(a)(1) of SMCRA. Section 522(a)(1) of SMCRA expressly allows exploration on these areas.

One commenter questioned what actions OSMRE will take with respect to State adoption of final rules, once the proposed VER requirement was adopted but before all States were in compliance. The VER requirement has not been adopted in this final rule, as discussed above.

One commenter stated that there must be public input into the VER determination, and a right to challenge. The procedures for determination of valid existing rights is an entirely separate process unrelated to this rulemaking; thus the comment is not relevant to this final rule.

One commenter requested reassurance that until a new VER definition is promulgated, OSMRE would not process VER applications within units of the National Park System in States that use a "takings" standard. The **Federal Register** notice which established this policy (51 FR 41955, November 20, 1986) is unaffected by this rulemaking. Another commenter said that the proposed exploration rule changes would extend this policy to VER determinations for exploration purposes in National Park System units where a "takings" standard applies. The proposed VER requirement for exploration is not adopted.

One commenter suggested that for clarity the heading of § 772.12(d) be modified to indicate that section 522(e)(1) areas are included. As proposed, the heading for § 772.12(d) has been modified to be sufficiently general as to include these areas.

Section 772.14 Commercial Use or Sale.

Section 772.14 is adopted as proposed except for certain changes as discussed below. Section 772.14 is retitled "Commercial Use or Sale" and is expanded to include the commercial use of coal in addition to the sale of coal. Commercial use of coal encompasses those activities which provide a commercial benefit to the person conducting the exploration or another, such as when the owner of a power generating plant conducts coal exploration directly or when exploration is conducted on behalf of the power plant owner through an agent or subsidiary company and the coal is used in the power generating plant.

Paragraph 772.14(a) provides that except as provided under §§ 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during exploration under an exploration permit shall first obtain a surface coal mining and reclamation operations permit.

One commenter stated that the cross-reference under § 772.14(a) should properly refer only to § 700.11(a)(5) and not to all of § 700.11(a). Section 700.11(a)(5) provides the specific exemption from Chapter VII requirements, for coal exploration on lands subject to the requirements of 43 CFR Parts 3480–3487. As suggested, final § 772.14(a) refers to § 700.11(a)(5).

Another commenter stated that it is unclear whether § 772.14 applies to exploration where 250 tons of coal or less is removed. The commenter stated that the reference to § 700.11(a) implies that the requirement to obtain a surface coal mining permit does not apply to exploration removing less than 250 tons even if it is commercially sold or used. The commenter recommended that it should not apply, and asked that clarification be provided.

OSMRE agrees with the commenter. Section 700.11(a)(2) provides that extraction of 250 tons or less of coal by a person conducting a surface coal mining operation is exempt from the requirements of 30 CFR Chapter VII. It would not be reasonable to require written approval for commercial sale or use under § 772.14 if less than 250 tons of coal were removed, since under § 700.11(a)(2) no permit is required for a surface coal mining operation removing 250 tons or less. OSMRE has deleted the language that would have required a permit to conduct surface coal mining operations for the sale or use of coal extracted under a notice of intent to explore, to clarify that § 772.14 applies only to coal exploration operations removing more than 250 tons or occurring on lands designated unsuitable for mining.

Two commenters stated that they were in favor of the proposed information requirements. One said that abuse of exploration permits "undercuts legitimate mining activities and threatens the creation of unreclaimed areas mined under sham exemptions for which no bond is available to conduct reclamation."

One commenter referred to proposed revisions to § 772.13 governing commercial sale or use of coal. This rule does not contain any revisions to § 772.13 nor does that section concern commercial use or sale.

Paragraph 772.14(b) provides that with the prior approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration under an exploration permit if the sale or use is for coal testing purposes only. The application shall demonstrate that the coal testing is necessary for the development of a future surface coal mining and reclamation operation for

which a surface coal mining operations permit application will be submitted in the near future, and that commercial use or sale is solely for the purposes of testing the coal. The proposed words "and reclamation" are deleted from the phrase "surface coal mining and reclamation operations permit application" in the final rule. This is not a substantive change, as this is merely a descriptive term for a surface coal mining operations permit under 30 CFR Part 773 as distinct from a coal exploration permit. Final § 772.14(b) adopts as proposed the requirements for specific information that must be met for approval of such testing. The rule has been edited from the proposed language to eliminate unnecessary repetition.

One commenter was concerned that exceptions would be made in the application of the commercial sale and use restrictions. The commenter stated that the proposed rule allows exceptions at the discretion of the regulatory authority. OSMRE disagrees that the rule allows exceptions. Prior written approval of the regulatory authority is required under an exploration permit for any commercial sale or use of more than 250 tons of coal extracted without a permit to conduct surface coal mining operations.

One commenter stated that § 772.14(b) would appear to limit the testing exemption to new coal operations since the proposed rule language referred to the "development" of a mining operation. The commenter said that existing operations should qualify for this exemption if it is necessary to conduct exploration off the permit area where existing operations may expand into unpermitted reserves. OSMRE does not agree that the rule language limits this exemption to new operations. The word "development" does not necessarily refer only to new operations.

Two commenters were concerned that the tonnage of coal used for approved testing may be subject to abuse and that strict recordkeeping is needed. OSMRE expects that any person extracting coal during exploration for a text burn will be able to demonstrate compliance with the terms of the approval. Such a demonstration would have to be from competent sources, including, for instance, records of the end user and the person performing the extraction. OSMRE does not believe, however, that the regulations should specify recordkeeping requirements for these provisions, but will leave any tracking or the imposition of recordkeeping requirements to the regulatory authority.

One commenter stated that the preamble of the proposed rule did not explain the "concern about abuses" to justify the new requirements and that the reasonableness of the new rule cannot be properly evaluated without such information. The commenter said that OSMRE should evaluate specific instances which raised concerns and seek solutions through the State program. OSMRE's evaluation of exploration operations has shown that in several cases, approved testing under an exploration permit appears to be an early start-up of mining rather than exploration to determine whether the coal would be suitable for commercial purposes. Exploration operations have also been approved which allow activities not envisioned by SMCRA, such as commercial sale of coal removed from exploration operations under the pretense that the coal is needed for testing. OSMRE has determined that the previous regulations do not require the applicant to provide sufficient information and assurances to enable the regulatory authority to establish whether the extraction of coal for commercial sale is necessary for testing purposes. OSMRE believes that revised national standards are necessary to ensure application of minimum standards to control the potential harmful effects of exploration activities.

Section 772.14(b)(1) requires that the application contain the name of the firm at which the coal will be tested and the locations for testing.

Section 772.14(b)(2) requires that if the coal is sold directly to or commercially used directly by the intended end user, the end user shall submit a statement that provides: the specific reasons for the test, including why the coal may be so different from the intended user's other coal supplies as to require the testing; the amount of coal necessary for the test and why a lesser amount is not sufficient; and a description of the specific tests that will be conducted.

As proposed, § 772.14(b)(3) requires that if the coal is sold indirectly to the intended end user through an agent or broker, the agent or broker must submit the statement as described above. In the final rule, proposed paragraph (b)(3) has been incorporated in paragraph (b)(2), to avoid unnecessary repetition.

The information required to be submitted under § 772.14(b)(2) includes a statement from the intended end user (*e.g.* a utility) or his/her agent or broker on the coal being tested, as independent verification of the need for testing and the kind of testing necessary. The rule recognizes that in some cases, such as when the coal is to be exported, a broker obtains the coal for an end-user. This rule allows a broker to verify the validity of the testing at either the end-user's facilities or at an appropriate other location. Typically, a coal broker assembles a test shipment by blending coal from various sources to suit the end-user's needs, and a test burn or other test may be needed to verify the coal quality and/or suitability for such shipments. Such testing of coal could be considered appropriate under this rule. The required documentation on the need for the testing provided by a broker acting for an end-user, could also be considered sufficient.

One commenter stated that the proposed rule was ambiguous on testing, and that the rule implies that the exemption for testing will only apply to tests for qualitative properties of the coal. The commenter noted that test burns may be necessary to determine the coal's compatibility with the customer's boiler specifications, or suitability for blending with other coals, rather than just to determine quality of the coal. OSMRE agrees with the commenter that test burns are sometimes required for determinations other than the quality of the coal. Testing for purposes of § 772.14(b) is considered by OSMRE to include valid test burns that are required by the end-user, but only in an amount necessary to evaluate the coal's compatibility with boiler or other technical specifications or to determine properties of the coal.

Final paragraph (b)(3), proposed as paragraph (b)(4), requires that the application also contain evidence that sufficient reserves of coal are available to the person conducting exploration, or its principals, for future commercial use or sale to the intended end user to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve. The phrase "or its principals" was added to recognize that in some situations the person conducting the exploration may be an agent of another.

Final paragraph (b)(4), proposed as paragraph (b)(5), requires the application to contain an explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of future surface coal mining operations. The words "prospecting or" which preceded the word "exploration" in the proposed rule, do not appear in the final rule because "prospecting" is not defined, and, as intended, is a subset of exploration.

The intent of these new requirements is to continue to allow valid testing, while eliminating practices whereby testing is used as a means to circumvent the prohibition of commercial use or sale of coal obtained during exploration.

Any exploration operation which sells or uses coal commercially without a valid testing approval shall be in violation of these rules, unless a permit for a surface coal mining and reclamation operation is first obtained.

30 CFR Part 815—Permanent Program Performance Standards—Coal Exploration

Section 815.2 Permitting Information

As proposed, OSMRE adds new § 815.2 to clarify the extent of the information required to be submitted in an application for an exploration permit. The performance standards for coal exploration at 30 CFR 815.15 currently contain requirements which cross-reference certain requirements in 30 CFR Part 816. The cross-referenced rules in Part 816 contain further cross references to permit application requirements for surface coal mining operations and, in particular, to those at 30 CFR Part 780. However, the cross-referenced permit application requirements are intended for surface coal mining operations and need not be applied to exploration operations because of the much more limited nature and scope of exploration activity.

The need for more careful specification of exploration permitting information was recently demonstrated by an administrative appeal to an exploration permit issued to Chatham Coal Co. The appeal alleged that the regulatory authority failed to require the Part 780 permitting information cross-referenced by the exploration performance standards. The Administrative Law Judge's decision held that, as written, the cross-referenced permit information requirements which were in question applied to coal exploration. *Chatham County* v. *OSMRE,* No. NX 7-1-A (August 24, 1987).

New § 815.2 states that notwithstanding cross-references in other parts which may be otherwise construed, Part 772 establishes the permit information requirements for coal exploration. As a result of the addition of this provision, the cross-references to the surface coal mining permit application requirements in Part 816 (which are cross-referenced in the exploration performance standards in 30 CFR 815.15) do not apply to exploration permits. However, the cross-references to the 816 standards still apply except to the extent that they reference plans contained in 30 CFR Part 780. Thus, OSMRE is deleting the perceived applicability of the surface coal mining permit application requirements to exploration operation.

One commenter supported the addition of § 815.2, and suggested that the language added under new § 815.2 should also be added to § 772.1, scope and purpose. OSMRE does not agree that the language need appear in both places and has not adopted the commenter's suggestion.

Another commenter stated that the proposed § 815.2 necessitates a demonstration in Part 772 of how SMCRA section 512(a)(2) standards will be met. The commenter said that absent such a demonstration the proposed rule created a void in the preapproval information requirements, which must be filled in by requiring the application to demonstrate that the exploration will be conducted in conformance with Part 816 standards, applicable through Part 815. The commenter's assertion that proposed § 815.2 created a void in the preapproval information requirements is incorrect. Permit application information requirements for exploration permits are set forth in 30 CFR 772.12(b). Section 772.12(b) establishes a numerous information requirements which provide the regulatory authority with sufficient data to make an informed decision on the application. In particular, § 772.12(b)(10) requires an applicant to submit a description of the measures to be used to comply with the applicable requirements of Part 815. If an applicant's submittal is inadequate, the regulatory authority may always require the submission of additional information.

30 CFR Part 942—Tennessee

Section 942.772 Requirements for Coal Exploration in the Federal Program for Tennessee

The Tennessee Federal program, promulgated on October 1, 1984 (49 FR 38874), added a provision to the coal exploration rules for Tennessee at 30 CFR 942.772(b) requiring that any person who intends to use mechanized earth moving equipment or explosives to conduct coal exploration activities must file a written notice of intent with OSMRE. This provision is in addition to the requirements of 30 CFR 772.11(a) requiring a written notice of intention to explore from a person intending to conduct coal exploration activities that may substantially disturb the natural land surface. The additional provision in the Tennessee program rules was added to aid enforcement and because the use of mechanized earth moving equipment or explosives is a fairly reliable indicator that substantial disturbance would be likely to occur during exploration. However, those provisions could be less effective than this final rule, which requires all who would explore for 250 tons or less of coal to file a notice of intent. Therefore, the exploration rules for the Tennessee Federal program are revised to make them consistent with the final rules adopted for 30 CFR Part 772.

As proposed and adopted, § 942.772(a) states that Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations in Tennessee. Previous § 942.772(b) is removed and replaced by a provision which provides consistency with the exploration application processing provisions contained in the other Federal programs for States. Final § 942.772(b) provides that OSMRE shall make every effort to act on an exploration application within 60 days of its receipt, or such longer time as may be reasonably required, and OSMRE will notify the applicant if additional time is needed to complete the review, setting forth the reasons for the additional time that is needed.

III. Procedural Matters

Effect in Federal Program States

The rules under 30 CFR Parts 772 and 815 apply, through cross-referencing, in those States with Federal programs. These include California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively.

Effects on State Programs

Upon promulgation of this final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

The collection of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0033. Public reporting burden for this information is estimated to average 6.2 hours per response under 30 CFR Part 772, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Information Collection Clearance Officer, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it 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 does not distinguish between small and large entities. The economic effects of the rule are estimated to be minor and no incremental effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA), and has made a finding that the rules adopted in this rulemaking will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI) has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**").

Author

The principal author of this rule is Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1864 (Commercial or FTS).

List of Subjects

30 CFR Part 772

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 815

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 772, 815 and 942 are amended as set forth below:

Dated: November 21, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 772—REQUIREMENTS FOR COAL EXPLORATION

1. The authority citation for Part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*; and Pub. L. 100-34.

2. Section 772.11 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 772.11 Notice requirements for exploration removing 250 tons of coal or less.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under Subchapter F of this chapter, shall be subject to the permitting requirements under § 772.12. Exploration conducted under a notice of intent shall be subject to the requirements prescribed under § 772.13.

(b) The notice shall include—

* * * * *

(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

* * * * *

3. Section 772.12 is amended by revising the section heading, revising paragraphs (a) and (b)(3); and revising the heading for paragraph (d); to read as follows:

§ 772.12 Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit. Such exploration shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) *Application information.*

* * * * *

(3) A narrative describing the proposed exploration area.

* * * * *

(d) *Decisions on applications for exploration.* * * *

4. Section 772.14 is revised to read as follows:

§ 772.14 Commercial use or sale.

(a) Except as provided under §§ 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under Parts 773 through 785 of this chapter.

(b) With the prior written approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) the amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) a description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

5. The authority citation for Part 815 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

6. Section 815.2 is added to read as follows:

§ 815.2 Permitting information.

Notwithstanding cross-references in other parts which may be otherwise construed, Part 772 establishes the notice and permit information requirements for coal exploration.

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

PART 942—TENNESSEE

7. The authority citation for Part 942 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

8. Section 942.772 is revised to read as follows:

§ 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, the Office shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such reviews, setting forth the reasons and the additional time that is needed.

[FR Doc. 88-29721 Filed 12-28-88; 8:45 am]
BILLING CODE 4310-05-M

federal register

Thursday
December 29, 1988

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 888

Orthopedic Devices; Exemptions From Premarket Notification; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 86N-0012]

Orthopedic Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, seven generic types of class I orthopedic devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance and safety and effectiveness: Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the Act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the Act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels specifically included them in recommendations made to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more important notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the Act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On September 4, 1987 (52 FR 33686), FDA published a final regulation classifying 77 orthopedic devices. Also on September 4, 1987 (52 FR 33714), FDA proposed to exempt from the requirement of premarket notification, with limitations, seven of those devices classified into class I. Interested persons were given until November 3, 1987, to submit written comments on the proposal. One comment was received from a manufacturer:

1. The comment suggested that § 888.9 *Limitations of exemptions from section 510(k) of the Act* be revised to include a reference to 21 CFR 807.81, which regulation specifies when a premarket notification submission is required.

FDA believes that cross-referencing 21 CFR 807.81 is unnecessary, because §§ 807.81 and 888.9 are independent and complementary sections and must be read together in determining whether a section 510(k) premarket notification submission is necessary.

2. The comment noted that the exemption from premarket notification for four devices (§§ 888.4200 *Cement dispenser*, 888.4210 *Cement mixer for clinical use*, 888.4230 *Cement ventilation tube*, and 888.5940 *Cast component*) was limited to those devices made of the same materials that were used in the devices before May 28, 1976. The comment said that it is highly unlikely that use in these innocuous devices of materials that are different from the materials used before May 28, 1976, would significantly affect the safety and effectiveness of the devices. Thus, the comment suggested that the proposed exemption from premarket notification not be limited to the devices made of the same materials and used before May 28, 1976.

FDA believes that use of materials in the four devices that are different from the materials used in the devices before May 28, 1976, may significantly affect the safety and effectiveness of these devices. Accordingly, under 21 CFR 807.81(a)(3), a premarket notification must be filed with the agency for any of the four devices when made of new materials. Then FDA will be able to assess the significance of the affect of the new materials on the safety and effectiveness of any of the four devices.

3. The comment suggested that FDA clarify the four regulations by identifying materials in use in the devices before May 28, 1976.

FDA is clarifying the four regulations as suggested, by identifying examples of the materials known by the agency to have been used in the devices before May 28, 1976.

Accordingly, FDA is adopting the regulations as proposed with minor clarifications to identify the materials used in four devices (§§ 888.4200, 888.4210, 888.4230, and 888.5940) before May 28, 1976.

Criteria for 510(k) Exemptions

FDA is exempting a generic type of class I device from the requirement of premarket notification, with the limitations described below, if the agency determines that premarket notification is unnecessary for the protection of the public health. FDA is granting an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual

examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify that types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immonoassay technology.

Reference

The following information has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR Part 888 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 888.9 is added to Subpart A to read as follows:

§ 888.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 888.4200 is amended by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976 (e.g., 316 stainless steel, chrome plated carbon steel, or polyethylene), the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

4. Section 888.4210 is amended by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976 (e.g., 316 stainless steel or polyethylene), the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

5. Section 888.4220 is amended by revising paragraph (b) to read as follows:

§ 888.4220 Cement monomer vapor evacuator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

6. Section 888.4230 is amended by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976 (e.g., polypropylene or polyethylene), the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

7. Section 888.5890 is amended by revising paragraph (b) to read as follows:

§ 888.5890 Noninvasive traction component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

8. Section 888.5940 is amended by revising paragraph (b) to read as follows:

§ 888.5940 Cast component.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, (e.g., heels of rubber vinyl; walking irons of plate steel) it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

9. Section 888.5980 is amended by revising paragraph (b) to read as follows:

§ 888.5980 Manual cast application and removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is exempt from the current good manufacturing regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: December 9, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-29886 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Thursday
December 29, 1988

Part V

Department of Energy

Economic Regulatory Administration

Electric and Gas Utilities Covered in 1989; Requirements for State Regulatory Authorities to Notify the Department of Energy, Notice

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43B]

Electric and Gas Utilities Covered in 1989 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act of 1978 and Requirements for State Regulatory Authorities To Notify the Department of Energy

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act (NECPA) require the Secretary of Energy to publish a list before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The 1989 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA and section 211(b) of NECPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1989.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Coal and Electricity Division, 1000 Independence Avenue, SW., Room 3F-070, Docket No. ERA-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room 3F-070, Washington, DC 20585, Telephone 202/586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), and section 211(b) of NECPA, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, (42 U.S.C. 8211 *et seq.*), hereinafter referred to as the "Acts", the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1989.

State regulatory authorities are required by the above cited Acts to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Acts.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, either of which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I or PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of Title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency or Federal agency, which sells electric energy. An electric utility is covered by Title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1989 if it exceeded the threshold in any year from 1976 through 1987.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of Title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which Title III applies during such calendar year. A gas utility is defined as any person, State agency or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by Title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1989 if it exceeded the threshold in any year from 1976 through 1987.

Title II, Part 1, of NECPA, addresses residential conservation programs, and Title VII of NECPA, enacted as part of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.* (42 U.S.C. 8701 *et seq.*), and amended by Pub. L. 99-412, 100 Stat. 932 *et seq.*, addresses commercial building and multi-family dwelling conservation programs. Section 211(b) contains a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which Titles II and VII apply. The NECPA requirements for coverage of electric utilities and gas utilities differ from the PURPA requirements in only three respects:

(1) The NECPA threshold for electric utilities is 750 million kilowatt-hours for purposes other than resale;

(2) A utility is covered for any calendar year if it exceeded the threshold during the second preceding calendar year; e.g., a utility is covered in 1989 if it exceeded the threshold in 1987; and

(3) Only utilities which have residential sales are covered by Title II and only utilities which have sales to commercial buildings or multi-family dwellings are covered by Title VII.

In compiling the list published today, the DOE revised the 1988 list (52 FR 49326, December 30, 1987) upon the assumption that all entities included on the 1988 list are properly included on the 1989 list unless the DOE has information to the contrary. In doing this, the DOE took into account information which was received from the rural Electrification Administration or included in public documents regarding entities which exceeded the PURPA and NECPA thresholds for the first time in 1987. the DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1989, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in

the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;
2. legal citations pertaining to the ratemaking authority of the State regulatory authority; and
3. for any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1989, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, Room 1E-190; 1000 Independence Avenue, SW., Washington, D.C. 20585 between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities which meet both PURPA and NECPA coverage requirements. In both appendices, the listed utilities covered by PURPA but not covered by NECPA also are noted. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA and NECPA.

Appendix A contains a list of utilities which are covered by PURPA and/or NECPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA and/or NECPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 30, 1987, **Federal Register** Notice (52 FR 49326) reguiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1988 list of electric and gas utilities are as follows:

Additions

*Joe Wheeler Electric Membership Corporation (AL)
*New Hampshire Electric Cooperative, Inc. (NH)
*Sawnee Electric Membership Corporation (GA)

Erroneously Listed in 1988 List

Northern Central Public Service Company (MN)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, as amended by Pub. L. 96-294, 94 Stat 611 *et seq.*, and Pub. L. 99-412, 100 Stat. 932 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, DC, on December 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986 or 1987. All except those marked (*) are covered by PURPA Title III, and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 10 billion cubic feet in 1987 for purposes other than resale, or do not have residential or commercial sales.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1984, 1985, 1986 or 1987. All except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold to 750 million kilowatt-hours in 1987 for purposes other than resale, or do not have residential or commercial sales.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
*Alabama-Tennessee Natural Gas Company
Mobile Gas Service Corporation
Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:
Alabama Power Company
The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Investor-Owned:
Decatur Electric Department
*Dothan Electric Department
Florence Electric Department
Huntsville Utilities
Rural Electric Cooperatives:
*Joe Wheeler Electric Membership Corporation
Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
*Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tucson Electric Power Company
Publicly-Owned:
*Trico Electric Cooperative, Inc.
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric Company
Southwestern Electric Power Company
Rural Electric Cooperative:
*First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:

Publicly-Owned:
*North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:
Public Service Company of Colorado Southern Colorado Power Division of Centel

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Utilities
Rural Electric Cooperatives:
*Intermountain Rural Association
Moon Lake Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
*Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
*City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:
Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electric and Water
*Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperative: The Florida Public Service Commission has rate

structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
*Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

Electric Utilities

Publicly-Owned:
*Albany Water, Gas & Light Commission
*Dalton Water, Light & Sink
Rural Electric Cooperatives:
*Douglas County Electric Membership Corporation
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
*Sawnee Electric Membership Corporation
Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
*Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Publicly-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
*Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
*Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
*Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Electric Company
Southwestern Public Service Company
Western Power Division of Centel
Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:
Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)
Trans Louisiana Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Dixie Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central-Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
*Conowingo Power Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilities

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Minnegasco, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
*Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:
*Rochester Department of Public Utilities
Rural Electric Cooperatives:
Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Incl.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Electric Utilities

Rural Electric Cooperatives:
*Alcorn County Electric Power Association
*Coast Electric Power Association
*4-County Electric Power Association
*Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of Inter-North, Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Facilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

The following covered utility within the State of New Hampshire is not regulated by the New Hampshire Public Utilities Commission

Electric Utilities

Rural Electric Cooperatives:
*New Hampshire Electric Cooperative, Inc.

State: New Jersey

Regulatory Authority: New Jersey Department of Energy Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperative:
*Duncan Valley Electric Cooperative, Inc.

*Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York States Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*High Point Electric Utility Department
*Rocky Mount Public Utilities
*Wilson Utilities Department
Rural Electric Cooperatives:
*Blue Ridge Electric Membership Corp.
*Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
*Cleveland Division of Light and Power
Rural Electric Cooperative:
Southern Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
*Cotton Electric Cooperative

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
*CP National Corporation
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utility Board
Rural Electric Cooperatives: Utility
*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company

Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority
Rural Electric Cooperatives:
*Berkeley Electric Cooperatives, Inc.
*Palmetto Electric Cooperative, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Services
*Sevier County Electric System
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
*Bowling Green Municipal Utilities
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
Florence Electric Department
*Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Service
*Sevier County Electric System
Rural Electric Cooperatives:
*Alcorn County Electric Power Association
*Appalachian Electric Cooperative
Cumberland Electric Membership

Corporation
Duck River Electric Membership Corporation
*4-County Electric Power Association
*Gibson County Electric Membership Corporation
*Joe Wheeler Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tombigbee Electric Power Association
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company
Publicly-Owned:
*Lower Colorado River Authority
Rural Electric Cooperatives:
*Bluebonnet Electric Cooperative, Inc.
*Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
*Sam Houston Electric Cooperative, Inc.

The governing body of each Texas municipality exercise exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Energas Company
Entex, Inc.
Lone Star Gas Company, a division of ENSERCH Corp.
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits, subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Public-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire.

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
*Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company

Rural Electric Cooperatives

Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:
*Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company

Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned:
*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays Harbor County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
*Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utility—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas, Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
*Cheyenne Light Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company

Rural Electric Cooperative:
Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986 or 1987. All except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hour in 1987 for purposes other than resale, or do not have residential or commercial sales and therefore, are not covered by NECPA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company [VA]
Appalachian Power Company [WV]
Arizona Public Service Company
Arkansas Power & Light Company [AR]
Arkansas Power & Light Company [LA]
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company [MT]
Black Hills Power & Light Company [SD]
Black Hills Power & Light Company [WY]
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company [NC]
Carolina Power & Light Company [SC]
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
*Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
*CP National Corporation
Dayton Power & Light Company
Delmarva Power & Light Company [DE]
Delmarva Power & Light Company [VA]
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company [NC]
Duke Power Company [SC]
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company [NM]
El Paso Electric Company [TX]
Empire District Electric Company [AR]
Empire District Electric Company [KS]
Empire District Electric Company [MO]
Empire District Electric Company [OK]
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company [LA]
Gulf States Utilities Company [TX]
Hawaiian Electric Company Inc.
Houston Lighting & Power Company
Idaho Power Company [ID]
Idaho Power Company [NV]
Idaho Power Company [OR]
Illinois Power Company
Indiana & Michigan Power Company [IN]
Indiana & Michigan Power Company [MI]
Indianapolis Power & Light Company
Interstate Power Company [IA]
Interstate Power Company [IL]

Interstate Power Company [MN]
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company [IA]
Iowa-Illinois Gas & Electric Company [IL]
Iowa Power & Light Company
Iowa Public Service Company [LA]
Iowa Public Service Company [SD]
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company [KS]
Kansas City Power & Light Company [MO]
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
Lake Superior District Power Company [MI]
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company [OH]
Monongahela Power Company [WV]
Montana-Dakota Utilities Company [MT]
Montana-Dakota Utilities Company [ND]
Montana-Dakota Utilities Company [SD]
Montana-Dakota Utilities Company [WY]
Montana-Dakota Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company [MN]
Northern States Power Company [ND]
Northern States Power Company [SD]
Northern States Power Company [WI]
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company [AR]
Oklahoma Gas & Electric Company [OK]
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company [MN]
Otter Tail Power Company [ND]
Otter Tail Power Company [SD]
Pacific Gas & Electric Company
Pacific Power Light Company [CA]
Pacific Power Light Company [ID]
Pacific Power Light Company [MT]
Pacific Power Light Company [OR]
Pacific Power Light Company [WA]
Pacific Power Light Company [WY]
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
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Southwestern Public Service Company (OK)
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Union Light, Heat & Power Company
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Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:
*Albany Water Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bowling Green Municipal Utilities (KY)
*Bristol Tennessee Electric System (TN)
*Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
*Dalton Water Light & Sink (GA)

*Danville Water Gas & Electric (VA)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
*Groton Public Utilities (CT)
*High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Murfreesboro Electric Dept. (TN)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
*Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rochester Department of Public Utilities (MN)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
*Sevier County Electric System (TN)
South Carolina Public Service Authority
*Springfield City Utilities (MO)
*Springfield Utility Board (OR)
Springfield Water, Lights & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
*Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives

*Alcorn County Electric Power Association (MS)
*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
*Berkeley Electric Cooperative (SC)
*Bluebonnet Electric Cooperative, Inc., (TX)
*Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Association (AK)
Clay Electric Cooperative (FL)
*Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
*Cotton Electric Cooperative (OK)
*Cumberland Electric Membership Corporation (TN)
*Dakota Electric Association (MN)
*Douglas County Electric Membership Corporation (GA)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
*Duncan Valley Electric Cooperative, Inc. (AZ, NM)
*First Electric Cooperative Corporation (AR)
*Flint Electric Membership Corporation (GA)
*4-County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
*Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
*Joe Wheeler Electric Membership Corporation (AL)
*Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
*Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
*Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
*New Hampshire Electric Cooperative, Inc. (NH)
*Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
*Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
*Pennyrile Rural Electric Cooperative Corporation (KY, TN)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
*Rutherford Electric Membership Corporation (NC)
*Sam Houston Electric Cooperative, Inc. (TX)
*Sawnee Electric Membership Corporation (GA)
*Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Sumter Electric Cooperative (FL)
*Tombigbee Electric Power Association (MS)
Tri-County Electric Association Inc. (WY)
*Tri-County Electric Membership Corporation (TN)

*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986 or 1987. All except those marked (*) are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 10 billion cubic feet in 1987 for purposes other than resale, or do not have residential or commercial sales. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Companay (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
*Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company (covered by NECPA only)
*City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Energas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities—Division of Utilicorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)

Northern States Power Company (WI)
North Penn Gas Company
Northwest Alabama Gas District
Northwest Natural Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
*Panhandle Eastern Pipeline Company (IL)
*Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

[FR Doc. 88-30004 Filed 12-28-88; 8:45 am]
BILLING CODE 6450-01-M

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Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).