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Friday  
September 13, 1991

# Federal Register

**Briefings on How To Use the Federal Register**  
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Washington, DC, see announcement on the inside cover of  
this issue.



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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- WHEN:** September 26, at 9:00 am  
**WHERE:** Denver Federal Center, Building 20  
 (E8 entrance on 2nd Street)  
 Conference Room B1409, Denver, CO
- RESERVATIONS:** Federal Information Center  
 1-800-359-3997

**WASHINGTON, DC**

- WHEN:** September 30, at 9:00 am  
**WHERE:** Office of the Federal Register  
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# Rules and Regulations

Federal Register

Vol. 56, No. 178

Friday, September 13, 1991

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 71 and 73

[Airspace Docket No. 90-AWP-13]

#### Amendment to Time of Designation of Restricted Area R-2301E Ajo East, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the time of designation of Restricted Area R-2301E Ajo East, AZ, from "Intermittent" to "0630-2230 local time, Monday to Friday; other times by NOTAM." This change more accurately reflects the actual usage times for the restricted area. This action also corrects part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W.

**EFFECTIVE DATE:** 0901 u.t.c., November 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

#### SUPPLEMENTARY INFORMATION:

##### History

On May 20, 1991, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to amend the time of designation of Restricted Area R-2301E Ajo East, AZ, and to include R-2301E and R-2301W in the Continental Control Area (56 FR 23036). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments were received from the

Experimental Aircraft Association (EAA) expressing concern about the amount of special use airspace in Arizona and its effect on general aviation. This action does not establish additional special use airspace. It amends the time associated with an existing area (R-2301E) from "Intermittent" to more realistic times based on past and present utilization. The EAA also recommended that a frequency be charted so general aviation pilots can obtain up to date information on the status of the restricted area. The FAA concurs with this suggestion and will publish a frequency on the appropriate sectional aeronautical chart adjacent to the affected airspace. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.23 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

##### The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations amend the time of designation of R-2301E Ajo East, AZ. The existing time of "Intermittent" does not reflect the actual use of the area. Utilization data dating back to 1986 demonstrates that the area is used consistently from "0630-2230 local time, Monday to Friday; other times by NOTAM." This amendment allows for more efficient real time coordination of the airspace between Albuquerque Air Route Traffic Control Center and the scheduling agency at Luke Air Force Base, AZ; and provides more accurate usage information to the flying public. A frequency will be charted enabling general aviation pilots to contact the controlling agency to obtain information on the status of the area. In addition, when R-2301 was subdivided into R-2301E and R-2301W (43 FR 36896), part 71 was not updated to reflect the change. This action corrects part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, and Restricted areas.

#### Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) are amended, as follows:

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

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

**Authority:** 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

##### § 71.151 [Amended]

2. § 71.151 is amended as follows:

**R-2301 Ajo, AZ [Removed]**

**R-2301E Ajo East, AZ [New]**

**R-2301W Ajo West, AZ [New]**

#### PART 73—SPECIAL USE AIRSPACE

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

**Authority:** 49 U.S.C. App. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

##### § 73.23 [Amended]

4. § 73.23 is amended as follows:

**R-2301E Ajo East, AZ [Amended]**

By removing the existing Time of designation and substituting the following:  
Time of designation. 0630-2230 local time, Monday to Friday; other times by NOTAM.

Issued in Washington, DC, on August 29, 1991.

Jerry W. Ball,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-22048 Filed 9-12-91; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

#### Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for water heaters.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on water heaters manufactured on and after October 15, 1991, and in advertising of water heaters beginning October 15, 1991. Properly labeled water heaters manufactured prior to the effective date need not be relabeled.

**EFFECTIVE DATE:** October 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On November 19, 1979, the Commission issued a final rule,<sup>1</sup> pursuant to section 324 of the Energy Policy and Conservation Act of 1975,<sup>2</sup> covering certain appliance categories, including water heaters. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information.

If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy ("DOE"), which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.<sup>3</sup> Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10(a) of the rule, to publish new ranges annually in the *Federal Register*, if appropriate. The rule specifies that it is appropriate to publish new ranges whenever the upper or lower limits of the range change by 15% or more from the previously published ranges. Otherwise, the Commission must publish a statement that the prior ranges remain in effect until the new ranges are published. However, in other circumstances, publication of new ranges also may be appropriate.

Today, the Commission is publishing new ranges because DOE has changed its test procedure for water heaters.<sup>4</sup> As a result of this change, manufacturers following the new procedure have derived energy factor values and estimated annual operating cost values that differ from the values they derived using the earlier version. In accordance with section 323(c) of EPCA, 42 U.S.C. 6293(c), these new values must be used in all energy usage representations and disclosures (including labels) as of October 15, 1991, which is the effective date of the revisions to the DOE test. In order for manufacturers to be able to use, in required disclosures by October 15, 1991, ranges derived from results of

<sup>3</sup> Reports for water heaters are due by May 1.

<sup>4</sup> The proposed modifications were initially published on March 13, 1987 (52 FR 7972). A subsequent version of the test was published on January 17, 1989 (54 FR 1890). The final revisions were published on October 17, 1990 (55 FR 42162).

the revised procedure, the Commission is publishing revised ranges now.

These new figures for the estimated annual costs of operation for water heaters were calculated using the 1991 representative average energy cost for electricity (8.24¢ per kilowatt-hour), natural gas (60.54¢ per therm), propane (89¢ per gallon) and no. 2 heating oil (\$1.29 per gallon), which were published by DOE on January 30, 1991.<sup>5</sup> They were submitted to the Commission as the 1991 annual data submission required by § 305.8(b) of the rule.<sup>6</sup>

In consideration of the foregoing, the Commission amends Appendices D1 through D3 of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of water heaters beginning October 15, 1991.

#### List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

#### PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

*Authority:* Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendices D1 through D3, Paragraphs 1 and the introductory texts in Paragraphs 2 are revised to read as follows:

#### Appendices to Part 305

\* \* \* \* \*

<sup>5</sup> 56 FR 3455 (see correction at 56 FR 5455 (Feb. 11, 1991)). The Commission published these figures on March 5, 1991, at 56 FR 9123 (see correction at 56 FR 11589 (March 19, 1991)).

<sup>6</sup> Because many manufacturers had to modify their test facilities, instrumentation or data acquisition systems in order to conduct the revised tests this year, they were granted an extension of the May 1 deadline for submitting the estimated annual operating costs for their products to allow the extra time necessary to make the modifications and conduct the tests.

<sup>1</sup> 44 FR 68466, 16 CFR part 305.

<sup>2</sup> ("EPCA"). Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

**Appendix D1 to Part 305—Water Heater—Gas**

**1. Range Information:**

Ranges of estimated yearly energy cost				
First hour rating	Natural Gas		Propane	
	Low	High	Low	High
Less than 21.....	*	*	*	*
21 to 24.....	*	*	*	*
25 to 29.....	*	*	*	*
30 to 34.....	*	*	*	*
35 to 40.....	*	*	*	*
41 to 47.....	\$151.00	\$162.00	\$244.00	\$262.00
48 to 55.....	142.00	162.00	229.00	262.00
56 to 64.....	142.00	171.00	229.00	277.00
65 to 74.....	140.00	174.00	226.00	283.00
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87 to 99.....	149.00	181.00	249.00	283.00
100 to 114.....	178.00	189.00	288.00	306.00
115 to 131.....	*	*	300.00	306.00
Over 131.....	193.00	216.00	313.00	350.00

\* No data submitted.

**2. Yearly Cost Information—Natural Gas and Propane:** Estimates on the scale are based on a national average natural gas rate of 60.54 cents per therm and a national average propane rate of \$0.89 per gallon.

**Appendix D2 to Part 305—Water Heater—Electric**

**1. Range Information:**

Ranges of estimated yearly energy cost		
First hour rating	Low	High
Less than 21.....	\$377.00	\$385.00
21 to 24.....	393.00	393.00
25 to 29.....	393.00	417.00
30 to 34.....	381.00	406.00
35 to 40.....	377.00	411.00
41 to 47.....	377.00	417.00
48 to 55.....	381.00	421.00
56 to 64.....	381.00	421.00
65 to 74.....	381.00	430.00
75 to 86.....	381.00	441.00
87 to 99.....	381.00	452.00
100 to 114.....	393.00	464.00
115 to 131.....	426.00	464.00
Over 131.....	*	*

\* No data submitted.

**2. Yearly Cost Information—Electricity:** Estimates on the scale are based on a national average electric rate of 8.24 cents per kilowatt hour.

**Appendix D3—Water Heater—Oil**

**1. Range Information:**

Ranges of estimated yearly energy cost		
First hour rating	Low	High
Less than 65.....	*	*
65 to 74.....	*	*
75 to 86.....	*	*
87 to 99.....	\$261.00	\$261.00
100 to 114.....	238.00	283.00
115 to 131.....	223.00	263.00
Over 131.....	*	*

\* No data submitted.

**2. Yearly Cost Information—Oil:** Estimates on the scale are based on a national average oil rate of \$1.29 per gallon.

Donald S. Clark,  
Secretary.  
[FR Doc. 91-22077 Filed 9-12-91; 8:45 am]  
BILLING CODE 6750-01-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 2619**

**Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1991. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1991 and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** October 1, 1991.

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

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's

("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since July 1, 1991. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1991, which set reflects a decrease of ¼ percent in the immediate interest rate from 7 to 6½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

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

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1991, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that

good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

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

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 93 of appendix B is revised and Rate Set 94 of appendix B is added to read as follows. The introductory text

is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Cy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities,  $k_1$ ,  $k_2$ ,  $k_3$ ,  $n_1$ , and  $n_2$  are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate	Deferred annuities				
	On or after	Before		$k_1$	$k_2$	$k_3$	$n_1$	$n_2$
93	07-1-91	10-1-91	7.00	1.0625	1.0500	1.0400	7	8
94	10-1-91		6.75	1.0600	1.0475	1.0400	7	8

**James B. Lockhart III,**  
Executive Director, Pension Benefit Guaranty Corporation.  
[FR Doc. 91-22022 Filed 9-12-91; 8:45 am]  
BILLING CODE 7708-01-M

**29 CFR Part 2676**

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

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

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

the rates are changing. This amendment adds to the table the rate series for the month of October 1991.

**EFFECTIVE DATE:** October 1, 1991.

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

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

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order

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

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and Pensions.

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

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

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

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

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

**§ 2676.15 Interest.**

\* \* \* \* \*

(c) *Interest rates.*

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

Issued at Washington, DC, on this 6th day of September 1991.  
**James B. Lockhart III,**  
*Executive Director, Pension Benefit Guaranty Corporation.*  
 [FR Doc. 91-22021 Filed 9-12-91; 8:45 am]  
**BILLING CODE 7708-01-M**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 206**

**RIN 1010-AB17**

**Revision of Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contracts**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** The Minerals Management Service (MMS) is amending its gas product valuation regulations to change the method of determining the value of gas sold under arm's-length percentage-of-proceeds (POP) contracts. The final rule provides for valuation of gas sold under these contracts using the rules applicable to unprocessed rather than processed gas. For wet gas sold under arm's-length POP contracts, it accepts as value for royalty purposes the market-based value determined by the gross proceeds remitted to the lessee under that contract. However, the regulations being adopted also retain a minimum royalty value for the wet gas in certain limited circumstances.

This rulemaking amends MMS's Federal and Indian gas royalty valuation regulations at 30 CFR part 206 governing the valuation of gas sold under arm's-length POP contracts. The requirements on accounting for comparison and major portion analysis as contained in the terms of Indian leases are not affected by this rulemaking. As stated in its proposed rule amendment that was published in the *Federal Register* on December 15, 1988 (53 FR 50422), MMS believes that the explicit recognition and use of gross proceeds under arm's-length contracts as value will not result in a

change in royalty collections, given current relative market prices of methane and other gas plant products. These changes will simplify royalty reporting requirements and will have a negligible affect on royalty revenues.

**EFFECTIVE DATE:** November 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Mail Stop 3910, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Denver, Colorado 80225-0165 (303) 231-3432 or (FTS) 326-3432.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The MMS has historically required lessees with processed gas sales (including gas sales subject to POP contracts) to base royalties on 100 percent of the value of the residue gas and a minimum of one-third of the natural gas liquids, or the gross proceeds received by the lessee, whichever was greater (30 CFR 206.105 and 206.106 (1987)). The MMS continued to require lessees to value gas sold under POP contracts as processed gas after publication of the new gas valuation regulations on January 15, 1988 (53 FR 1230), although lessees could obtain approval of a processing allowance in excess of the two-thirds limit upon application to MMS. One of the primary reasons MMS chose to value gas in this manner, both historically and under the new regulations, was to prevent lessees from exceeding the otherwise applicable processing allowance limit by the terms of their POP contracts. During the process of revising the final gas valuation regulations (which became effective March 1, 1988), industry commenters argued that POP contracts represented wellhead sales of unprocessed gas. These commenters said that the gross proceeds to the lessee should be accepted as value, and that lessees should not be required to calculate processing allowances for these types of gas sales. However, an opposing point of view was presented by the State and Indian commenters who argued that MMS should not accept

gross proceeds without requiring proof that processing costs charged to the lessee were reasonable.

On December 15, 1988 (53 FR 50422), MMS issued a notice proposing to amend its gas product valuation regulations to require that the valuation of gas sold under arm's-length POP contracts be determined by the provisions of the unprocessed gas valuation regulations at 30 CFR 206.152 (1988) rather than the provisions of the processed gas valuation regulations at 30 CFR 206.153 (1988). This would result, in most circumstances, in the value for royalty purposes being based on gross proceeds. However, MMS also proposed adding a new provision to the unprocessed gas valuation regulations requiring that value, for royalty purposes, of gas sold under arm's-length POP contracts could never be less than 100 percent of the value of the residue gas attributable to processing the lessee's gas. Under the proposed rule, valuation of gas sold under non-arm's-length POP contracts would have remained under the processed gas valuation regulations.

The MMS's proposal was premised on the belief that the new regulations would generate a large number of requests to exceed the two-thirds processing allowance limit (see 30 CFR 206.158(c)(2) and (c)(3) (1988)) and that virtually all these requests would be granted. The MMS believed that, for arm's-length POP contracts, the new regulations imposed an unnecessary burden on industry and on MMS by requiring the submittal of allowance forms to claim an allowance up to the two-thirds limit, requests to exceed the limit, new allowance forms to claim an approved allowance in excess of the two-thirds limit, and the amendment of previously submitted Reports of Sales and Royalty Remittance (Form MMS-2014) to reflect the newly approved, higher allowance. Also, with the proposal that the value of such gas be a minimum of 100 percent of the value of the residue gas, MMS estimated that royalty would not be significantly affected by changing valuation of gas sold under arm's-length POP contracts

to the unprocessed gas valuation regulations. In addition to these proposals, MMS also requested specific comments on whether the proposed rule, if adopted, should be retroactive.

## II. Comments Received on Proposed Rule

The proposed rulemaking provided for a 30-day public comment period which ended January 17, 1989, and was subsequently extended to February 3, 1989 (see 54 FR 1398, January 13, 1989). During the public comment period, MMS received 24 written comments: 16 responses from industry, 3 from industry trade groups or associations, 3 from State Agencies, and 2 from State/Indian associations.

The five State and Indian commenters were unanimously opposed to adopting both the proposed revision and the retroactive effective date. They stated that MMS has no adequate basis for the conclusions enumerated in the proposed rulemaking and that there is no known study that establishes the prevalence of POP contracts. They also argued that, if a large number of such contracts did exist, MMS has not demonstrated that processing allowances under these contracts would, in most instances, exceed the two-thirds limit.

These commenters claimed that, contrary to MMS's assertion that the proposed changes will reduce the administrative burden, the revision will merely shift this burden to a different division of MMS, the Royalty Compliance Division (RCD). Several of these commenters stressed that the burden would actually increase for the auditors who audit payors "after the fact," and suggested that the burden would increase, with the passage of time, for payors who might not learn of an increase in royalty liability until 6 years after production occurs. They contended that, until MMS is able to audit all payors, the proposed revision carries an increased risk that the public will suffer a loss of royalties and that the protection of the lessor will be weakened in the name of administrative convenience.

Finally, these commenters observed that no justification exists for abandoning the prudent policy of requiring payors to perform a processing costs analysis prior to payment of royalties and that if payors cannot overcome the burden of proving that their processing costs are reasonable, actual, and necessary, they should not be permitted an exception to the allowance limitation.

Industry and industry trade groups or associations supported adoption of the proposed revision and a retroactive

effective date of March 1, 1988, consistent with the effective date of the new gas valuation regulations. Some industry commenters stated that the revenues received under arm's-length POP contracts represent the wellhead value of unprocessed gas and that valuing gas sold under POP contracts as unprocessed gas is consistent with basing royalty on the market value of gas at the wellhead. These commenters declared that it is illogical to treat arm's-length POP contracts differently from other arm's-length transactions. One industry commenter suggested that gas sold under non-arm's-length POP contracts should also be valued as unprocessed gas because, in sales of gas to affiliates under POP contracts, the seller retains no more interest in the gas after the sale than if the gas had been sold to a nonaffiliate.

Commenters also claimed that adopting the revision would alleviate the enormous administrative burden for both MMS and industry of filing updated Payor Information Forms, processing allowance forms (Form MMS-4109), and filing and processing requests to exceed the two-thirds processing allowance limitation.

The proposal to require a minimum value of 100 percent of the residue gas was opposed by all industry respondents. Industry claimed that its position would be consistent with MMS's general philosophy that revenue received under, or prices established in, arm's-length contracts represent reasonable value for royalty purposes.

Several industry commenters proclaimed that the minimum value provision adds a dual accounting requirement to POP contracts that is impossible to comply with. Many commenters also mentioned that not all purchasers provide sufficient information on the settlement statement to enable a payor to perform dual accounting and that the value of the gas at the wellhead is represented by the proceeds received under the contract.

Various commenters alleged that the minimum value provision may create an economic burden on payors because their royalty payments might exceed their revenue if the value, for royalty purposes, exceeds the gross proceeds received for sale of the gas at the wellhead. Some commenters discussed the imposition of transportation and/or gathering charges by processors in addition to the costs of processing and stated that the minimum value provision may limit the payor from properly recovering these costs. Multiple commenters stressed that the minimum value provision will result in an increased workload.

Few State or Indian respondents commented on the minimum value provision because they were opposed to adoption of the revision in its entirety. The few State commenters that did respond reasoned that the entire concept of valuing gas sold under POP contracts as unprocessed gas is faulty if a minimum value is based on the sale of residue gas. These commenters were very concerned that this provision would allow payors to deduct 100 percent of the value of gas plant products without approval or monitoring by MMS.

In the proposed rulemaking, MMS did not specify an effective date for the proposed changes. Most industry commenters strongly recommended that MMS make the proposed revision effective retroactive to March 1, 1988, the effective date of the new regulations. Several commenters reasoned that this would be consistent with MMS's objective of eliminating unnecessary workload, would allow MMS to consistently apply the revision from inception of the new regulations, and would avoid audit confusion. Some industry commenters believed that MMS should postpone the due date for filing Forms MMS-4109 that contain actual 1988 data and estimated 1989 data for gas sold under POP contracts until the proposed rulemaking is final. State and Indian respondents presented no comments on this issue.

## III. Results of Study

To respond to some of the concerns raised by commenters, MMS undertook a study to determine: (1) The number of leases subject to POP contracts; (2) how many processing allowances under these contracts would reasonably be expected to exceed the two-thirds limit; (3) how many requests for exceptions to the two-thirds processing allowances limit were actually submitted to MMS; and (4) the extent of the reporting burden caused by the existing regulations.

Leases with gas sales under POP contracts were identified by reviewing company-generated valuation requests, requests to exceed the two-thirds processing allowance limit applicable to gas plant products, and information assembled by RCD from audits involving POP contracts. Actual data reported to the Auditing and Financial System (AFS) on Form MMS-2014 were reviewed to determine lessee compliance with regulatory requirements. Reported processing allowances were reviewed to determine the percentage of the value of gas plant

products actually claimed as a deduction.

The MMS identified 326 leases subject to POP contracts. The MMS has no method of determining the total number of leases with gas sales subject to POP contracts, but suspects that the 326 identified leases do not include all leases subject to this type of contract.

The MMS review indicated that processing allowances for about 50 percent of the 326 leases studied would reasonably be expected to exceed the two-thirds processing allowance. Processing allowances for 8 leases (2 percent) exceeded 100 percent of the value of the gas plant products. Accordingly, the statistics suggest that the lessee's gross proceeds will exceed 100 percent of the value of the residue gas in almost all cases and will exceed 100 percent of the value of the residue gas plus one-third of the value of the liquid products in about half of the cases.

With implementation of the January 1988 gas valuation regulations, all lessees with POP sales were required to submit a Form MMS-4109 to MMS pursuant to 30 CFR 206.159(c) and report processing allowances as separate line items on the Form MMS-2014 pursuant to 30 CFR 206.159(c)(4). Industry reports a monthly average of 207,000 lines on the Form MMS-2014 and 32,400 lines on separate allowance reporting forms that were entered into the allowance tracking system. The 326 leases alone would account for approximately 7 percent of the total processing allowance lines reported on Form MMS-2014.

#### IV. Discussion

The MMS believes that gross proceeds under arm's-length contracts is the best indicator of value except under limited circumstances. In particular, gross proceeds may not be the measure of value for royalty purposes when the gas is not sold in marketable condition. See 30 CFR 206.152(i) and 206.153(i). This factor is similar to holdings in several oil and gas producing states, where the courts were concerned that the choice of a point of sale "rests entirely [with the lessee and its purchaser and could] lead to manipulation by lessees". *State v. Davis Oil Co.* 728 P.2d 1107, 1110 (Wyo. 1986) (dealing with POP contracts). See also *Piney Woods Country Life Sch. v. Shell Oil Co.* 726 F.2d 225 (5th Cir. 1984) (applying Mississippi law). Gross proceeds may also not be the best measure of value when the lessee is unable to market the gas at a competitively determined price. In particular, POP contracts often occur

under conditions where the lessee is subject to monopsonistic market power by its purchaser or processor.

The principle adopted for the new gas valuation regulations on January 15, 1988 (53 FR 1230), is that the value of production for royalty purposes is the value at the lease. Except under the narrow circumstances described above, the gross proceeds accruing under an arm's-length contract will determine that value. This principle governs royalty valuation determinations made for other resources, as well as oil and gas.

Based on this general philosophy, the comments received on the proposed rule, and the facts ascertained from the study, MMS decided that valuation of gas sold under arm's-length POP contracts will be determined by the provisions of the unprocessed gas valuation regulations at 30 CFR 206.152.

As stated in its proposed rule amendment (53 FR 50423), MMS believes that the explicit recognition and use of gross proceeds under arm's-length contracts as value will not result in a change in royalty collections. There was significant controversy surrounding valuation under POP contracts in adopting the final product value regulations in 30 CFR part 206 (53 FR 1230, January 15, 1988). Because of these concerns, MMS proposed to take a conservative approach in changing the regulations, and has therefore retained the minimum value provision. The MMS continues to believe that such a minimum will not result in a change in royalty collections. There is no additional reporting burden associated with this minimum.

The MMS does not believe that adoption of the revision will create any additional burden for either RCD or lessees. Even under the current regulations, lessees have the obligation to base royalties on no less than their gross proceeds and payments made by lessees are subject to audit "after the fact." The revision does not change these requirements nor does it place any increased burden on RCD to assure that they are met. The revision also does not carry an increased risk of loss of royalties nor does it change the existing requirements for dual accounting (30 CFR 206.155(b)) and major portion analysis (30 CFR 206.152(a)(3)(i)) on Indian leases. Furthermore, MMS retains the ability to determine another value if the values received under arm's-length contracts do not reflect either the total consideration transferred between buyer and seller or a reasonable value because the lessee has breached its duty to market production for the mutual benefit of the lessee and the lessor or

because of misconduct (see 30 CFR 206.152(b)(1)(ii) and (iii)).

The study conducted by MMS does not support industry's position that the minimum value provision imposes an economic burden on lessees. Of the 326 leases reviewed, only 6 leases (2 percent) had reported processing allowances in excess of 100 percent of the value of the gas plant products. The very small number of leases with allowances exceeding 100 percent of the value of the gas plant products indicates that industry's contention of economic burden is unfounded.

The concerns of the State and Indian commenters that the provision will always cause POP sales values to be based only on the value of the residue gas are not supported by the statistics. The commenters appear to be assuming that all gas will be valued according to the minimum value provision of the rule. This however is not the case. Gas under POP contracts still must be valued at least equal to the gross proceeds actually received by the lessee.

The MMS is also not convinced that requiring the value of the gas to be a minimum value equivalent to 100 percent of the value of the residue gas will increase the paperwork burden on the lessee. The contractually specified percentage of the residue gas value is known to the lessee; the lessee received that specified percentage of value as part of its gross proceeds. Therefore, determination of the 100 percent value of the residue gas is a simple mathematical calculation. Those lessees who contend that they do not receive sufficient information to determine the 100 percent value are assumed to be failing in their duty to determine if the purchaser is complying with their contract, a situation the lessor cannot endorse.

The final issue concerning the minimum value provision is the contention by lessees that they effectively will not be able to deduct transportation fees they incur under the POP contract if the value is established at no less than 100 percent of the value of the residue gas. The lessees are concerned because they are required under their arm's-length contracts to provide the purchaser/gas plant operator a volume of gas, in kind, that represents the fuel necessary to transport their gas to the plant. In addition, any liquids recovered in the transportation system between the lease and the plant are normally retained by the purchaser/gas plant operator, either in whole or in part. However, the rule gives the lessee the benefit of these deductions because the royalty is based

either on gross proceeds (which reflects reductions for the volumes returned by the purchaser) or 100 percent of the value of the residue gas at the tailgate of the plant (which reflects the deductions because the volumes at the tailgate already are reduced by volume returned by the purchaser). The study conducted by MMS and the comments received also pointed out that there may be costs of transporting the residue gas from the plant to a sales point prior to sale. These transportation costs are typically deducted from the plant owner's sales values prior to making payment to producers and therefore are reflected in the gross proceeds. The MMS will also allow these costs to reduce the value of the residue gas determined under 30 CFR 206.152 in arriving at the minimum value under the rules being adopted today.

The final issue raised by commenters was whether or not to make the proposed revision retroactive. The MMS has decided not to adopt the proposed revision retroactively. The effect of adopting this rule retroactively would be to provide unwarranted administrative relief to certain lessees for having failed to properly follow current reporting requirements.

#### V. Summary of Final Rule

The MMS is amending its gas product valuation regulations to change valuation of gas sold under arm's-length POP contracts from the processed gas valuation regulations at 30 CFR 206.153 to the unprocessed gas valuation regulations at 30 CFR 206.152. The MMS is also adopting a new provision in the unprocessed gas valuation regulations requiring that the value for royalty purposes for gas sold under arm's-length POP contracts be no less than a value equivalent to 100 percent of the value of the residue gas, less any applicable allowances for transporting the residue gas away from the plant prior to sale. The final rule is effective as of the date specified in the **EFFECTIVE DATE** section of this preamble.

#### Procedural Matters

##### *Executive Order 12291*

Because this rulemaking does not result in any additional burden for lessees, the Department has determined that this document is not a major rule and therefore does not require a regulatory analysis under Executive Order 12291.

##### *Regulatory Flexibility Act*

Because this rulemaking will remove requirements of existing regulations, there are no significant additional

requirements or burdens placed upon small business entities as a result of implementation of the rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

##### *Executive Order 12630*

The Department certifies that this rulemaking does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

##### *Paperwork Reduction Act of 1980*

Information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1010-0075.

##### *National Environmental Policy Act of 1969*

It is hereby determined that this rulemaking does not constitute a major Federal Action that significantly affects the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

##### **List of Subjects in 30 CFR Part 206**

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands-minerals resources, Reporting and recordkeeping requirements.

Dated: July 31, 1991.

Richard Roldan,

*Deputy Assistant Secretary—Land and Minerals Management.*

For the reasons set out in the preamble, 30 CFR part 206 is amended as follows:

#### **PART 206—PRODUCT VALUATION**

1. The authority citation for part 206 continues to read as follows:

**Authority:** 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 398a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (a)(1) and (b)(1)(i) of § 206.152 under subpart D (Federal and

Indian Gas) are revised to read as follows:

##### **§ 206.152 Valuation standards—unprocessed gas.**

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract for the sale of that gas prior to processing provides for the value to be determined on the basis of a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas that must be valued prior to processing in accordance with § 206.155 of this part. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.153 of this part shall apply instead of this section.

\* \* \* \* \*

(b)(1)(i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate. Also, where the lessee's arm's-length contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production, for royalty purposes, shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

\* \* \* \* \*

3. Paragraph (a)(1) of § 206.153 under subpart D (Federal and Indian Gas) is revised to read as follows:

##### **§ 206.153 Valuation standards—processed gas.**

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this part. This section applies where the lessee's contract

includes a reservation of the right to process the gas and the lessee exercises that right.

\* \* \* \* \*

[FR Doc. 91-22092 Filed 9-12-91; 8:45 am]  
BILLING CODE 4310-MR-M

## Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 916

#### Kansas Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the approval of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to general requirements, definitions, permit applications, public hearing, assessment conferences, individual civil penalties and civil penalties, permit review, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable for surface coal mining, blaster certification, employee financial interests, inspection and enforcement, subsidence control, and incidental coal extraction.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations and improve operational efficiency.

**EFFECTIVE DATE:** September 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Ennis, Telephone: (816) 374-6405.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, *Federal Register* (48 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

##### II. Submission of Amendment

By letter dated June 29, 1989 (Administrative Record No. KS-436), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed revisions (1) in response to an October 21, 1988 (Administrative Record No. KS-432), letter that OSM sent in accordance with 30 CFR 732.17(d) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1988, and to satisfy anticipated deficiencies in the State program through July 1, 1989; (2) in response in a May 11, 1989, letter (Administrative Record No. KS-434) that OSM sent in accordance with 30 CFR 732.17(d) concerning ownership and control; and (3) at the State's own initiative to improve its program.

The regulations that Kansas proposes to amend are: Kansas Administrative Regulations (K.A.R.) 47-1-1, Title; 47-1-3, Communication; 47-1-4, Sessions; 47-1-8, Petitions to Initiate Rulemaking; 47-1-9, Notice of Citizen Suits; 47-1-10, General Notice Requirement; 47-1-11, Permittee Preparation and Submission of Reports; 47-2-14, Complete and Accurate Application Defined; 47-2-21, Employee Defined; 47-2-53, Regulatory Authority or State Regulatory Authority Defined; 47-2-67, Surety Bond Defined; 47-2-75, Definitions-Adoption by Reference; 47-3-1, Application for Mining Permit; 47-3-2, Application for Mining Permit-Adoption by Reference; 47-3-3a, Application for Mining Permit-Maps; 47-3-42, Application for Mining Permit-Adoption by Reference; 47-4-14a, Administrative Hearing Procedure; 47-4-15, Administrative Hearings, Discovery; 47-4-16, Interim Orders for Temporary Relief; 47-4-17, Administrative Hearings, Award of Costs and Expenses; 47-5-5a, Civil Penalties-Adoption by Reference; 47-5-16, Civil Penalties-Final Assessment and Payment of Civil Penalties; 47-6-1, Permit Review; 47-6-2, Permit Revision; 47-6-3, Permit Renewals-Adoption by Reference; 47-6-4, Permit Transfers, Assignments, and Sales-Adoption by Reference; 47-6-6, Permit Conditions-Adoption by Reference; 47-6-7, Permit Suspension or Revocation; 47-6-8, Termination of Jurisdiction-Adoption by Reference; 47-6-9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction-Adoption by Reference; 47-6-10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals-Adoption by Reference; 47-7-2, Coal Exploration-Adoption by Reference; 47-8-9, Bonding Procedures-Adoption by Reference; 47-8-11, Use of

Forfeited Bond Funds; 47-9-1, Performance Standards-Adoption by Reference; 47-9-2, Revegetation; 47-9-4, Interim Program Performance Standards-Adoption by Reference; 47-10-1, Underground Mining-Adoption by Reference; 47-11-8, Small Operator Assistance Program-Adoption by Reference; 47-12-4, Lands Unsuitable for Surface Mining-Adoption by Reference; 47-13-4, Training and Certification of Blasters-Adoption by Reference; 47-13-5, Responsibilities of Operators and Blasters-in-Charge; 47-13-6, Training Program; 47-14-7, Employee Financial Interest-Adoption by Reference; 47-15-1a, Inspection and Enforcement-Adoption by Reference; 47-15-3, Lack of Information; Inability to Comply; 47-15-4, Injunctive Relief; 47-15-7, State Inspections; 47-15-8, Citizen's Request for State Inspections; 47-15-15, Service of Notices of Violation and Cessation Orders; 47-15-17, Maintenance of Permit Areas.

OSM published a notice in the July 14, 1989, *Federal Register* (54 FR 29742) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-441). The public comment period ended August 14, 1989.

During its review of the amendment, OSM identified concerns related to K.A.R. 47-1-9(e) and (f), Notice of Citizen Suits; 47-2-21, Employee Defined; 47-2-53, Regulatory Authority or State Regulatory Authority Defined; 47-2-53a, Regulatory Program Defined; 47-2-58, Significant, Imminent Environmental Harm to Land, Air, and Water Resources Defined; 47-2-64, State Act Defined; 47-2-74, Public Road Defined; 47-2-75(a)(6), (7), and (8), Definitions; 47-2-75(b)(6)(B) and (C), Alluvial Valley Floor and Arid and Semiarid Area Defined; 47-2-75, Ownership and Control Definitions; 47-3-1, Application for Mining Permit; 47-3-2(c)(3), Application for Mining Permit; 47-3-42, Application for Mining Permit; 47-3-42(b)(15), Special Category Permits; 47-3-42, Application for Mining Permit; 47-4-14, Incorporation by Reference of Kansas Statute Annotated (KSA) 77-501 *et seq.*; 47-5-5a(a)(10), Individual Civil Penalties; 47-6-2(d), Permit Revision; 47-6-6(b)(4), Permit Review; 47-7, Coal Exploration; 47-8-9(q)(2), Bonding Procedures; 47-9-1(c)(6), Topsoil and Subsoil; 47-9-1(c)(26), Coal Mine Waste: General Requirements; 47-9-1(c)(42) and (d)(39), Surface and Underground Revegetation: Standards for Success; 47-9-1(c)(45) and (d)(44), Surface and Underground Postmining Land Use; 47-9-1(d)(2),

Underground Mining Performance Standards; 47-10-1(b)(6), Underground Mining Permit Applications; and Rills and Gullies Guidelines. OSM notified Kansas of the concerns by letter dated September 8, 1989 (Administrative Record No. KS-445). Kansas responded in letters dated October 24, October 30, and November 9, 1989, and an undated letter received November 17, 1989, by submitting a revised amendment (Administrative Record No. KS-449).

OSM published a notice in the December 1, 1989, *Federal Register* (54 FR 49773) announcing receipt of the revised amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-470). The public comment period ended December 18, 1989.

During its review of the additional information submitted by Kansas, OSM identified concerns related to K.A.R. 47-2-75(e)(6), Definitions; 47-4-14a, (a)(2), and (b)(6), Administrative Hearings-Procedure; 47-4-15(c), Administrative Hearings-Discovery; 47-5-5a(a)(8), Procedures for Assessment Conferences; 47-5-5a(a)(10), Individual Civil Penalties; and 47-5-5a(b)(11), Civil Penalties. OSM notified Kansas of the concerns by letter dated February 13, 1990 (Administrative Record No. KS-463). Kansas responded in letters dated March 26, 1990 (Administrative Record No. KS-464), and June 29, 1990 (Administrative Record No. 471), by submitting a revised amendment.

The revised amendment included newly proposed revisions (1) in response to a May 22, 1989 (Administrative Record No. KS-434), letter that OSM sent in accordance with 30 CFR 732.17(d) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1989; (2) in response to a February 7, 1990, letter that OSM sent in accordance with 30 CFR 732.17(d) concerning incidental coal extraction; (3) concerning administrative procedures at its own initiative; and (4) to satisfy anticipated deficiencies in the State program related to subsidence control (Administrative Record No. KS-465).

OSM published a notice in the July 13, 1990, *Federal Register* (55 FR 28777) announcing receipt of the revised amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-482). The public comment period ended August 13, 1990.

On its own initiative, Kansas submitted, on October 9, 1990 (Administrative Record No. KS-488), additional revisions to the previously

proposed amendment to improve clarity by changes in format and minor editorial revisions, and to improve operational efficiency concerning public hearing provisions at K.A.R. 47-4.

OSM published a notice in the October 23, 1990, *Federal Register* (55 FR 42729) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-495). The public comment period ended November 7, 1990.

### III. Director's Findings

#### 1. Provisions Not Discussed

Kansas proposes revisions to rules that are substantive in nature and contain language that is the same or similar to the counterpart Federal regulations, replace Federal references and terms with appropriate State references and terms, are nonsubstantive in nature or add specificity without adversely affecting other aspects of the program, or adopt by reference an existing Federal regulation. The Director, therefore, finds that these proposed revisions to Kansas's regulations are no less effective than the corresponding Federal regulations. The approved State regulations are identified in the Federal regulations at 30 CFR 916.15—Approval of regulatory program amendments.

#### 2. Provisions Adopting Suspended Federal Regulations

Kansas proposes to adopt by reference several Federal regulations or portions thereof that are suspended. In adopting these regulations, Kansas also adopts the suspension notices located at the end of the Federal regulations published in the Code of Federal Regulations (Administrative Record Nos. KS-463 and KS-471). Therefore, the Director considers any proposed Kansas rule adopting a suspended Federal regulation to also be suspended. Therefore, the Director finds that the proposed rules adopting suspended Federal regulations are no less effective than the Federal counterpart regulations and is approving them. The following is a list of the proposed Kansas rules adopting suspended Federal regulations and the *Federal Register* notices that explain the Federal suspensions.

a. At K.A.R. 47-2-75(b), Kansas adopts the definition and suspension notice for "affected area" at 30 CFR 701.5—51 FR 41960, November 20, 1986.

b. At K.A.R. 47-9-1(c)(11), Kansas adopts 30 CFR 816.46, hydrologic balance: Siltation structures, and the suspension notice that suspends

§ 816.46(b)(2)—51 FR 41961, November 20, 1986.

c. At K.A.R. 47-9-1(c)(26), Kansas adopts 30 CFR 816.81 coal mine waste: General requirements, and the suspension notice that suspends § 816.81(a)—51 FR 41961, November 20, 1986.

d. At K.A.R. 47-9-1(c)(30), Kansas adopts 30 CFR 816.89, disposal of noncoal mine waste, and the suspension notice that suspends § 816.89(d)—51 FR 41962, November 20, 1986.

e. At K.A.R. 47-9-1(c)(45), Kansas adopts 30 CFR 816.133, postmining land use, and the suspension notice that suspends § 816.133(d)—51 FR 41962, November 20, 1986.

f. At K.A.R. 47-9-1(d)(11), Kansas adopts 30 CFR 817.46, hydrologic balance: Siltation structures, and the suspension notice that suspends § 817.46(b)(2)—51 FR 41961, November 20, 1986.

g. At K.A.R. 47-9-1(d)(25), Kansas adopts 30 CFR 817.81, coal mine waste: General requirements, and the suspension notice that suspends § 817.81(a)—51 FR 41961, November 20, 1986.

h. At K.A.R. 47-9-1(d)(29), Kansas adopts 30 CFR 816.89, disposal of noncoal mine waste, and the suspension notice that suspends § 816.89(d)—51 FR 41962, November 20, 1986.

i. At K.A.R. 47-9-1(d)(44), Kansas adopts 30 CFR 817.133, postmining land use, and the suspension notice that suspends § 817.133(d)—51 FR 41962, November 20, 1986.

j. At K.A.R. 47-10-1(a)(1), Kansas adopts 30 CFR 783.21, soil resources information, and its suspension notice—45 FR 51548, August 4, 1980.

k. At K.A.R. 47-12-4(a)(1), Kansas adopts the definition and suspension notice for "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" at 30 CFR 761.5—51 FR 41960, November 20, 1986. Kansas also adopts the definition for "valid existing rights" and the suspension notice in which paragraphs (a) and (c) were suspended—51 FR 41960, November 20, 1986.

l. At K.A.R. 47-12-4(a)(2), Kansas adopts 30 CFR 761.11, areas where mining is prohibited, and the suspension notice that suspends 761.11(h)—51 FR 41961, November 20, 1986.

#### 3. K.A.R. 47-1-1, Title

Kansas has amended K.A.R. 47-1-1 to reflect that the appropriate State regulatory authority has been changed from "the mined land conservation and reclamation board of Kansas" to "the

surface mining section of the Kansas department of health and environment." On October 5, 1988 (Administrative Record No. KS-431), OSM approved the transfer of regulatory authority within the State of Kansas from the Mined Land Conservation and Reclamation Board to the Kansas Department of Health and Environment, Division of Environment, Bureau of Waste Management, Surface Mining Section (53 FR 39085). The Director finds that the proposed amendment to K.A.R. 47-1-1 is needed to provide administrative clarity to the Kansas program and is not inconsistent with SMCRA and the Federal regulations. The Director is, therefore, approving this revision.

#### 4. K.A.R. 47-2-14, "Complete and accurate application" defined

Kansas proposes, at K.A.R. 47-2-14, a definition for "complete and accurate application." However, at K.A.R. 47-2-75(b), Kansas also proposes to adopt by reference the Federal definitions at 30 CFR 701.5 that includes a different definition for "complete and accurate application." Kansas cannot have two different definitions for the same term. Therefore, the Director finds that proposed K.A.R. 47-2-14 lessens the effectiveness of the program and is not approving it. Kansas is required to amend its program by removing its proposed definition for "complete and accurate application" at K.A.R. 47-2-14.

#### 5. K.A.R. 47-2-53a, "Regulatory Program" Defined

Kansas proposes to amend K.A.R. 47-2-53a by stating that *regulatory program* means the State act and the rules and regulations adopted by the Department of Health and Environment and approved by the "United States Office of Surface Mining." The term *State act* is defined at K.A.R. 47-2-64 to mean "the Mined-Land Conservation and Reclamation Act (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980)."

The "United States Office of Surface Mining" is an incorrect reference to the agency responsible for reviewing and approving all State programs. The correct agency name is the "United States Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSM)." The Director shall interpret this, and all other occurrences of this incorrect cite, to mean the United States Department of Interior, Office of Surface Mining Reclamation and Enforcement.

Given the above interpretation, the Director finds that K.A.R. 47-2-53a is not inconsistent with the requirements of SMCRA and the Federal regulations.

The Director is therefore approving this proposed rule.

#### 6. K.A.R. 47-2-75(a), Definitions

Kansas proposes to amend K.A.R. 47-2-75(a) by adopting by reference the definitions contained in 30 CFR 700.5, except to the extent otherwise noted in K.A.R. 47-2-75(a). Three issues regarding proposed 47-2-75(a) require further discussion.

a. *Anthracite*. Kansas proposes to amend K.A.R. 47-2-75(a)(5) by deleting from the definition of "anthracite," as adopted by reference, the paragraph regarding periodic notice of changes to the coal classification standards published by the American Society of Testing and Materials (ASTM standards). The Director finds that this deletion does not render Kansas's definition less effective than the Federal definition and is approving it. However, the Director wishes to clarify that it is the 1977 ASTM standards, and not any later ones, that Kansas has adopted by reference.

b. *Regulatory Program*. The proposed Kansas amendment, at K.A.R. 47-2-75(a), contains two subsections (5). The first subsection (5) is discussed above and concerns the definition of "anthracite." The second subsection (5) concerns the definition of "regulatory program." The State needs to reorganize and/or renumber the subsections of K.A.R. 47-2-75(a) so that it does not contain two different subsections with the same number.

c. *Director*. Kansas proposes to amend K.A.R. 47-2-75(a)(6) by adding language that specifies that the term "Director" means the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) in K.A.R. 47-3-42(a)(36), adopting by reference 30 CFR 785.13. It continues by stating that all other references to the director shall be replaced by the secretary of the department of health and environment. Kansas must also reference here subsections K.A.R. 47-14-7(1), (3), (4), (5), (8), and (9) (adopting by reference portions of 30 CFR 705) wherein the term "director" will refer to the Director of OSM. This is necessary because the responsibilities under 30 CFR 705 are reserved for the Director of OSM and cannot be delegated to the State.

The Director finds that Kansas's proposed regulation at K.A.R. 47-2-75(a)(6) is no less effective than the Federal regulations and is approving it. However, the Director is requiring that Kansas amend K.A.R. 47-2-75(a) so that there are not two different subsections numbered (5). In addition, the Director is requiring that Kansas amend 47-2-75(a)(6) to include the appropriate

sections of K.A.R. 47-14-7 in the list wherein the term "Director" refers to the Director of OSM.

#### 7. K.A.R. 47-2-75(b), Definition

Kansas proposes to amend K.A.R. 47-2-75(b) by adopting by reference the definitions contained in 30 CFR 701.5, except to the extent otherwise noted in K.A.R. 47-2-75(b). Included in the adopted Federal regulations at 30 CFR 701.5 is the definition of "previously mined area." In *National Wildlife Federation versus Lujan*, 733 F.Supp. 419 (D.D.C. 1990), the court found that the definition of "previously mined area" was contrary to the Act and remanded that definition to the Secretary for revision. The court stated that "While the Secretary's definition cannot be compared to any statutory language, it may be analyzed for its consequences for Congress' goals as stated in the statute." *Id.* at 441. The court ruled that the current definition must be rewritten to (1) eliminate the possibility that it could be interpreted to allow an operator to mine an area that had been fully and satisfactorily reclaimed and then reclaim it only to the lesser standards applicable to mining operations and (2) include the effective date of SMCRA as the time from which "the temporal concepts of 'preexisting' and 'previous' are measured."

Based on the above and the court's remand of the Federal definition of "previously mined area," the Director finds that to the extent Kansas' proposed definition of "previously mined area" (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands that have once been fully and satisfactorily reclaimed and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA. The Director is, therefore, not approving Kansas's proposed incorporation of the definition of "previously mined area" at 30 CFR 701.5 to the extent that the definition (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allows lands that have once been fully and satisfactorily reclaimed to be mined and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Kansas of regulatory changes needed to amend this definition.

#### 8. K.A.R. 47-2-75(d)(6), Definition

Kansas proposes to amend K.A.R. 47-2-75(d) by adopting by reference the

Federal regulation at 30 CFR 846.5 concerning definitions regarding individual civil penalties, as those regulations were in effect on July 1, 1990. At K.A.R. 47-2-75(d)(6) Kansas also proposes to replace the reference to section 703 of SMCRA with K.S.A. 77-501 *et seq.* K.S.A. 77-501 *et seq.*, which is the Kansas Administrative Procedure Act (APA), is not a State counterpart provision of section 703 of SMCRA.

The Director finds that the proposed rule at K.A.R. 47-2-75(d)(6) is less effective than 30 CFR 846.5. Kansas is required to amend its program by removing proposed K.A.R. 47-2-75(d)(6).

It should be noted also that the Kansas APA has not been approved by OSM as part of the Kansas program. As part of this amendment, on November 2, 1989, the State did submit the Kansas APA to OSM for approval as part of the Kansas program (Administrative Record No. KS-446). However, on December 11, 1989, Kansas withdrew the Kansas APA from consideration by OSM as part of this amendment (Administrative Record No. KS-455). Kansas then resubmitted the amendment with new provisions governing administrative hearings in the State (Administrative Record No. KS-471). Those new provisions contain numerous provisions very similar, if not identical, to portions of the Kansas APA. Many of those provisions are discussed in later findings of this Notice. The Director wishes to clarify, however, that the Kansas APA, *in toto*, has not been approved by OSM as part of the Kansas program. Therefore, another reason that the Director is not approving proposed K.A.R. 47-2-75(d)(6) is that K.S.A. 77-501 *et seq.* is not part of the approved Kansas program.

9. K.A.R. 47-2-75(a)(1), K.A.R. 47-2-75(e)(3), Definitions, K.A.R. 47-3-42(a)(2), Violation Information, K.A.R. 47-3-42(a)(43), Review of Permit Applications, and K.A.R. 47-3-42(b)(3)

Kansas proposes to adopt, at proposed 47-2-75(a)(1), the Federal definitions contained in 30 CFR 700.5, except to the extent otherwise provided in proposed 47-2-75(a)(2) through (a)(8). One of the Federal definitions thereby adopted by reference is the definition for the term *Act*, which is defined by 30 CFR 700.5 to mean "the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (Pub. L. 95-87)." However, at other portions of the State's proposal, it has defined the term *Act* to mean *State Act*. For instance, at proposed 47-2-75(e)(3), the State proposal would provide that the term *Act*, as used in 30 CFR 846.5, shall be replaced by *State Act*. In addition, at proposed 47-3-42(b)(3), the State proposal provides that

wherever the term *Act* appears, it shall be replaced by the term *State Act*. Therefore, the proposed amendment contains different definitions for the term *Act*. The different definitions make the proposed State program amendment less effective than the Federal provisions. Kansas needs to clearly define the term *Act*.

In addition, this lack of a clear definition for the term *Act* raises substantial problems with other provisions of the amendment. First, at proposed K.A.R. 47-3-42(a), Kansas proposes to adopt by reference the various portions of 30 CFR part 778, including, at proposed K.A.R. 47-3-42(a)(2), 30 CFR 778.14(c), as it existed on July 1, 1990, dealing with violation information. The Federal regulations at 30 CFR 778.14(c) require an operator to include in a permit application, among other things, a list of all violation notices received by the applicant for "any violation of a provision of the Act (SMCRA), or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation."

The Director finds that Kansas's regulation at K.A.R. 47-3-42(a)(2) is no less effective than the Federal counterpart regulation at 30 CFR 778.14(c) and is approving it. However, the Director is requiring Kansas to amend its program by clarifying that the term *Act*, as used in 30 CFR 778.14(c), which is adopted by reference at 47-3-42(a)(2), means SMCRA.

Second, Kansas proposes to amend its program at K.A.R. 47-3-42(a)(43) by adopting the Federal regulation at 30 CFR 773.15, dealing with the review of permit applications, as it existed on July 1, 1990. The Federal regulations at 30 CFR 773.15(b)(1) require the regulatory authority to deny a permit application if the applicant or any person who owns or controls the applicant or any surface coal mining operation owned or controlled by the applicant has incurred, in connection with any surface coal mining operation, unabated violations of SMCRA or any Federal or State law, rule or regulation pertaining to air or water environmental protection.

Similarly, the Federal provisions at 30 CFR 773.15(b)(3) requires the regulatory authority to deny a permit application if "the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal

mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act[.]"

The Director finds that Kansas's regulation at K.A.R. 47-3-42(a)(43) is no less effective than the Federal counterpart regulations at 30 CFR 773.15(b)(1) and (b)(3) and is approving it. However, the Director is requiring Kansas to amend its program by clarifying that the term *Act*, as used in 30 CFR 773.15, which is adopted by reference at proposed K.A.R. 47-3-42(a)(43), means SMCRA.

In summary, the Director is requiring Kansas to amend its program to provide a clear definition for the term *Act*. In addition, the Director finds the proposed regulations at K.A.R. 47-3-42(a)(2) and K.A.R. 47-3-42(a)(43) are no less effective than the Federal counterpart regulations at 30 CFR 778.14(c) and 30 CFR 773.15(b)(1) and (b)(2), respectively, and is approving the proposed regulations. However, the Director is requiring the State to amend its program in order to clarify that the term *Act*, as used in K.A.R. 47-3-42(a)(2) and K.A.R. 47-3-42(a)(43), means SMCRA.

#### 10. K.A.R. 47-3-42(a)(5), Permit Term Information

Kansas proposes to adopt by reference, at proposed K.A.R. 47-3-42(a)(5), the Federal regulation at 30 CFR 778.17(a) as it existed on July 1, 1990. Kansas has elected not to adopt by reference 30 CFR 778.17(b). 30 CFR 778.17(a) states that each application for a surface coal mining and reclamation operation shall state the anticipated or actual starting and ending date of each phase of the operation and the anticipated acreage to be affected during each phase of mining over the life of the mine. 30 CFR 778.17(b) requires the applicant to supply additional information if the initial permit term is to exceed 5 years. The 5 year initial term is allowed to be exceeded only if necessary for obtaining financing for equipment and opening of the operation. Kansas, in section 49-406 (a) of its act, states that "the permit shall \* \* \* be valid for a period not to exceed 5 years from the date of its issuance unless sooner revoked or suspended as herein provided." Kansas has no provision for allowing an initial permit term greater than 5 years as does the Federal program. Therefore, the Director finds that Kansas's proposed rule at K.A.R. 47-3-42(a)(5) is consistent with the

requirements of SMCRA and the Federal regulations at 30 CFR 778.17 and is approving it.

**11. K.A.R. 47-3-42(a)(9), Responsibilities**

Kansas proposes to adopt by reference the Federal regulations at 30 CFR 779.4 as they existed on July 1, 1990. Kansas also proposes to replace the phrase "this part" with "K.A.R. 47-3-42(a) (9) to (17), inclusive." 30 CFR 779.4 states that "it is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application." The Director finds Kansas's proposed regulation at K.A.R. 47-3-42(a)(9) to be no less effective than the Federal regulation at 30 CFR 779.4 and is approving it. However, the Director is requiring Kansas to expand its substitution to include K.A.R. 47-3-42 (18) to (35), inclusive. This is because the regulation at 30 CFR 779.4 regarding "responsibilities" is repeated, with minor editorial changes, at 30 CFR 780.4 for application to all the information discussed in 30 CFR part 780 (State counterparts K.A.R. 47-3-42(a)(18) through (35)).

**12. K.A.R. 47-3-42(a)(25) and K.A.R. 47-10-1(a)(2), Probable Hydrologic Consequences (PHC) Determinations**

Kansas proposes to adopt by reference, at proposed K.A.R. 47-3-42(a)(25) and 47-10-1(a)(2), the Federal regulations at 30 CFR 780.21 and 784.14, respectively, as they existed on July 1, 1990. These Federal regulations regarding PHC determinations, at 30 CFR 780.21(f) and 784.14(e), were challenged on the grounds that they were limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." The U.S. District Court for the District of Columbia remanded the rules on the grounds that the Secretary has failed to provide an adequate explanation for not requiring life of the mine analysis in the PHC determination (In re: Permanent Surface Mining Regulation Litigation, 620 F. Supp. 1519, 1530 (D.D.C. 1985)). As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952 at 41957, November 20, 1986). OSM re-examined the Federal regulations and on September 19, 1988, promulgated Federal regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394 at 36400).

However, in the preamble to the new Federal regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC

determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394 at 36396-36399, September 19, 1988). A "temporal" PHC determination would apply to all known mining activities associated with the initial permit area, irrespective of whether the mining occurs during the permit term or subsequent renewals (53 FR 36394 at 36396, September 19, 1988).

Kansas's proposed K.A.R. 47-3-42(a)(25) and 47-10-1(a)(2) are identical to the Federal regulations at 30 CFR 780.21(f) and 784.14(e). However, Kansas has not revised its regulations or submitted a policy statement specifying its interpretation of the PHC regulations. The Director finds that Kansas's proposed regulations at K.A.R. 47-3-42(a)(25) and 47-10-1(a)(2) does not render the Kansas program less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e) and he approves them. The Director notified Kansas in the December 19, 1989, 732 letter (Administrative Record No. KS-458) that OSM had largely retained the language promulgated on September 28, 1983, but had revised the preamble to clarify that this language means that the PHC determination must address all proposed mining activities associated with the permit area for which authorization is sought, not just those expected to occur during the term of the permit. If Kansas interprets its proposed amendment in a similar fashion, no further revisions will be necessary. Kansas should, as directed in the December 19, 1989, 732 letter, confirm with OSM that it does hold the same interpretation.

**13. K.A.R. 47-3-42(a)(40), Coal Preparation Plants not Located Within the Permit Area of a Specified Mine**

Kansas proposes to amend K.A.R. 47-3-42(a)(40) by adopting by reference the Federal regulation at 30 CFR 785.21 as it existed on July 1, 1990. This Federal regulation was remanded as a result of decisions of the U.S. District Court for the District of Columbia in *National*

*Wildlife Federation v. Lujan*, 31 ERC 2034 (1990). The court found that the Federal regulation at 30 CFR 785.21 was contrary to the definition of "surface coal mining operations" at section 701(28) of SMCRA that requires regulation of off-site processing and preparation plants, including dry handling facilities such as crushing, sizing, and screening plants. The court remanded the regulation to the Secretary of the Interior to clarify that proximity may not be the decisive factor in deciding to regulate an off-site processing plant.

Although OSM has not yet actually suspended the above Federal regulation, OSM may not, because of the court's remand, use the regulation at 30 CFR 785.21 in evaluating the sufficiency of Kansas's proposed rule. Accordingly, OSM evaluated the proposed rule against the appropriate provisions of SMCRA as interpreted by the court.

Based upon: (1) The court's finding that the Federal regulations at 30 CFR 785.21 is contrary to SMCRA and (2) the court's specific instruction to clarify 30 CFR 785.21, the Director finds that Kansas's proposed K.A.R. 47-3-42(a)(40) makes its program less stringent than section 701(28) of SMCRA. Therefore, the Director is not approving Kansas's proposed K.A.R. 47-3-42(a)(40) concerning the permitting of coal processing plants and is requiring Kansas to amend its program at K.A.R. 47-3-42(a)(40) to clarify that proximity may not be the decisive factor in deciding to regulate an off-site processing plant.

**14. K.A.R. 47-4-14a(a), Administrative Hearing Procedure**

Kansas proposes to amend K.A.R. 47-4-14a by adding regulations that govern the procedures used in all administrative hearings. K.A.R. 47-4-14a(a)(3) includes administrative hearings resulting from "applications for review of the secretary's decision to disapprove, suspend, or revoke a permit." In accordance with section 514(c) of SMCRA and 43 CFR 4.1361 of the Federal regulations, the State program must also include provisions that allow an interested person to request that a review hearing be conducted when the regulatory authority approves a permit. Although K.A.R. 47-4-14a(a)(3) does not allow an interested person to request a review hearing in that situation, K.A.R. 47-4-14a(a)(8) does allow for all other appeals and review procedures authorized by the "act." As discussed in finding number 9 above, the Kansas program does not contain a clear definition for the term

*Act.* However, regardless of whether the term *Act* means SMCRA or the State Act in this context, both section 514(c) of SMCRA and section 49-407(d)(3) of the Kansas Act, allow an operator or any party with an interest that may be adversely affected to request a hearing on the secretary's final determination regarding a permit application. This would include approvals, as well as disapprovals of permit applications.

Therefore, the Director finds that K.A.R. 47-4-14a(a)(3), in concert with K.A.R. 47-1-14a(a)(8), the State Act and SMCRA, provides for administrative hearing procedures that are no less effective than its Federal counterpart at 43 CFR 4.1361 and no less stringent than section 514(c) of SMCRA. The Director is, therefore, approving K.A.R. 47-4-14a(a)(3).

**15. K.A.R. 47-4-14a(c)(1), Rules of Procedure**

Kansas proposes to amend K.A.R. 47-4-14a(c)(1) by adding a regulation regarding hearing locations. This proposed amendment is virtually identical to its Federal counterpart located at 43 CFR 4.1106 except that the Federal regulation contains a proviso that, for hearing locations, the regulation applies unless the Act requires otherwise. A review of the Kansas Act indicated that there are situations where the Kansas Act requires hearing locations that are not clearly provided for in this proposed rule.

The Director finds that the proposed amendment at K.A.R. 47-4-14a(c)(1) concerning hearing locations does not render the State regulation less effective than the Federal regulation at 43 CFR 4.1106 and is approving it. However, the Director is requiring Kansas to amend K.A.R. 47-4-14a(c)(1) so that hearing locations are selected in accordance with K.A.R. 47-4-14a(c)(1) unless the Kansas Act requires otherwise.

**16. K.A.R. 47-4-14a(c)(7), Intervention**

Kansas proposes to amend K.A.R. 47-4-14a(c)(7) by adding a provision that deals with intervention. The State proposed rule is substantively similar to the Federal counterpart which is located at 43 CFR 4.1110.

However, three concerns arise pertaining to this proposed amendment. First, the introductory sentence of the amendment states that any person "shall petition for leave to intervene in a proceeding." The use of the mandatory term "shall" does not make sense in this context.

Second, the proposed language at K.A.R. 47-4-14a(c)(7)(A)(i) and (ii) impose stricter standards for intervention than those imposed under

the Federal regulations. Under the Federal regulations, intervention must be granted if either of the two criteria under 43 CFR 4.1110(c)(1) or (c)(2) are met. The proposed State regulation does not contain any connector between (7)(A)(i) and (7)(A)(ii) and therefore appears to require that both criteria be met before intervention would be mandatory. Also, the proposed Kansas regulation imposes more limiting standards at K.A.R. 47-4-14a(c)(7)(A)(ii) than the Federal criterion set forth at 43 CFR 4.1110(c)(2). Under the Federal provision, intervention must be granted to a petitioner where the petitioner has an interest "which is or may be adversely affected" by the outcome of the proceeding. By contrast, under the proposed State regulation the petitioner must have an interest "which shall be adversely affected by the outcome of the proceeding."

Third, K.A.R. 47-4-14a(c)(7)(B) requires the presiding officer to consider the factors set forth therein in all cases where intervention is sought. By contrast, the Federal regulations at 43 CFR 4.1110(d) sets forth the factors that an administrative law judge (ALJ) should consider in determining whether to grant intervention only in cases where the criteria at 43 CFR 4.1110(c) (1) and (2) are both inapplicable. If the criteria of either (c)(1) or (c)(2) are applicable, then granting intervention is mandatory. If the criteria of (c)(1) or (c)(2) are not applicable, then the granting of intervention is discretionary with the ALJ and, in making a determination, the ALJ must consider the factors set forth at 43 CFR 4.1110(d). Thus, the Kansas rule is more limiting than the Federal regulation in that it appears to allow intervention only where the criteria of subsection K.A.R. 47-4-14a(c)(7)(A) are present. In addition, the Kansas proposal requires the presiding officer to consider the factors set forth at K.A.R. 47-4-14a(c)(7)(B) even where the criteria of (7)(A) have already been established.

The Director finds that Kansas's proposed regulation at K.A.R. 47-4-14a(c)(7) is less effective than its Federal counterpart at 43 CFR 4.1110 and is not approving it. Kansas is required to amend its program at K.A.R. 47-4-14a(c)(7) so that: (1) The word "shall" is replaced by the word "may" and (2) the standards for intervention are no more strict than those required by the Federal regulations at 43 CFR 4.1110.

**17. K.A.R. 47-4-14a(c)(8), Voluntary Dismissals**

Kansas proposes to amend K.A.R. 47-4-14a(c)(8) by adding a rule that is substantively similar to its Federal

counterpart at 43 CFR 4.1111. However, Kansas substitutes the term "shall" inappropriately in two situations where the Federal regulation uses the term "may." First, the proposed rule states that any party who initiated a proceeding "shall withdraw it by moving to dismiss." Second, the proposed rule states that the presiding officer "shall grant such a motion." This second use of the term "shall" removes any discretion of the presiding officer and requires that he or she always grant a motion to dismiss if filed by the party who initiated the proceeding. The Federal regulation allows the presiding officer the discretion to grant or deny a voluntary motion to dismiss filed by the initiating party. Kansas's proposed rule is less effective than the counterpart Federal provision in that it does not allow the presiding officer any discretion regarding whether to grant voluntary motions to dismiss in situations wherein a party other than the one initiating the proceeding may have asserted claims which require resolution.

The Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(c)(8) is less effective than its Federal counterpart at 43 CFR 4.1111 and is not approving it. Kansas is required to amend its regulations at K.A.R. 47-4-14a(c)(8) by replacing the word "shall" with the word "may" as indicated above in order to be as effective as the Federal regulation at 43 CFR 4.1111.

**18. K.A.R. 47-4-14a(c)(10), Consolidation**

Kansas proposes to amend K.A.R. 47-4-14a(c)(10), consolidation of proceedings, by adding a rule that is substantively similar to its Federal counterpart at 43 CFR 4.1113. However, this proposed rule refers to proceedings being consolidated pursuant to a motion by a party "or the presiding officer." In accordance with K.A.R. 47-4-14a(c)(9)(A) all motions are required to be in writing. Therefore, read literally, K.A.R. 47-4-14a(c)(10) would appear to require Kansas's presiding officers to write a motion for consolidation and then issue an order granting the motion. Presiding officers, or under the Federal rules, ALJ's usually are not required to write *sua sponte* motions. While there is nothing inappropriate with this procedure, it is somewhat awkward and places an additional burden on the presiding officers. The Director finds, however, that Kansas's proposed rule at K.A.R. 47-4-14a(c)(10) is no less effective than its Federal counterpart at 43 CFR 4.1113 and is approving it.

19. K.A.R. 47-4-14a(c)(11), *Waiver of Hearing*

Kansas proposes to amend K.A.R. 47-4-14a(c)(11), waiver of hearing, by adding a rule that is substantively similar to its Federal counterpart at 43 CFR 4.1115. However, two concerns arise pertaining to this proposed amendment. First, Kansas has inappropriately used the mandatory term "shall," instead of the discretionary term, "may," in both sentences of the proposed regulation. Second, the proposed amendment does not contain a specific requirement of the Federal regulation that a hearing will be held unless all parties to a proceeding who are entitled to a hearing waive or are deemed to have waived the right to a hearing. Therefore, the Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(c)(11) is less effective than its Federal counterpart at 43 CFR 4.1115 and is not approving it. Kansas is required to amend its program at K.A.R. 47-4-14a(c)(11) so that: (1) The word "shall" is replaced by the word "may" and (2) the regulation provides that a hearing will be held unless all parties to a proceeding who are entitled to a hearing waive their right to a hearing.

20. K.A.R. 47-4-14a(d), *Formal Hearings*

Kansas proposes to amend K.A.R. 47-4-14a(d) by adding language that states "When a statute provides for a hearing in accordance with this act, the hearing shall be governed by this subsection, and amendments thereto except as otherwise provided by subsections (e), (f), and (g)." The Director is not approving proposed K.A.R. 47-4-14a(e), (g), or (f) (see finding numbers 32, 33 and 34 *infra*) therefore, the Director cannot approve the exceptions provided for in this proposed rule. Kansas is required to amend its proposed rule at K.A.R. 47-4-14a(d) by removing the phrase "except as otherwise provided by subsection (e), (f), and (g)."

21. K.A.R. 47-4-14a(d)(2), *Disqualification of Presiding Officers*

Kansas proposes to amend K.A.R. 47-4-14a(d)(2), disqualification of presiding officers, by adding a rule that is substantively similar to its Federal counterpart at 43 CFR 4.27(c). However, two issues are of concern with this proposed rule.

First, at K.A.R. 47-4-14a(d)(2)(C), Kansas uses the mandatory term "shall" inappropriately in the sentence "Any party shall petition for the disqualification of a person promptly after receipt of notice \* \* \*." The decision to petition for disqualification is discretionary and not mandatory.

Second, at K.A.R. 47-4-14a(d)(2)(D), Kansas provides that the person whose disqualification is requested in a petition shall determine whether to grant that petition. However, Kansas does not grant the petitioning party the right to have an independent review of the disqualification determination where a petition for disqualification is denied by the person whose disqualification is sought. The Federal counterpart regulation at 43 CFR 4.27(c) does allow for an independent review in that if the ALJ declines to disqualify himself or herself, then the Board or the Director of the Office of Hearings and Appeals, as appropriate, must look at the issue and make a determination regarding the request for disqualification.

The Director, therefore, finds Kansas's proposed rules at K.A.R. 47-4-14a(d)(2)(C) and (D) to be less effective than their Federal counterparts and is not approving them. Kansas is required to amend its regulations at K.A.R. 47-4-14a(d)(2)(C) and (D) by (1) replacing the word "shall" with the word "may" as discussed above and (2) providing the petitioning party the right to have an independent review of the disqualification determination.

22. K.A.R. 47-4-14a(d)(3), *Prehearing Conference; Notice*

Kansas proposes to add K.A.R. 47-4-14a(d)(3) dealing with prehearing conferences. Its Federal counterpart is 43 CFR 4.1121(b). Two issues are of concern with this proposed rule.

First, the first sentence of proposed K.A.R. 47-4-14a(d)(3) states that the presiding officer "shall" conduct a prehearing conference. However, in contradiction with the first sentence, which appears to mandate that a prehearing conference be held, the second sentence begins "If the conference is conducted \* \* \*." The Federal rules allow, but do not require, a prehearing conference to be held.

Second, at K.A.R. 47-4-14a(d)(3)(A), Kansas requires that the department use the rules at K.A.R. 47-4-14a(d)(1)(B) to select a presiding officer for a hearing. However, K.A.R. 47-4-14a(d)(1)(B) does not concern the department's selection of a presiding officer for a hearing but instead concerns a party's right to be represented at a hearing by counsel or other representative.

For the reason stated above, the Director finds K.A.R. 47-4-14a(d)(3) and (d)(3)(A) to be less effective than the Federal counterpart at 43 CFR 4.1121(b) and is not approving them. Kansas is required to amend its regulation at K.A.R. 47-4-14a(d)(3) and (3)(A) by replacing the word "shall" with the

word "may" and correcting the citation at K.A.R. 47-4-14a(d)(3)(A).

23. K.A.R. 47-4-14a(d)(4)(G) and (d)(5)(B)(i), *Prehearing Conference*

Kansas proposes to add K.A.R. 47-4-14a(d)(4)(G) and (d)(5)(B)(i), dealing with prehearing conferences. These proposed regulations allow a prehearing conference to be converted, without further notice, into a conference hearing or a summary proceeding for disposition of the matter. The proposed rules at K.A.R. 47-4-14a(e), Conference hearing and (g) Summary proceedings have not been approved by the Director (see findings no. 33 and 35) for the reason that section 503(a)(7) of SMCRA requires that State programs clearly demonstrate "rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." Therefore, their reference in this proposed rule cannot be approved either.

The Director finds Kansas's proposed rules at K.A.R. 47-4-14a(d)(4)(G) and (d)(5)(B)(i) to be inconsistent with the requirements of SMCRA and the Federal regulations and is not approving them. Kansas is required to amend its program by removing paragraphs K.A.R. 47-4-14a(d)(4)(G) and (d)(5)(B)(i) from its program.

24. K.A.R. 47-4-14a(d)(6), *Notice of Administrative Hearing*

Kansas proposes to modify K.A.R. 47-4-14a(d)(6) by adding a rule dealing with notice of administrative hearings. The Federal counterpart regulation is 43 CFR 4.1123. Five issues are of concern in this proposed rule and two are of note.

First, at K.A.R. 47-4-14a(d)(6)(A), Kansas requires the department to serve notices "in accordance with subsection (18) hereunder and amendments of them." It is believed that Kansas meant "in accordance with subsection (18) hereunder and amendments of *it* (emphasis added)." Or perhaps Kansas meant to say "thereto" as opposed to "of them."

Second, at K.A.R. 47-4-14a(d)(6)(C)(iv), the revised amendment provides that the notice shall include "a statement of place, and nature of the hearing." The Federal regulation at 43 CFR 4.1123 also requires that the "time" be identified.

Third, at K.A.R. 47-4-14a(d)(6)(C)(vii), the revised amendment provides that the notice shall include "a statement of involved and, to the extent known to the presiding officer, of the matters asserted by the parties." This is an incomplete sentence.

Fourth, at K.A.R. 47-4-14a(d)(6)(E)(iii) Kansas provides, in part, that "[n]otice under this subsection shall include all types of information provided in subsections (i) through (iv) or of a brief statement indicating the subject matter, parties, time, place and nature of the hearing, manner in which copies of the notice to the parties shall be inspected and copies and the name and telephone number of the presiding officer." The quoted language does not specify where subsections (i) through (iv) come from. Presumably, the reference is to K.A.R. 47-4-14a(d)(6)(C)(i), through (iv). However, as written, it is unclear. Moreover, the quoted language contains several typographical and/or grammatical errors.

Fifth, K.A.R. 47-4-14a(d)(6)(E)(iii) allows, as a substitute for notice, a "brief statement indicating the subject matter \* \* \*." The concern is that Kansas, on the one hand, sets very specific requirements regarding notice of a hearing but, on the other hand allows the department or someone else providing notice to forgo those notice requirements in favor of a "brief statement \* \* \*." There is no justification given as to why anything other than the specific notice requirements would be acceptable. However, the Director does not find that this provision renders the Kansas program less effective than the Federal requirements.

The Director finds that K.A.R. 47-4-14a(d)(6)(A), (C)(iv), (C)(vii), and (E) are less effective than the Federal counterpart provisions at 43 CFR 4.1123 and is therefore not approving them. Kansas is required to amend its proposed regulation at K.A.R. 47-4-14a(d)(6)(A), (C)(iv), (C)(vii), and (E) to (1) correct the typographical errors cited above and (2) to specify where subsections (i) through (iv) come from as discussed above.

#### 25. K.A.R. 47-4-14a(d)(7), *Default*

Kansas proposes to amend K.A.R. 47-4-14a(d)(7) by adding a rule concerning default of a party. There is no direct Federal counterpart regulation. K.A.R. 47-4-14a(d)(7)(C) states that "Unless vacated by the presiding officer the proposed default order shall become effective after expiration of the time within which the party." This is an incomplete sentence.

The Director finds K.A.R. 47-4-14a(d)(7)(C) to be inconsistent with the requirements of SMCRA and the Federal regulations and is not approving it. Kansas is required to amend its program at K.A.R. 47-4-14a(d)(7)(C) by providing a complete sentence.

#### 26. K.A.R. 47-4-14a(d)(8), *Certification of Interlocutory Ruling*

Kansas proposes to amend K.A.R. 47-4-14a(d)(8) by adding a rule involving interlocutory appeals. The counterpart to the Federal regulation can be found at 43 CFR 4.1124. The proposed rule states that "[o]n the presiding officer's or a party's motion, a ruling may be certified \* \* \*." As discussed in finding number 18 of this notice, since K.A.R. 47-4-14a(c)(9)(A) requires all motions to be written, the proposed provision, read literally, would require presiding officers in Kansas to actually write motions. There is nothing improper with this procedure however it is somewhat awkward.

The Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(d)(8) is no less effective than the Federal rule at 43 CFR 4.1125 and is therefore approving it.

#### 27. K.A.R. 47-4-14a(d)(10), *The Presiding Officer and K.A.R. 47-4-14a(d)(5)(B)(vii), Prehearing Conference Procedure*

Kansas proposes to amend K.A.R. 47-4-14a(d)(10) by adding a rule involving hearing procedures. At K.A.R. 47-4-14a(d)(10)(D) the proposed rule states that the presiding officer "[m]ay conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding." This proposal conflicts with the requirement that the hearing be open to the public found in the State program at K.A.R. 47-4-14a(d)(10)(f). See also State Act at 49-405c, 49-407, 49-415, and 49-416a. SMCRA also requires that hearings be open to the public. The SMCRA requirements for public hearings are found throughout the Act including sections 513, 514, 518, 521, and 525. See also Discussion of public participation rights at finding number 32, *infra*.

Similarly, Kansas proposes to add a provision at K.A.R. 47-4-14a(d)(5)(B)(vii), dealing with prehearing conference procedures. Pursuant to this provision, "[t]he presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with such matters as \* \* \* (vii) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person[.]" As noted above, the Director finds the provision for the conduct of hearings by telephone or other electronic means to conflict with the requirements for public

hearings contained in both SMCRA and the Kansas Act. Therefore, the Director finds that the proposed amendment at K.A.R. 47-4-14a(d)(5)(B)(vii) to be inconsistent with SMCRA and the Federal regulations and he is requiring Kansas to remove from that provision the phrase "and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person."

Also, Kansas inappropriately used the term "shall" at K.A.R. 47-4-14a(d)(10)(E) when it stated "Any party \* \* \* shall cause a person other than the State agency to prepare a transcript \* \* \*." This removes a party's discretion regarding whether to have a transcript of the proceeding prepared.

The Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(d)(10)(D) and (E) and K.A.R. 47-4-14a(d)(5)(B)(vii) are not consistent with SMCRA and the Federal regulations and is, therefore, not approving them. Kansas is required to amend its proposed regulation at K.A.R. 47-4-14a(d)(10)(D) and (E) by (1) removing the provision for the holding of hearings by telephone conference and (2) replacing the word "shall" with "may" as discussed above. Kansas is further required to amend its proposed regulation at K.A.R. 47-4-14a(d)(5)(B)(vii) by removing the phrase "and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person[.]"

#### 28. K.A.R. 47-4-14a(d)(14), *Review of Initial Order; Exceptions to Reviewability*

Kansas proposes to amend K.A.R. 47-4-14a(d)(14) by adding a rule concerning the review of an initial order. An editorial problem appears to exist with this proposed rule. At K.A.R. 47-4-14a(d)(14)(f) the regulation requires that "[t]he agency head shall cause copies of the final order \* \* \* to be served on each party in the manner prescribed by subsection (18) and amendments." It appears that what Kansas meant to say is "subsection (18) and amendments thereto (emphasis added)." This typographical error does not render K.A.R. 47-4-14a(d)(14)(f) less effective than the Federal counterpart at 43 CFR 4.1109 dealing with service. Therefore, the Director is approving this proposed rule. However, Kansas is required to amend its proposed regulation at K.A.R. 47-4-14a(d)(14)(f) to include the term "thereto."

#### 29. K.A.R. 47-4-14a(d)(15), *Stay*

Kansas proposes to amend K.A.R. 47-4-14a(d)(15) by adding a rule that

concerns stays of initial or final orders, however, Kansas inappropriately used the term "shall" in the requirement that "A party shall submit to the presiding officer or agency head a petition for stay of effectiveness \* \* \*." There is no direct counterpart Federal regulation, however, the filing of a petition for stay is a discretionary action and not a mandatory one. Therefore, the term "shall" in Kansas's proposed regulation should be substituted for the term "may" in this context.

The Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(d)(15) is inconsistent with SMCRA and the Federal regulations and is requiring Kansas to amend its regulation at K.A.R. 47-4-14a(d)(15) by replacing the word "shall" with "may."

*30. K.A.R. 47-4-14a(d)(16),  
Reconsideration*

Kansas proposes to amend K.A.R. 47-4-14a(d)(16) by adding a rule that concerns petitions for reconsideration. The Federal counterpart regulation is found at 43 CFR 4.1276. Kansas uses the mandatory term "shall" in an inappropriate context. In the first sentence of K.A.R. 47-4-14a(d)(16)(A), the proposed amendment states that any party, within 15 days after service of a final order, "shall file a petition for reconsideration with the agency head \* \* \*." It does not make sense to make the filing of a petition for reconsideration mandatory. This is especially so in light of the fact that the very next sentence of this subsection states that the filing of such a petition "is not a prerequisite for seeking administrative or judicial review." By using the mandatory term "shall," Kansas is taking away a parties discretion to file or not to file a petition. This discretion is allowed by the counterpart Federal regulation.

The Director, therefore, finds Kansas's regulation at K.A.R. 47-4-14a(d)(16)(A) to be less effective than its Federal counterpart regulation at 43 CFR 4.1276 and is not approving it. Kansas is required to amend its regulation at K.A.R. 47-4-14a(d)(16)(A) by replacing the word "shall" with the word "may" in the sentence "Any party, within 15 days after service of a final order, shall file a petition for reconsideration with the agency head \* \* \*."

*31. K.A.R. 47-4-14a(d)(17)(C), Orders*

Kansas proposes to amend K.A.R. 47-4-14a(d)(17) by adding language that outlines when orders are effective. K.A.R. 47-4-14a(d)(17)(C) states that "[t]his section does not preclude the department from taking immediate action to protect the public interest in

accordance with subsection (f), and amendments thereto." The Director has not approved subsection (f), dealing with emergency proceedings (see finding number 33), and therefore cannot approve K.A.R. 47-4-14a(d)(17)(C) that allows emergency proceedings to be invoked. Therefore, the Director finds that Kansas's proposed rule at K.A.R. 47-4-14a(d)(17)(C) is less effective than the Federal program and is not approved. Kansas must amend its program by removing this rule.

*32. K.A.R. 47-4-14a(e), Conference Hearing; Use, When*

Kansas proposes to amend K.A.R. 47-4-14a(e) by adding a rule involving conference hearings. There is no counterpart Federal regulation regarding conference hearings. There are three concerns with this proposed rule.

First, Kansas offers this concept of a conference hearing without an explanation as to what the purpose of such a hearing is and how it differs from either a prehearing conference or a formal hearing. This is in conflict with section 503(a)(7) of SMCRA that requires that the State program "has the capability of carrying out the provisions of this Act and meeting its purposes through— \* \* \* (7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act."

Second, the proposed conference hearing proceedings would eliminate important public participation rights required by SMCRA and its implementing regulations. Section 102(i) of SMCRA states that one of the purposes of SMCRA is to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement to regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act." In addition, 30 CFR 731.14(g)(8) and (14) require State programs to include systems for "(8) [i]ssuing public notices and holding public hearings," and "(14) [p]roviding for public participation in the development, revision and enforcement of State regulations, the State program, and permits under the State program." Further, 30 CFR 723.15(b)(10) provides, among other things, that a State program shall not be approved unless a finding is made that "the State program includes provisions to—(10) provide for public participation in the development, revision, and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter." In addition, 30 CFR 840.15 requires State programs to "provide for public participation in

enforcement of the State program consistent with that provided by 30 CFR parts 842, 843, and 845 and 43 CFR Part 4." This proposed rule also appears to be in conflict with the State act which makes reference to public hearings throughout the act at K.S.A. 49-405c, 49-407, 49-415, and 49-416a. See also Discussion of public hearings at finding number 27, *supra*.

Third, the proposed regulatory provisions concerning conference hearing procedures contain numerous inconsistencies and/or typographical errors. For instance, proposed K.A.R. 47-4-14a(e)(2)(B) does not make sense. That subsection states as follows:

The provisions of K.A.R. 47-4-15 and amendments thereto do not apply to conference hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and discovery orders but do not apply to conference hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

The Director cannot determine the intent of the above-quoted provision. As another example, the subsection at K.A.R. 47-4-14a(e)(2)(C) states that "[p]aragraphs (10)(A), (B), and (C) of amendments thereto do not apply; but (i) the presiding officer shall regulate the course of the proceedings; \* \* \*." Paragraph 47-4-14a(d)(10)(A) states that the presiding officer "[s]hall regulate the proceedings." It appears unnecessary to state at 47-4-14a(e)(2)(C) that paragraph 47-4-14a(10)(A) does not apply when it says the same thing as 47-4-14a(e)(2)(C)(i).

The Director finds that K.A.R. 47-4-14a(e) is less stringent than sections 102(i) and 503(a)(7) of SMCRA. The Director further finds that K.A.R. 47-4-14a(e) is less effective than the Federal regulations at 30 CFR 731.14(g)(8) and (14), 732.15(b)(10) and 840.15. Finally, the Director finds that K.A.R. 47-4-14a(e) is inconsistent with other portions of the Kansas Program. The Director is, therefore, not approving it. Kansas is required to amend its program by removing the regulation at K.A.R. 47-4-14a(e).

*33. K.A.R. 47-4-14a(f), Emergency Proceedings*

Kansas proposes to amend K.A.R. 47-4-14a(f) by adding a rule involving emergency adjudicative proceedings. The proposed rule at K.A.R. 47-4-14(f)(1)(A) and (B) states that "(1) A State agency shall use emergency proceedings; (A) In a situation involving an immediate danger to the public health, safety or welfare requiring

immediate State agency action or (B) as otherwise provided by law." The Federal regulations do not provide for the use of emergency adjudicative proceedings. SMCRA and the Federal rules do allow the Secretary of the Interior or his agents to take immediate action to abate dangerous situations under two circumstances. First, pursuant to section 410 of SMCRA and 30 CFR part 877, the Secretary or his agents may enter upon land to perform emergency reclamation work. SMCRA specifically provides that such an entry shall be construed as an exercise of the police power. See SMCRA, section 410(b). The Kansas State Program contains similar provisions. See K.S.A 49-432; Proposed K.A.R. 47-16-5 (discussed in finding number 58, *infra*). Second, pursuant to section 521(a)(2) of SMCRA and 30 CFR Part 843, an authorized representative of the Secretary of the Interior is required to immediately order a cessation of surface coal mining and reclamation operations if he or she finds any condition or practice or violation that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources. Once again, the Kansas State Program provides similar provisions. See K.S.A 49-405(m)(1); K.A.R. 47-15-1a(a)(7).

Neither of the two above-outlined situations involve emergency adjudicatory proceedings. Moreover, neither SMCRA nor the Kansas Act allow for emergency adjudications. Finally, the proposed emergency adjudicatory proceedings, like the proposed conference hearings discussed in finding number 32, *supra*, eliminate important public participation rights required by SMCRA and its implementing regulations, as well as the Kansas Act. See Discussion at finding number 32, *supra*. See also Discussion of public hearings at finding number 27, *supra*.

Therefore, the Director finds that the proposed Kansas amendment at proposed 47-4-14a(f) to be inconsistent with SMCRA, the Federal regulations, and the Kansas Act and is not approving it. The State is required to amend its program by removing proposed K.A.R. 47-4-14a(f).

### 34. K.A.R. 47-4-14a(g), Summary Proceedings

Kansas proposes to amend K.A.R. 47-4-14a(g) by adding a rule dealing with summary proceedings. This proposed rule states that "(1) The department shall use summary proceedings, subject to a party's request for a hearing on the

order, if; (A) The use of those proceedings in the circumstances does not violate any provision of law; and (B) the protection of the public interest does not require the State agency to give notice and an opportunity to participate to persons other than the parties."

Like the proposed State rules governing conference hearings and emergency adjudications, this provision eliminates important public participation rights required by SMCRA and its implementing regulations. See Discussion at findings number 32 and 33, *supra*. See also Discussion of public hearings at finding number 27, *supra*. Therefore, for the same reasons discussed in finding number 32, *supra*, the Director finds proposed K.A.R. 47-4-14a(g) to be inconsistent with SMCRA, the Federal regulations, and the State Act and is not approving it. Therefore, Kansas is required to amend its program by removing K.A.R. 47-4-14a(g).

### 35. K.A.R. 47-4-15, Administrative Hearings; Discovery

Kansas proposes to amend K.A.R. 47-4-15 by adding a rule dealing with discovery that is substantively similar to the Federal counterpart provisions at 43 CFR 4.1130 through 4.1141. Proposed K.A.R. 47-4-15(a) requires litigants to make requests for discovery "in writing to the presiding officer." This would appear to require that the presiding officer make a ruling on all requests for discovery. The Federal counterpart provisions allow discovery to be conducted by the parties without assistance from the court. Besides being in conflict with the Federal provisions, the requirement at proposed K.A.R. 47-4-15(a) also conflicts with the proposed rules at K.A.R. 47-4-15(l)(1) and (o)(2) which provide that litigants may give notice of their intent to take depositions or may make written requests for production of documents or things or requests for entry upon land for inspection and other purposes "without leave of the presiding officer."

At K.A.R. 47-4-15(l)(4) there is a typographical error. Kansas's proposed rule provides, in part, that the officer before whom a deposition is taken "shall certify the deposition of, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign." The underlined word should be "or" and not "of."

Finally, at K.A.R. 47-4-15(m)(3)(C), there is a typographical error, a comma is missing between "age" and "illness."

For the reasons discussed above, the Director finds Kansas regulations at K.A.R. 47-4-15(a), (c), (l)(4), (l)(7), and (m)(3)(C) to be less effective than the Federal counterpart regulations at 43

CFR 4.1130 through 4.1141 and is, therefore, not approving them. Kansas is required to amend its regulations at K.A.R. 47-4-15(a), (c), (l)(4), (l)(7), and (m)(3)(C) to not require that all requests for discovery be made in writing to the presiding officer, and to correct typographical errors as noted.

### 36. K.A.R. 47-5-5a(a) and K.A.R. 47-5-5a(b), Civil Penalties

Kansas proposes to amend K.A.R. 47-5-5a(a) and (b) by adopting by reference most of the Federal regulations at 30 CFR part 845, dealing with civil penalties, and all of the Federal regulations at 30 CFR part 846, dealing with individual civil penalties, as they existed on July 1, 1990. Kansas inadvertently left an extra word in the sentence; "[t]he following terms shall be replaced with the indicated terms wherever they appear in the text of the rules and regulations incorporated adopted by reference under this section (emphases added)."

Another editorial error apparent between K.A.R. 47-5-5a(a) and K.A.R. 47-5-5a(b) is that K.A.R. 47-5-5a(a) states that "the following parts and sections of the Federal rules and regulations \* \* \* are hereby adopted by reference as rules and regulations of the secretary." However, the referenced rules and regulations are located under K.A.R. 47-5-5a(b), not K.A.R. 47-5-5a(a). In addition, K.A.R. 47-5-5a(b) states that "[t]he following terms shall be replaced with the indicated terms wherever they appear in the rules and regulations adopted by reference under this section." However, the terms and their replacements are not located under this section but have inadvertently been placed under K.A.R. 47-5-5a(c)(8)(B).

At 47-5-5a(b)(9) Kansas adopts by reference the Federal regulations at 30 CFR 845.19, dealing with requests for hearings. This Federal regulation, in turn, references 30 CFR 843.16, dealing with the formal review of citations. Kansas does not propose to adopt by reference 30 CFR 843.16. Therefore, Kansas must either provide a State counterpart to 30 CFR 843.16 or adopt it by reference.

At K.A.R. 47-5-5a(b)(10) Kansas adopts by reference all of the Federal regulations at 30 CFR 846, Individual Civil Penalties. However, Kansas failed to replace several Federal terms and citations with the appropriate State terms and citations. For instance, at 30 CFR 846.5(1) under the definition of "violation, failure, or refusal," the following terms are used for which Kansas has not substituted appropriate State counterparts: "A Federal program,

a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act." In addition, 30 CFR 846.5(2), under the definition of "violation, failure, or refusal," uses the following terms for which Kansas has not provided State counterparts: "section 521 of the Act" and "section 518(b) or section 703 of the Act." At 30 CFR 846.17(b)(1), the address to where an individual files a petition for review needs to be replaced with the appropriate State address. And finally, at 30 CFR 846.18(d), the references to 30 CFR 870.15(e)(1) through (e)(5) and 30 CFR 870.15 (f) and (g) need to be replaced by the appropriate State citations.

For the reasons discussed above, the Director finds that K.A.R. 47-5-5a(a) and K.A.R. 47-5-5a(b) are less effective than the Federal counterpart regulations at 30 CFR parts 845 and 846 and is not approving them. Kansas is required to amend its regulations at K.A.R. 47-5-5a(a) and K.A.R. 47-5-5a(b) by correcting the editorial errors discussed above, and replacing the noted Federal terms and citations with the appropriate State terms and citations.

### 37. K.A.R. 47-5-5a(c), Review of Proposed Assessments of Civil Penalties

Kansas proposes to add language at K.A.R. 47-5-5a(c) dealing with the review of proposed assessments of civil penalties. Several issues regarding the rules under K.A.R. 47-5-5a are raised in the following discussion.

First, at K.A.R. 47-5-5a(c), Kansas states that "the procedure set forth in K.A.R. 47-4-14 and the following shall apply." In that sentence, the term procedure should be plural. Also, K.A.R. 47-4-14 no longer exists. It is revoked by this rulemaking. In its place, Kansas has proposed K.A.R. 47-4-14a.

Second, Kansas proposes, at K.A.R. 47-5-5a(c)(2)(A)(ii), dealing with contents of petition, that if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, the petition should contain "a statement indicating how the civil penalty formula contained in K.A.R. adopting 30 CFR Part 723 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula." The citation for Kansas' regulation is incomplete. In addition, it appears that Kansas, in its proposed rules, has not adopted 30 CFR part 723 as part of its program. The Federal regulations at 30 CFR part 723 contain the initial Federal program regulations dealing with civil penalties. The Federal permanent program regulations dealing

with civil penalties are found at 30 CFR part 845. Kansas has adopted by reference 30 CFR Part 845 at proposed K.A.R. 47-5-5a(b)(1) through (b)(9). Therefore, Kansas needs to correct the reference to 30 CFR part 723 to K.A.R. 47-5-5a(b)(1) through (b)(9) (adopting by reference 30 CFR Part 845).

Third, at proposed K.A.R. 47-5-5a(c)(4)(A), dealing with review of waiver determination, there is a reference to the granting or denial of a waiver of the civil penalty formula "pursuant to subsection (a)(6) above." This reference is incorrect and should read subsection (b)(6).

Fourth, at proposed K.A.R. 47-5-5a(c)(1)(C) and (c)(2)(C), there are references to K.S.A. 1989 Supp. 49-416(a). However, Kansas' statute does not contain a section 49-416(a). It appears that Kansas is referring to section 49-416a(a).

The Director finds that Kansas' proposed rule at K.A.R. 47-5-5a(c), (c)(2)(A)(ii), (c)(4)(A), (c)(1)(C), and (c)(2)(C) are less effective than the Federal regulations at 43 CFR Part 4.1152 and is not approving them. Kansas is required to amend its rules at K.A.R. 47-5-5a(c) by: (1) changing the word "procedure" to "procedures" and the Kansas citation "K.A.R. 47-4-14" to "K.A.R. 47-4-14a;" (2) completing the Kansas citation at 47-5-5a(c)(2)(A)(ii) and by correcting the reference to 30 CFR part 723 to K.A.R. 47-5-5a(b)(1) through (b)(9) (adopting by reference 30 CFR Part 845); (3) changing the citation at K.A.R. 47-5-5a(c)(4)(A) to "subsection (b)(6)" and (4) providing the correct statutory citation at K.A.R. 47-5-5a(c)(1)(C) and (c)(2)(C).

### 38. K.A.R. 47-5-5a(c)(5), Burden of Proof in Civil Penalty Proceedings

At K.A.R. 47-5-5a(c)(5), dealing with burden of proof in civil penalty proceedings, Kansas has proposed a rule governing the burden of proof that is a higher burden upon the regulatory authority. The Federal counterpart regulation at 43 CFR 4.1155 states that:

In civil penalty proceedings, OSM shall have the burden of going forward to establish a *prima facie* case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

The Kansas proposed rule states that:

In civil penalty proceedings, the surface mining section shall have the burden of going forward to establish a *prima facie* case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

Kansas' proposed rule language is identical to former language found at 30 CFR 4.1155. However, the former Federal regulation was found to be in conflict with another Federal regulation at 43 CFR 4.1171 that allocates the burdens of proof in an application for review proceeding. 43 CFR 4.1171 provides that OSM shall have the burden of going forward to establish a *prima facie* case as to the validity of the notice or order but that "[t]he ultimate burden of persuasion shall rest with the applicant for review." It allocates the ultimate burden of persuasion to the applicant for review because "the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977)." 43 FR 34376, 34381 (August 3, 1978).

The result of the different allocation of the burden of ultimate persuasion as to the fact of the violation in 43 CFR 4.1155 and 4.1171 was not only that the former regulation was inconsistent with congressional intent but also that there were contradictory provisions applicable to the same burden of proof. Therefore, the Director revised the Federal regulations at 43 CFR 4.1155 (53 FR 47693, November 25, 1988).

Kansas's proposed rule at 47-5-5a(c)(5) is also inconsistent with congressional intent since it proposes language that is identical to the former language of 43 CFR 4.1155. Therefore, the Director finds that Kansas proposed rule at K.A.R. 47-5-5a(c)(5) is less effective than the Federal counterpart regulation at 43 CFR 4.1155 and is not approving it to the extent that the State regulatory authority has the ultimate burden of persuasion as to the fact of the violation. Kansas is required to amend its proposed rule by placing the ultimate burden of persuasion as to the fact of the violation with the person who petitioned for review.

### 39. K.A.R. 47-5-5a(c)(7), Initial Order of the Presiding Officer

Kansas proposes to modify K.A.R. 47-5-5a(c)(7) by adding rules dealing with initial orders of the presiding officer. Three issues are of concern and are discussed below.

First, the proposed amendment contains incorrect references. At proposed K.A.R. 47-5-5a(c)(7)(A), there is an incorrect reference to "47-5-5a(a)(3)." The reference should be to "47-5-5a(b)(3)." At proposed K.A.R. 47-5-5a(c)(7)(B)(i), the following portion of a sentence appears: "the point system and conversion table contained in 30 CFR 845.14 adopted in K.A.R. 47-5-5(3)

and (4) above \* \* \*." However, the point system and conversion table are not found in 30 CFR 845.14. Rather, the point system is found at 30 CFR 845.13 and the conversion table is found at 30 CFR 845.14. Also, there is no K.A.R. 47-5-5(3) or (4). It appears that Kansas meant to say K.A.R. 47-5-5a(3) and (4). However, as written Kansas has made reference to a nonexistent portion of their program.

The Director finds that the Kansas regulations at K.A.R. 47-5-5a(c)(7)(A) and (B)(i) are less effective than the Federal regulation at 30 CFR 845.13 and is not approving them. Kansas is required to amend its regulation at K.A.R. 47-5-5a(c)(7)(A) and (B)(i) by providing correct references as discussed above and providing correct locations for the point system and conversion table.

Second, Kansas proposes to add language at K.A.R. 47-5-5a(c)(7)(C) that requires the State to remit the "appropriate amount" to the person who made a civil penalty payment into escrow if the presiding officer makes a finding that no violation occurred or if the presiding officer reduces the amount of the civil penalty below the proposed assessment. The Federal regulation at 30 CFR 845.20(c) also requires OSM to refund all or part of the escrowed amount if the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed. However, the Federal regulation requires that interest, from the date of payment into escrow to the date of the refund, be paid at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater. While Kansas has no provision for paying interest in its rules, its act at K.S.A. 49-405(c) states that "[i]f through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the board shall within 30 days remit the appropriate amount to the person, with interest at the rate earned thereon." Therefore, the Director finds that K.A.R. 47-5-5a(c)(7)(C), in concert with the State act, is no less effective than its Federal counterpart at 30 CFR 845.20(c) and is approving it.

Third, Kansas proposes to add language at K.A.R. 47-5-5a(c)(7)(D) that requires the presiding officer to order payment of civil penalties within 30 days of receipt of the decision if the presiding officer increases the amount of

the civil penalty above that of the proposed assessment.

The Federal regulation at 30 CFR 845.20(d) requires that if the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person. Kansas's proposed regulation would allow the longer time period of 30 days from the receipt of the decision rather than the shorter 15 days after the order is mailed. Kansas's proposed regulation also conflicts with another Kansas regulation at K.A.R. 47-5-16(d) that requires payment to be made to the department within 15 days after the order increasing the civil penalty is mailed.

The Director, therefore, finds Kansas's proposed rule K.A.R. 47-5-5a(c)(7)(D) to be less effective than the Federal regulation at 30 CFR 845.20(d) and is not approving it. Kansas is required to amend its regulation at K.A.R. 47-5-5a(c)(7)(D) by reducing the time period in which any increase in penalty must be paid to 15 days in order to (1) resolve the discrepancy within the State's proposed rules and to (2) be as effective as the Federal regulation at 30 CFR 845.20(d).

#### 40. K.A.R. 47-5-5a(c)(8), Appeals

Kansas proposes to amend K.A.R. 47-5-5a(c)(8) by requiring "the secretary to review and/or reconsideration of the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14(d)(14) and (16) respectively." The Federal counterpart regulation at 43 CFR 4.1158 allows any party to petition the Board to review the assessment decision.

First, the word reconsideration in the Kansas proposed rule does not make sense. It appears that the word Kansas means to use is reconsider. Second, there is no section K.A.R. 47-4-14(d)(14) or (16) in Kansas's program. Kansas, in this rulemaking, has revoked section 47-4-14. It appears that the correct citation is K.A.R. 47-4-14a(d)(14) or (16). The Director, therefore, finds that Kansas's proposed K.A.R. 47-5-5a(c)(8) is less effective than the Federal counterpart at 43 CFR 4.1158 and is not approving it to the extent that it refers to a nonexistent rule. Kansas is required to amend its program by correcting the citation from "K.A.R. 47-4-14(d)(14) or (16)" to "K.A.R. 47-4-14a(14) or (16)."

#### 41. K.A.R. 47-6-1, Permit Review

Kansas proposes to amend K.A.R. 47-6-1 by requiring each permit issued to

be reviewed by the secretary or the secretary's designee not later than the middle of the permit's term. After this review, reasonable revisions or modifications may be ordered to ensure compliance with the laws and regulations. The corresponding Federal regulation at 30 CFR 774.11(b) allows that reasonable revisions of a permit may be ordered after the permit review *or at any time* (emphases added) to ensure compliance with the Act and the regulatory program. Kansas's regulation is more limiting in that it does not allow the regulatory authority to order reasonable permit revisions or modifications at any time.

The Director finds that Kansas's regulation at K.A.R. 47-6-1 is no less effective than the Federal regulation at 30 CFR 774.11(b) insofar as it allows the regulatory authority to order reasonable permit revisions or modifications to ensure compliance with appropriate regulations. However, the Director is requiring Kansas to amend its regulation at K.A.R. 47-6-1 to allow the regulatory authority to order reasonable revisions or modifications of permits at any time.

#### 42. K.A.R. 47-6-4, Permit Transfers, Assignments, and Sales; Adoption by Reference

Kansas proposes to amend the title of K.A.R. 47-6-4 from "Permit transfers, assignments, and sales; incorporation by reference" to "Permit transfers, sales assignments and adoption by reference." The proposed title change is incomplete and erroneous. The Federal regulation being adopted by Kansas is 30 CFR 774.17 and deals with the transfer, assignment, or sale of permit rights not, as the Kansas proposed regulation title suggests, permit transfers, sales assignments and whatever else. However, since the Federal regulation pertaining to the transfer, assignment, or sale of permit rights is adopted by reference without change, the intent of the regulation is intact. Therefore, the Director finds Kansas's proposed rule at K.A.R. 47-6-4 to be no less effective than the Federal counterpart rule at 30 CFR 774.17 and is approving it. The Director suggests that, for clarity, Kansas correct the title of this subsection.

#### 43. K.A.R. 47-6-7, Permit Suspension or Revocation

Kansas proposes to amend K.A.R. 47-6-7(e) and K.A.R. 47-6-7(h)(2) by adding procedures for permit suspension or revocation and procedures for appeals. However, in adding these rules, Kansas

appears to have inadvertently included, at proposed K.A.R. 47-6-7(e), an erroneous cross-reference to K.A.R. 47-4-14(d) which does not exist. Kansas also, at proposed K.A.R. 47-6-7(h)(2), refers to K.A.R. 47-4-14(a)(d)(14), another non-existent State provision. Kansas's proposed amendment is therefore left without procedures to be followed for proceedings to suspend or revoke a permit. The Federal counterpart regulation at 30 CFR 843.13 requires hearings to be conducted according to 43 CFR part 4.

The Director finds that K.A.R. 47-6-7(e) and (h)(2) are less effective than the Federal counterpart regulations and is not approving them. Kansas is required to amend its regulation at K.A.R. 47-6-7(e) and (h)(2) by providing the correct cross-references to the procedures to be followed for proceedings to suspend or revoke a permit.

#### 44. K.A.R. 47-6-8, Termination of Jurisdiction; Adoption by Reference

Kansas proposes to amend K.A.R. 47-6-8 by adopting by reference the Federal regulation at 30 CFR 700.11 as it existed on July 1, 1990. This Federal regulation sets forth the applicability of the rules and regulations of chapter VII of title 30 of the Federal Code of Regulations and contains provisions that allow the regulatory authority to, under certain circumstances, terminate its jurisdiction under the regulatory program.

Subsection (d) of 30 CFR 700.11 outlines when a regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof.

However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521(a)(1) and (a)(2) of SMCRA. The Court interpreted the language of section 521(a)(1) and (a)(2) as imposing an "on-going duty upon the Secretary to correct violations of the Act" and that this duty appears to be "without limitation." Therefore, the Court remanded 30 CFR 700.11(d) (*National Wildlife Federation v. Lujan*, 31 ERC 2034 (1990)) to the Secretary to be revised or withdrawn.

In response to the court's decision, OSM suspended the above Federal regulation on June 3, 1991 (56 FR 25036). Because of the suspension, the Director cannot approve the adoption of K.A.R. 47-6-8. The Director will, in the future and pursuant to 30 CFR 732.17(d), notify Kansas of any regulatory changes needed for the above rule.

#### 45. K.A.R. 47-8-9(a), Bonding Procedure

Kansas proposes, at K.A.R. 47-8-9(a), to delete from its program the adoption by reference of 30 CFR 800.23 governing self-bonds. It is the State's prerogative to decide whether or not to make self-bonding available to its operators. Kansas has elected not to. The Director finds that this deletion does not render the State program less effective than the Federal program and is approving it. However, for completeness, Kansas is required to remove from its adoption by reference at 30 CFR 800.5, the definition for the term *self-bond*.

#### 46. K.A.R. 47-9-1(a), Permanent Program Performance Standards—General Provisions

Kansas proposes to amend K.A.R. 47-9-1(a) by adopting by reference the Federal regulations at 30 CFR part 810. Several errors exist with this adoption and are discussed below.

At K.A.R. 47-9-1(a) Kansas proposes to adopt by reference the Federal regulation at 30 CFR 810.2, permanent program standards-general provisions. This is an incorrect title for this section of the Federal regulations. Then, at K.A.R. 47-9-1(a) Kansas restates that it proposes to adopt by reference the Federal regulation at 30 CFR 810.2, this time using the proper title, objective. Since the adoption of 30 CFR 810.2 at K.A.R. 47-9-1(a)(1) uses the proper title for this section of the Federal regulations, it should be retained and the adoption of K.A.R. 47-9-1(a) should be removed.

In adopting the Federal regulations, several terms referencing the Federal nature of the program are inappropriate when applied to a State program and need to be changed. Sections 30 CFR 810.4 (b) and (c) refer to "every State program" and "the applicable regulatory program." These need to be changed to reflect the Kansas program. Section 30 CFR 810.11 refers to the Federal regulations at 30 CFR parts 815 through 828. These references need substitute State counterpart references.

The Director finds that Kansas's regulations at K.A.R. 47-9-1(a) are no less effective than the Federal counterpart at 30 CFR part 810 and is approving them. However, Kansas is required to amend its regulation at K.A.R. 47-9-1(a) by (1) deleting the adoption by reference of 30 CFR 810.2 at K.A.R. 47-9-1(a) and (2) replacing the Federal terms and citations with the appropriate State terms and citations as described above.

#### 47. K.A.R. 47-9-1(b), Permanent Performance Standards—Coal Exploration, K.A.R. 47-9-1(c), Permanent Performance Standards—Surface Mining Activities, K.A.R. 47-9-1(d), Permanent Performance Standards—Underground Mining Activities, K.A.R. 47-9-1(e), Special Permanent Program Performance Standards—Auger Mining, K.A.R. 47-9-1(f), Special Permanent Program Performance Standards—Operations on Prime Farmland, K.A.R. 47-9-1(g), Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, and K.A.R. 47-9-1(h), Special Permanent Program Performance Standards—in Situ Processing

At proposed K.A.R. 47-9-1, Adoption by reference, Kansas states that "[t]he following parts and sections of the Federal rules and regulations of the Office of Surface Mining \* \* \* are hereby adopted by reference as rules and regulations of the Secretary as the performance standards to be maintained by surface and underground coal mining and reclamation operations. The adoption by reference shall cover the parts and sections in effect on July 1, 1990, except as otherwise noted (emphases added)." At K.A.R. 47-9-1 (b), (c), (d), (e), (f), (g), and (h) Kansas proposes to adopt by reference 30 CFR Parts 815, 816, 817, 819, 823, 827, and 828, respectively. Kansas then lists numerous sections related to these parts. This is a duplication of adoptions since, in adopting 30 CFR parts 815, 816, 817, 819, 823, 827, and 828, all the sections of those parts are automatically adopted. Kansas should either list only the exceptions to the adoptions of these parts or remove from K.A.R. 47-9-1 the word "parts." As Kansas currently proposes the rules at K.A.R. 47-9-1(b), (c), (d), (e), (f), (g), and (h), the Director understands that parts 815, 816, 817, 819, 823, 827, and 828 are being adopted in their entirety including the exceptions listed.

The Director finds that proposed K.A.R. 47-9-1(b), (c), (d), (e), (f), (g) and (h) are no less effective than the Federal counterparts at 30 CFR parts 815, 816, 817, 819, 823, 827, and 828 and is approving them. However, the Director is requiring that Kansas amend its program by making the editorial change necessary to clarify whether it intends to adopt all of parts 815, 816, 817, 819, 823, 827, and 828 or only the sections listed.

**48. K.A.R. 47-9-1, Performance Standards**

At K.A.R. 47-9-1(a)(4), performance standards for surface mining activities and (d)(2), performance standards for underground mining activities, Kansas proposes to replace the term "subchapter" with the phrase "K.A.R. 47-9-1(a)" and "K.A.R. 47-9-1(d)" respectively throughout K.A.R. 47-9-1. There are six Federal regulations where the term "subchapter" is used. For four of the regulations, 30 CFR 816.107(c), 816.116, 817.107(c), and 817.116 the substitution is valid. However, for the remaining two regulations this substitution does not apply. At 30 CFR 816.61(c)(1), use of explosives: general requirements, the sentence "No later than 12 months after the blaster certification program for a State required by part 850 of this chapter has been approved under the procedures of subchapter C of this chapter, all blasting operations in that State shall be conducted under the direction of a certified blaster \* \* \*." Subchapter C refers to the 30 CFR regulations concerning permanent regulatory programs for non-Federal and non-Indian lands whereas K.A.R. 47-9-1(a) and (d) concern the Kansas performance standards for surface and underground mines. The second instance is substantively similar to the first only it is located at 30 CFR 817.61(c)(1), use of explosives: General requirements (for underground mining operations). The Director finds that Kansas' proposed rules at K.A.R. 47-9-1(a) and (d) to be as effective as the Federal regulations at 30 CFR 816.107(c), 816.116, 817.107(c), and 817.116 and is approving them. However the Director is requiring Kansas to amend its program by not replacing the term "subchapter" with (1) the phrase "K.A.R. 47-9-1(a)" at 30 CFR 816.61(c)(1) and (2) the phrase "K.A.R. 47-9-1(d)" at 817.61(c)(1).

**49. K.A.R. 47-9-1(c)(35), Backfilling and Grading: General Requirements**

Kansas proposes to amend K.A.R. 47-9-1(c)(35) by adopting by reference the Federal regulation at 30 CFR 816.102 as it existed on July 1, 1990. This Federal regulation provides the general requirements for backfilling and grading. Among these general requirements being adopted by Kansas are 30 CFR 816.102(k)(3)(i) and (ii) which, in turn, reference the Federal regulations at 30 CFR 785.14 and .16. The Federal regulations at 30 CFR 785.14 and .16 deal with mountaintop removal mining and permits incorporating variances from approximate original contour (AOC) restoration requirements, respectively.

Kansas does not propose to adopt by reference either 30 CFR 785.14 or .16 nor does Kansas currently have rules similar to 30 CFR 785.14 or .16 in its program. Therefore, Kansas cannot apply these Federal regulations to its program. In addition, on July 15, 1985, the U.S. District Court for the District of Columbia remanded OSM's variances from AOC regulations for non-steep slope areas at 30 CFR 785.16 in *In re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519 (D.D.C. 1985). The court ruled that the Act does not permit a variance from AOC unless steep slope mining is involved. Accordingly, OSM suspended 30 CFR 785.16 on November 20, 1986 (51 FR 41952).

The Director finds that Kansas' proposed rule at K.A.R. 47-9-1(c)(35) is no less effective than the Federal regulation at 30 CFR 816.102. However, the Director is requiring Kansas to further amend its regulation at K.A.R. 47-9-1(c)(35) by removing from the adoption by reference of 30 CFR 816.102 the references to 30 CFR 785.14 and .16.

**50. K.A.R. 47-9-1(c)(36), Backfilling and Grading: Thin Overburden and K.A.R. 47-9-1(c)(37), Backfilling and Grading: Thick Overburden**

Kansas proposes to amend K.A.R. 47-9-1(c)(36) and K.A.R. 47-9-1(c)(37) by adopting by reference the Federal regulations at 30 CFR 816.104(a) and 816.105(a), respectively, as they existed on July 1, 1990.

On October 1, 1984, the U.S. District Court for the District of Columbia remanded OSM's backfilling and grading regulations for thin and thick overburden surface mine at 30 CFR 816.104(a) and 816.105(a) (48 FR 23356 at 23369, May 24, 1983) because they did not provide objective formulae for defining thin and thick overburden (*In re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 15-ELR 20481 (D.D.C. 1984)). The Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15312 at 15411, March 13, 1979) that had been in effect prior to OSM's promulgation of the remanded regulations at 30 CFR 816.104(a) and 816.105(a) did specify such objective formulae. Specifically, the March 13, 1979, regulations provides that the thin overburden provisions would apply where the final thickness was less than 0.8 times the initial thickness, and that the thick overburden provisions would apply where the final thickness was greater than 1.2 times the initial thickness.

Because Kansas proposes to adopt by reference the remanded Federal regulations, the Director finds that

K.A.R. 47-9-1(c)(36) and 47-9-1(c)(37) are less stringent than Section 515(b)(3) of SMCRA and is not approving them. Kansas is required to amend its regulation at K.A.R. 47-9-1(c)(36) and 47-9-1(c)(37) by providing objective formulae for defining thin and thick overburden.

**51. K.A.R. 47-9-1(c)(42), Revegetation: Standards of Success**

Kansas proposes to adopt by reference the Federal revegetation success standards at 30 CFR 816.116 as it existed on July 1, 1990. Kansas also instructs the reader to "delete editorial note 3" from this regulation. However, the 1990 version of 30 CFR 816.116 does not contain any editorial notes. Kansas also proposes to add a subsection that addresses repairs of rills and/or gullies "using normal husbandry practices, approved by the regulatory agency in consultation with the State conservationist or his designated representative, and the repairs are approved by the regulatory authority \* \* \*." The Federal regulation at 30 CFR 816.116(c)(4) requires that all normal husbandry practices be approved through the State program amendment process. Kansas should clarify K.A.R. 47-9-1(c)(42)(i) to indicate the practices to be approved by the regulatory agency must also have been (or must be) approved in advance by OSM in accordance with 30 CFR 732.17, State program amendments, and 816.116(c)(4).

The Director finds that Kansas's regulation at K.A.R. 47-9-1(c)(42) is no less effective than the Federal regulation at 30 CFR 816.116 to the extent that it adopts by reference 30 CFR 816.116. He is, therefore, approving it. However, Kansas is required to amend its regulation at K.A.R. 47-9-1(c)(42) by first, removing the direction to delete editorial note "3," and second, indicating the practices to be approved by the regulatory agency must also have been (or must be) approved in advance by OSM in accordance with 30 CFR 732.17, State program amendments, and 816.116(c)(4).

**52. K.A.R. 47-9-1(d)(47)-(50), Permanent Program Performance Standards—Underground Mining**

Kansas proposes to amend K.A.R. 47-9-1(d)(47)-(49) by adopting by reference 30 CFR 816.180, utility installations; 30 CFR 816.181, support facilities; 30 CFR 816.200, interpretative rules related to general performance standards and by adding K.A.R. 47-9-1(d)(50) that deletes entirely 30 CFR 816.72, disposal of excess spoil: Valley fills/head-of-hollow

fills and 30 CFR 816.73, disposal of excess spoil: Durable rock fills. However, Kansas inadvertently referenced the Federal regulations cited above by the surface mining prefix, 816, rather than the underground mining prefix, 817. The Director finds that the context in which the Federal regulations are adopted indicates that the Kansas rule intended to cite the 30 CFR 817 regulations. However, Kansas's regulations must clearly state that it is the underground mining regulations and not the surface mining regulations that are intended to be adopted or deleted. The effect of this typographical error is that Kansas has no underground mining regulations governing utility installations, support facilities or interpretive rules related to general performance standards. There is no effect from deleting 30 CFR 816.72 and 816.73 since these regulations were not adopted by Kansas.

The Director finds that Kansas's regulations at K.A.R. 47-9-1(d)(47) through (50) are less effective than the Federal regulations at 30 CFR 817.180, 817.181 and 817.200 and is, therefore, not approving them. Kansas is required to amend its regulations at K.A.R. 47-9-1(d)(47) through (50) by correcting the typographical error at K.A.R. 47-9-1(d)(47)-(50) by changing the adopted Federal regulation prefixes from 30 CFR 816 to 30 CFR part 817.

### 53. K.A.R. 47-9-1(f)(2), Applicability

Kansas proposes to amend K.A.R. 47-9-1(f)(2) by adopting by reference the Federal regulation at 30 CFR 823.11 as it existed on July 1, 1990. 30 CFR 823.11 provided exemptions to the prime farmland regulations for "(a) coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time \* \* \* where such uses affect a minimal amount of land;" "(b) [d]isposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland;" and "(c) [p]rime farmland that has been excluded in accordance with 785.17(a)." However, the U.S. District Court for the District of Columbia remanded paragraph (a) of this Federal regulation in *In re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 15 ELR 20481 (D.D.C. 1984), because the Secretary did not provide guidelines for what constituted an extended period of time or a minimal amount of land. OSM suspended paragraph (a) on February 21, 1985, in response to the court decision (50 FR 7278). Because of the

suspension, the Director cannot approve the adoption of K.A.R. 47-9-1(f)(2).

Kansas is required to amend its regulation at K.A.R. 47-9-1(f)(2) to require that prime farmland occupied by all coal preparation plants, support facilities and roads that are a part of the surface mining activities must meet the applicable prime farmland performance standards.

### 54. K.A.R. 47-12-4(a)(6), Additional Criteria

Kansas proposes to amend K.A.R. 47-12-4(a)(6) by adopting by reference the Federal regulation at 30 CFR 762.12 that allows a regulatory authority to establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining. The regulation also allows the Secretary to establish additional criteria for Federal land unsuitability determinations. The Director finds that K.A.R. 47-12-4(a)(6) is no less effective than the Federal regulation and approves it. However, Kansas is required to either delete subsection (b) from adoption by reference or, if retained, by indicating that the term "Secretary" means Secretary of the Interior, not the secretary of the Kansas Department of Health and Environment.

### 55. K.A.R. 47-13-4, Training and Certification of Blasters

Kansas proposes to amend K.A.R. 47-13-4 by adopting by reference the Federal regulations contained in 30 CFR part 850 that pertain to the training and certification of blasters as they existed on July 1, 1990. Federal terms to be replaced with correlative State terms are located at K.A.R. 47-13-4(b). Also located under this section are K.A.R. 47-13-4(b)(2) that adopts 30 CFR 850.5, Definitions and (b)(3) that adopts 30 CFR 850.13, Training. It appears that Kansas misplaced these two sections and that they should be located under K.A.R. 47-13-4(a). However, since it is unnecessary to single out these two sections given that they are included in the original adoption by reference of 30 CFR 850 in its entirety, Kansas should remove K.A.R. 47-13-4(b) (2) and (3) from this proposed amendment.

The Director finds the proposed rule at K.A.R. 47-13-4 to be no less effective than its Federal counterpart at 30 CFR 850 and is, therefore, approving it. However, Kansas is required to amend its program by removing K.A.R. 47-13-4(b) (2) and (3).

### 56. K.A.R. 47-15-1a(a)(1), Inspection by State Regulatory Authority

Kansas proposes to amend its regulations at K.A.R. 47-15-1a(a)(1) by adopting by reference 30 CFR 840.11 as it existed on July 1, 1990. However, the District Court for the District of Columbia found that the Federal regulations were in conflict with SMCRA (*National Wildlife Federation v. Lujan*, 31 ERC 2034 (1990)). More specifically, the court held that 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA which contains no exceptions to its requirement of 12 partial and four complete inspections per year. Accordingly, the court remanded this rule to the Secretary to be withdrawn or revised.

Although OSM has not yet actually suspended the above Federal regulation, OSM may not, because of the court's remand, use the regulation at 30 CFR 840.11 (g) and (h) in evaluating the sufficiency of Kansas's proposed rule. Accordingly, OSM evaluated the proposed amendments based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based upon: (1) The court's finding that the 30 CFR 840.11 (g) and (h) are contrary to the provisions of SMCRA and (2) the court's specific instruction to withdraw or revise 30 CFR 840.11 (g) and (h), the Director finds that Kansas's proposed rule at K.A.R. 47-15-1a(a)(1) includes requirements that are not consistent with and less stringent than section 517(c) of SMCRA. Therefore, the Director is not approving Kansas's proposed rule at K.A.R. 47-15-1a(a)(1) definition of "abandoned site."

The Director will, pursuant to 30 CFR 732.17(d), notify Kansas of the regulatory changes needed for the above rules.

### 57. K.A.R. 47-15-1a, Inspection and Enforcement

Kansas proposes to add language at K.A.R. 47-15-1a dealing with civil penalties. Several issues regarding the rules under K.A.R. 47-15-1a are raised in the following discussion.

First, Kansas proposes to amend K.A.R. 47-15-1a(a)(6) by adopting by reference the Federal regulation at 30 CFR 842.15 dealing with review of decisions not to inspect or enforce. This Federal regulation, in turn, references 30 CFR 842.12 which deals with requests for Federal inspections. Kansas currently does not propose to adopt by reference 30 CFR 842.12. Kansas must either adopt 30 CFR 842.12 or replace it with an appropriate State counterpart.

Second, Kansas proposes to amend K.A.R. 47-15-1a(a)(12) by adopting by reference the Federal regulation at 30 CFR 843.20 dealing with the compliance conference. This Federal regulation, in turn, references 30 CFR 842.11 which deals with inspections and monitoring. Kansas currently does not propose to adopt by reference 30 CFR 842.11. Kansas must either adopt the reference to 30 CFR 842.11 or replace it with an appropriate State counterpart.

Third, Kansas proposes to amend K.A.R. 47-15-1a(b) by providing a list of Federal terms that are to be replaced with the appropriate State terms. Three additional Federal terms, "Section 518(e), 518(f), 521(a)(4) or 521(c) of the Act," "Act," and "Director" need to be replaced with the appropriate State terms and added to the list.

For the reasons provided above, the Director finds that Kansas's regulation at K.A.R. 47-15-1a(a)(6), (a)(12), and (b) are less effective than the Federal counterparts at 30 CFR 840.11, 842.15, and 843.20 and is not approving them. Kansas is required to amend its regulation at K.A.R. 47-15-1a(a)(6), (a)(12), and (b) by either adopting 30 CFR 842.12 or replacing it with an appropriate State counterpart, either adopting 30 CFR 842.11 or replacing it with an appropriate State counterpart, and by adding three additional Federal terms, "Section 518(e), 518(f), 521(a)(4) or 521(c) of the Act," "Act," and "Director" to the list of terms that need to be replaced with appropriate State terms.

#### IV. Public and Agency Comments

##### 1. Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for public hearing (July 14, and December 1, 1989, and July 13, and September 28, 1990, publications of the Federal Register at 54 FR 29722, 54 FR 49773, 55 FR 28777 and 55 FR 39300). Because no one requested an opportunity to testify at a public hearing, no hearing was held. No public comments were received.

##### 2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kansas program. Comments were also solicited from various State agencies. The following comments were received.

##### Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed

amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated December 2, 1989 (Administrative Record No. KS-460), EPA offered its general concurrence on Kansas's October 29, 1989, proposed amendment package but did provide the following comment. EPA was concerned that Kansas's adoption of the State Administrative Procedure Act (APA) for use during administrative hearings would jeopardize the public's right to participate in the enforcement of the Kansas program. As discussed in finding number 8, *supra*, on December 11, 1989, the State withdrew the Kansas APA from consideration by OSM as part of this amendment (Administrative Record No. KS-455). In its new submittal, however, Kansas included many provisions that were very similar, if not identical, to provisions of the Kansas APA. OSM agrees with the EPA that many of those provisions jeopardize the public's right to participate in the enforcement of the Kansas program. Therefore, OSM has not approved certain provisions of this amendment which OSM deemed to eliminate public participation rights required by SMCRA and its implementing regulations. See Finding Numbers 16, 20, 23, 27, 31, 32, 33, and 34.

By letter dated March 26, 1990, EPA stated that it had no comments and concurred with the November 20, 1989, revised amendment package (Administrative Record No. KS-466).

By letter dated August 8, 1990, EPA stated that it had no comments, other than to point out the numerous typographical errors, and concurred with the June 29, 1990, revised amendment package (Administrative Record No. KS-484).

By letter dated November 16, 1990, EPA's regional office stated that it had no comments and concurred with the October 9, 1990, proposed amendment package (Administrative Record No. KS-499). However, EPA's office headquarters responded to the same amendment package on December 7, 1990, by stating that it wanted to make clear that its concurrence was based on the understanding that Kansas's regulations do not themselves provide full authorization for the instream treatment of point source discharges and that Kansas must also be in compliance with the applicable requirements of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. By letters dated November 27, 1989, June 21, 1990, and July 10, 1990, the SHPO responded that he had no comments on the proposed amendment and its subsequent revisions (Administrative Record Nos. KS-451, 473, and 479). No comments were received from ACHP.

#### V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, the proposed amendment submitted by Kansas on June 29, 1989, as revised on November 20, 1989, June 29, 1990, and October 9, 1990, with exception of those provisions found to be inconsistent with SMCRA or the Federal regulations.

As discussed in findings Nos. 4, 7, 8, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, 50, 52, 53, and 57, the Director is not approving K.A.R. 47-2-14, the definition for "complete and accurate information"; K.A.R. 47-2-75(b), the definition for "previously mined area"; K.A.R. 47-2-75(d)(6), the definition regarding individual civil penalties; K.A.R. 47-3-42(a)(40), Coal preparation plants not located within the permit area of a specified mine; K.A.R. 47-4-14a(c)(7), Intervention; K.A.R. 47-4-14a(c)(8), Voluntary dismissals; K.A.R. 47-4-14a(c)(10), Consolidation; K.A.R. 47-4-14a(c)(11), Waiver of hearing; K.A.R. 47-4-14a(d), Formal hearings; K.A.R. 47-4-14a(d)(2), Disqualification of presiding officers; K.A.R. 47-4-14a(d)(3), Prehearing conference; notice; K.A.R. 47-4-14a(d)(4)(G), (d)(5)(B)(i), and (d)(5)(B)(vii), Prehearing conference; K.A.R. 47-4-14a(d)(6)(A), (C)(iv), (C)(vii), and (E), Notice of administrative hearing; K.A.R. 47-4-14a(d)(7)(C), Default; K.A.R. 47-4-14a(d)(10)(D) and (E), The presiding officer; K.A.R. 47-4-14a(d)(15), Stay; K.A.R. 47-4-14a(d)(16)(A), Reconsideration; K.A.R. 47-4-14a(d)(17)(C), Orders; K.A.R. 47-4-14a(e), Conference hearing; use, when; K.A.R. 47-4-14a(f), Emergency proceedings; K.A.R. 47-4-14a(g), Summary proceedings; K.A.R. 47-4-15(a), (c), (1)(4), (1)(7), and (m)(3)(C), Administrative hearings; discovery; K.A.R. 47-5-5a(a) and K.A.R. 47-5-5a(b), Civil penalties; K.A.R. 47-5-5a(c).

(2)(A)(ii), (c)(4)(A), (c)(1)(C), and (c)(2)(C), Review of proposed assessments of civil penalties; K.A.R. 47-5-5a(c)(5), Burden of proof in civil penalty proceedings; K.A.R. 47-5-5a(c)(7)(D), Initial order of the presiding officer; K.A.R. 47-5-51(c)(8), Appeals; K.A.R. 47-6-7(e) and (h)(2), Permit suspension or revocation; K.A.R. 47-6-8, termination of jurisdiction; adoption by reference; K.A.R. 47-9-1(c)(36), Backfilling and grading: thin overburden and K.A.R. 47-9-1(c)(37), Backfilling and grading: Thick overburden; K.A.R. 47-9-1(d)(47)-(50), Permanent program performance standards—underground mining; K.A.R. 47-9-1(f)(2), Applicability; K.A.R. 47-15-1a(a)(1), Inspections by State regulatory authority; K.A.R. 47-15-1a(a)(6), (12), and (b), Inspection and enforcement.

As discussed in findings No. 6, 9, 11, 15, 28, 41, 45, 46, 47, 49, 51, 54, 55, and 58, the Director is approving these amendments. However, the Director is requiring that Kansas submit further regulatory program amendments regarding K.A.R. 47-2-75(a) and (a)(6), Definitions; K.A.R. 47-3-42(a)(2), Violation information; K.A.R. 47-3-42(a)(9), Responsibilities; K.A.R. 47-4-14a(c)(1), Rules of procedure; K.A.R. 47-4-14a(d)(14), Review of initial order; exception to reviewability; K.A.R. 47-6-1, Permit review, K.A.R. 47-8-9(a), Bonding procedure; K.A.R. 47-9-1(a), Permanent program performance standards—general provisions; K.A.R. 47-9-1(b), Permanent performance standards—coal exploration, K.A.R. 47-9-1(c), Permanent performance standards—surface mining activities, K.A.R. 47-9-1(d), Permanent performance standards—underground mining activities, K.A.R. 47-9-1(e), Special permanent program performance standards—auger mining, K.A.R. 47-9-1(f), Special permanent program performance standards—operations on prime farmland, K.A.R. 47-9-1(g), Permanent program performance standards—coal preparation plants not located within the permit area of a mine, and K.A.R. 47-9-1(h), Special permanent program performance standards—in situ processing K.A.R. 47-9-1, Performance standards; K.A.R. 47-9-1(c)(35), Backfilling and grading: general requirements; K.A.R. 47-9-1(c)(42), Revegetation: Standards of success; K.A.R. 47-12-4(a)(6), Additional criteria; and K.A.R. 47-13-4, Training and certification of blasters.

Except as noted above, the Director is approving the Kansas regulations with the provision that they be fully promulgated in identical form to the

rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kansas program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Kansas of only such provisions.

#### VII. Procedural Determinations

##### 1. Compliance With the National Environmental Policy Act

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 OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of 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 regulations 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 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 1991.

Raymond L. Lowrie,  
Assistant Director, Western Support Center.

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 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended by adding paragraph (k) as follows:

#### § 916.15 Approval of regulatory program amendments.

\* \* \* \* \*

(k) With the exceptions of K.A.R. 47-2-14, the definition for "complete and accurate application"; K.A.R. 47-2-75(b), the definition for "previously mined area"; K.A.R. 47-2-75(d)(6), the definition regarding individual civil penalties; K.A.R. 47-3-42(a)(40), Coal preparation plants not located within the permit area of a specified mine; K.A.R. 47-4-14a(c)(7), Intervention; K.A.R. 47-4-14a(c)(8), Voluntary dismissals; K.A.R. 47-4-14a(c)(11), Waiver of hearing; K.A.R. 47-4-14a(d), Formal hearings; K.A.R. 47-4-14a(d)(2), Disqualification of presiding officers; K.A.R. 47-4-14a(d)(3), Prehearing conference; notice; K.A.R. 47-4-14a(d)(4)(G), (d)(5)(B)(i), and (d)(5)(B)(vii), Prehearing conference; K.A.R. 47-4-14a(d)(6)(A), (C)(iv), (C)(vii), and (E), Notice of administrative hearing; K.A.R. 47-4-14a(d)(7)(C), Default; K.A.R. 47-4-14a(d)(10) (D) and (E), The presiding officer; K.A.R. 47-4-14a(d)(15), Stay; K.A.R. 47-4-14a(d)(16)(A), Reconsideration; K.A.R. 47-4-14a(d)(17)(C), Orders; K.A.R. 47-4-14a(e), Conference hearing; use, when; K.A.R. 47-4-14a(f), Emergency proceedings; K.A.R. 47-4-14a(g), Summary proceedings; K.A.R. 47-4-15(a), (c), (1)(4), (1)(7), and (m)(3)(C), Administrative hearings; discovery; K.A.R. 47-5-5a(a), and K.A.R. 47-5-5a(b), Civil penalties; K.A.R. 47-5-5a(c), (2)(A)(ii), (c)(4)(A), (c)(1)(C), and (c)(2)(C), Review of proposed assessments of civil penalties; K.A.R. 47-5-5a(c)(5), Burden of proof in civil

penalty proceedings; K.A.R. 47-5-5a(c)(7)(D), Initial order of the presiding officer; K.A.R. 47-5-51(c)(8), Appeals; K.A.R. 47-6-7(e) and (h)(2), Permit suspension or revocation; K.A.R. 47-6-8, Termination of jurisdiction; adoption by reference; K.A.R. 47-9-1(c)(36), Backfilling and grading: Thin overburden and K.A.R. 47-9-1(c)(37), Backfilling and grading: Thick overburden; K.A.R. 47-9-1(d)(47)-(50), Permanent program performance standards—underground mining; K.A.R. 47-9-1(f)(2), Applicability; K.A.R. 47-15-1a(a)(1), Inspections by State regulatory authority; K.A.R. 47-15-1a(a)(6), (a)(12), and (b), Inspection and enforcement, the following revisions to the Kansas Administrative regulations (K.A.R.) submitted to OSM on June 29, 1989, as revised on November 20, 1989, June 29, 1990, and October 9, 1990, are approved effective September 13, 1991.

K.A.R. 47-1-1, Title.  
 K.A.R. 47-1-3, Communication.  
 K.A.R. 47-1-4, Sessions.  
 K.A.R. 47-1-8, Petitions to Initiate Rulemaking.  
 K.A.R. 47-1-9, Notice of Citizen Suits.  
 K.A.R. 47-1-10, General Notice Requirement.  
 K.A.R. 47-1-11, Permittee Preparation and Submission of Reports.  
 K.A.R. 47-2-14, Complete and Accurate Application Defined.  
 K.A.R. 47-2-21, Employee Defined.  
 K.A.R. 47-2-53, Regulatory Authority or State Regulatory Authority Defined.  
 K.A.R. 47-2-87, Surety Bond Defined.  
 K.A.R. 47-2-75, Definitions—Adoption by Reference.  
 K.A.R. 47-3-1, Application for Mining Permit.  
 K.A.R. 47-3-2, Application for Mining Permit—Adoption by Reference.  
 K.A.R. 47-3-3a, Application for Mining Permit—Maps.  
 K.A.R. 47-3-42, Application for Mining permit—Adoption by Reference.  
 K.A.R. 47-4-14a, Administrative Hearing Procedure.  
 K.A.R. 47-4-15, Administrative Hearings, Discovery.  
 K.A.R. 47-4-16, Interim Orders for Temporary Relief.  
 K.A.R. 47-4-17, Administrative Hearings, Award of Costs and Expenses.  
 K.A.R. 47-5-5a, Civil Penalties—Adoption by Reference.  
 K.A.R. 47-5-16, Civil Penalties—Final Assessment and Payment of Civil Penalties.  
 K.A.R. 47-6-1, Permit Review.  
 K.A.R. 47-6-2, Permit Revision.  
 K.A.R. 47-6-3, Permit Renewals—Adoption by Reference.  
 K.A.R. 47-6-4, Permit Transfers, Assignments, and Sales—Adoption by Reference.  
 K.A.R. 47-6-6, Permit Conditions—Adoption by Reference.  
 K.A.R. 47-6-7, Permit Suspension or Revocation.  
 K.A.R. 47-6-8, Termination of Jurisdiction—Adoption by Reference.

K.A.R. 47-6-9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction—Adoption by Reference.  
 K.A.R. 47-6-10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals—Adoption by Reference.  
 K.A.R. 47-7-2, Coal Exploration—Adoption by Reference.  
 K.A.R. 47-8-9, Bonding Procedures—Adoption by Reference.  
 K.A.R. 47-8-11, Use of Forfeited Bond Funds.  
 K.A.R. 47-9-1, Performance Standards—Adoption by Reference.  
 K.A.R. 47-9-2, Revegetation.  
 K.A.R. 47-9-4, Interim Program Performance Standards—Adoption by Reference.  
 K.A.R. 47-10-1, Underground Mining—Adoption by Reference.  
 K.A.R. 47-11-8, Small Operator Assistance Program—Adoption by Reference.  
 K.A.R. 47-12-4, Lands Unsuitable for Surface Mining—Adoption by Reference.  
 K.A.R. 47-13-4, Training and Certification of Blasters—Adoption by Reference.  
 K.A.R. 47-13-5, Responsibilities of Operators and Blasters-in-Charge.  
 K.A.R. 47-13-6, Training Program.  
 K.A.R. 47-14-7, Employee Financial Interest—Adoption by Reference.  
 K.A.R. 47-15-1a, Inspection and Enforcement—Adoption by Reference.  
 K.A.R. 47-15-3, Lack of Information; Inability to Comply.  
 K.A.R. 47-15-4, Injunctive Relief.  
 K.A.R. 47-15-7, State Inspections.  
 K.A.R. 47-15-8, Citizen's Request for State Inspections.  
 K.A.R. 47-15-15, Service of Notices of Violation and Cessation Orders.  
 K.A.R. 47-15-17, Maintenance of Permit Areas.

3. Section 916.16 is amended by adding paragraph (b) to read as follows:

**§ 916.16 Required program amendments.**

\* \* \* \* \*

(b) By November 12, 1991, Kansas shall amend its program as follows:

(1) At K.A.R. 47-2-14 by removing the proposed definition for "complete and accurate application" at K.A.R. 47-2-14.

(2) At K.A.R. 47-2-75(a) by renumbering the subsections so that there are not two different subsections numbered (5), and by requiring at K.A.R. 47-2-75(a)(6) that the appropriate subsections of K.A.R. 47-14-7 (adopting by reference portions of 30 CFR part 705) be included in the list of rules wherein the term "Director" refers to the Director of OSM.

(3) At K.A.R. 47-2-75(d)(6) by removing proposed K.A.R. 47-2-75(d)(6).

(4) At K.A.R. 47-3-42(a)(2) and (a)(43) by clarifying that the term Act, as used in K.A.R. 47-3-42(a)(2) and 47-3-42(a)(43), means SMCRA.

(5) At K.A.R. 47-3-42(a)(9) by requiring Kansas to expand its substitution to include K.A.R. 47-3-42 (18) to (35), inclusive.

(6) At K.A.R. 47-3-42(a)(40) by clarifying that proximity may not be the decisive factor in deciding to regulate an off-site processing plant.

(7) At K.A.R. 47-4-14a(c)(1) by requiring that hearings locations are selected in accordance with K.A.R. 47-4-14a(c)(1) unless the Kansas Act requires otherwise.

(8) At K.A.R. 47-4-14(c)(7) by replacing the word "shall" with the word "may" in the phrase "shall petition for leave to intervene in a proceeding" and by making changes necessary so that the standards for intervention are no more strict than those required by the Federal regulations at 43 CFR 4.1110.

(9) At K.A.R. 47-4-14a(c)(8) by replacing the word "shall" with the word "may" in the phrases "shall withdraw it by moving to dismiss" and "shall grant such a motion".

(10) At K.A.R. 47-4-14a(c)(11) by replacing the word "shall" with the word "may" in the phrases "shall waive such a right" and "shall be deemed to have waived his right" and by requiring that a hearing will be held unless all parties to a proceeding who are entitled to a hearing waive their right to a hearing.

(11) At K.A.R. 47-4-14a(d) by removing the phrase "except as otherwise provided by subsections (e), (f), and (g)."

(12) At K.A.R. 47-4-14a(d)(2) by replacing the word "shall" with the word "may" in the sentence "Any party shall petition for the disqualification of a person promptly after receipt of notice \* \* \*," and by providing the petitioning party the right to have an independent review of the disqualification determination.

(13) At K.A.R. 47-4-14a(d)(3) by replacing the word "shall" with the word "may" in the sentence "The presiding officer designated to conduct the hearing shall conduct a prehearing conference" and by correcting the citation at K.A.R. 47-4-14a(d)(3)(A).

(14) At K.A.R. 47-4-14a(d)(4) and (d)(5) by removing paragraph K.A.R. 47-4-a(d)(4)(G) and (d)(5)(B)(i) from its program.

(15) At K.A.R. 47-4-14a(d)(6)(A), (C)(iv), (C)(vii), and (E) by correcting the typographical errors, and by specifying where subsections (i) through (iv) come from.

(16) At K.A.R. 47-4-14a(d)(7) by providing a complete sentence at K.A.R. 47-4-14a(d)(7)(C).

(17) At K.A.R. 47-4-14a(d)(10)(D) and (E) by removing the provision for the holding of hearings by telephone conference and by replacing the word "shall" with "may" in the phrase "shall

cause a person other than the state agency to prepare a transcript \* \* \*." Kansas is further required to amend its program at K.A.R. 47-4-14a(d)(5)(B)(vii) by removing the phrase "and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person[.]"

(18) At K.A.R. 47-4-14a(d)(14)(I) by including the term "thereto" in the sentence "[t]he agency head shall cause copies of the final order \* \* \* to be served on each party in the manner prescribed by subsection (18) and amendments thereto."

(19) At K.A.R. 47-4-14a(d)(15) by replacing the word "shall" with the word "may" in the sentence "A party shall submit to the presiding officer or agency head a petition for stay of effectiveness \* \* \*."

(20) At K.A.R. 47-4-14a(d)(16)(A) by replacing the word "shall" with the word "may" in the phrase "shall file a petition for reconsideration with the agency head."

(21) At K.A.R. 47-4-14a(d)(17) by removing K.A.R. 47-4-14a(d)(17)(C).

(22) At K.A.R. 47-4-14a by removing the proposed rules at K.A.R. 47-4-14a(e), (f), and (g).

(23) At K.A.R. 47-4-15(a), (c), (1)(7), and (m)(3)(C) by not requiring that all requests for discovery be made in writing to the presiding officer, and to correct typographical errors.

(24) At K.A.R. 47-5-5a(a) and (b) by correcting editorial errors and replacing the noted Federal terms and citations with the appropriate State terms and citations.

(25) At K.A.R. 47-5-5a(c) by changing the word "procedure" to "procedures" and the Kansas citation "K.A.R. 47-4-14" to "K.A.R. 47-4-14a;" at K.A.R. 47-5-5a(c)(2)(A)(ii) by completing the Kansas citation and by correcting the reference to 30 CFR part 723 to K.A.R. 47-5-5a(b)(1) through (b)(9) (adopting by reference 30 CFR part 845); at K.A.R. 47-5-5a(c)(4)(A) by changing the citation to "subsection (b)(6);" and at K.A.R. 47-5-5a(c)(1)(C) and (c)(2)(C) by providing the correct statutory citation.

(26) At K.A.R. 47-5-5a(c)(5) by requiring that the ultimate burden of persuasion as to the fact of the violation be placed with the person who petitioned for review.

(27) At K.A.R. 47-5-5a(c)(7)(D) by reducing the time period in which any increase in penalty must be paid to 15 days.

(28) At K.A.R. 47-5-5a(c)(8) by correcting the citation from "K.A.R. 47-4-14(d)(14) or (16)" to "K.A.R. 47-4-14a(14) or (16)."

(29) At K.A.R. 47-6-1 by allowing the regulatory authority to order reasonable

revisions or modifications of permits at any time.

(30) At K.A.R. 47-6-7(e) and (h)(2) by providing the correct cross-references to the procedures to be followed for proceedings to suspend or revoke a permit.

(31) At K.A.R. 47-8-9(a) by removing from adoption by reference at 30 CFR 800.5, the definition for the term "self-bond."

(32) At K.A.R. 47-9-1(a) by deleting the adoption by reference of 30 CFR 810.2 and by replacing the Federal terms and citations with the appropriate State terms and citations as described in finding no. 46.

(33) At K.A.R. 47-9-1(b), (c), (d), (e), (f), (g), and (h) by making the editorial change necessary to clarify whether it intends to adopt all of parts 815, 816, 817, 819, 823, 827, and 828 or only the sections listed.

(34) At K.A.R. 47-9-1(a) and (d) by not replacing the term "subchapter" with (1) the phrase "K.A.R. 47-9-1(a)" at 30 CFR 816.61(c)(1) and (2) the phrase "K.A.R. 47-9-1(d)" at 30 CFR 817.61(c)(1).

(35) At K.A.R. 47-9-1(c)(35) by removing from the adoption by reference of 30 CFR 816.102 the references to 30 CFR 785.14 and .16.

(36) At K.A.R. 47-9-1(c)(36) and (37) by providing objective formulae for defining thin and thick overburden.

(37) At K.A.R. 47-9-1(c)(42) by removing the direction to delete editorial note "3" and by indicating the practices to be approved by the regulatory agency must also have been (or must be) approved in advance by OSM in accordance with 30 CFR 732.17, and 816.116(c)(4).

(38) At K.A.R. 47-9-1(d)(47) through (50) by correcting the typographical error at K.A.R. 47-9-1(d)(47)-(50) by changing the adopted Federal regulation prefixes from 30 CFR 816 to 30 CFR 817.

(39) At K.A.R. 47-9-1(f)(2) by requiring that prime farmland occupied by all coal preparation plants, support facilities and roads that are a part of the surface mining activities must meet the applicable prime farmland performance standards.

(40) At K.A.R. 47-12-4(a)(6) by either deleting subsection (b) from adoption by reference or, if retained, by indicating that the term "Secretary" means Secretary of the Interior, not the secretary of the Kansas Department of Health and Environment.

(41) At K.A.R. 47-13-4 by removing K.A.R. 47-13-4(b)(2) and (b)(3).

(42) At K.A.R. 47-15-1a(a)(6), (a)(12), and (b) by either adopting 30 CFR 842.12 or replacing it with an appropriate State counterpart, and by adding three additional Federal terms, "section

518(e), 518(f), 521(a)(4) or 521(c) of the Act", "Act", and "Director" to the list of terms that need to be replaced with appropriate State terms.

[FR Doc. 91-21859 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-05-M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 211 and 217

RIN 0596-AB10

#### Requesting Review of National Forest Plans and Project Decisions; Legal Notice of Decisions

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule; technical amendment and correction.

**SUMMARY:** This final rule corrects and makes a technical amendment to the final rule requiring legal notice of decisions subject to appeal under 36 CFR part 217, which was published February 6, 1991, at 56 FR 4914 and removes the appeal regulations at 36 CFR 211.17 governing appeals of timber sales returned or defaulted on National Forests pursuant to the Federal Timber Contract Payment Modification Act of 1984.

**EFFECTIVE DATE:** This correction is effective September 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Hauser, National Forest System Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1346.

**SUPPLEMENTARY INFORMATION:** On February 6, 1991, at 56 FR 4914, a final rule governing how the Forest Service is to give legal notice of decisions affecting National Forest System plans and projects, subject to administrative appeal under 36 CFR part 217, was published. In reviewing the published rule, the Forest Service has discovered technical errors and omissions in the amendments to 36 CFR part 217.

Accordingly, the rules at 36 CFR part 217 are being amended as follows:

#### *Section 217.12 Resolution of Issues*

The final rule inadvertently removed the provision of paragraph (a) constraining the Reviewing Officer from participating in resolution efforts. Therefore, the rule is amended to reinstate this provision.

**Section 217.19 Applicability and Effective Date**

The final rule inadvertently omitted a revision of this section to clearly articulate that it applied to appealable decisions published on or after February 6, 1991. Therefore, the final rule is amended to specify this.

**Section 217.20 Special procedures Applicable to Appeals of Certain Timber Sales in Oregon and Washington**

The provisions in this section have expired as they only applied to timber sale decisions made after October 23, 1989, and prior to October 1, 1990 (§ 217.20(e)). The need to revise this section was overlooked at the time of the final rule revision. Therefore, in the interest of having only the current applicable sections published, the rule is amended to remove this section.

**36 CFR 211.17**

The Federal Timber Contract Payment Modification Act of 1984 (FTCPMA) (16 U.S.C. 618; Pub. L. 98-478) allowed purchasers of timber sale contracts on National Forests the opportunity to buy out of a certain volume of timber under qualifying timber sale contracts and directed that timber from returned or defaulted timber sales be given preference for resale in the Forest Service timber sale program.

In October 1986, Congress provided specific direction in section 320 of the Appropriations Act for Fiscal Year 1987 (Pub. L. 99-951) that the reoffered sales would be subject to only one level of administrative appeal and that any such appeal must be resolved within 90 days of receipt. As a result, the Department promulgated rules at 36 CFR 211.17 (53 FR 13263, April 22, 1988) governing appeals of timber sales returned or defaulted on National Forests pursuant to FTCPMA.

Since that time, new rules revising Departmental policies and procedures by which individuals or groups may appeal decisions made by Forest Service officials concerning the management of the National Forest System have been promulgated at 36 CFR part 217 (54 FR 3342, January 23, 1989). When that rule was finalized, a conforming amendment to delete the separate appeal process at 36 CFR 211.17 was not done because the Forest Service was still processing returned or defaulted timber sales pursuant to the FTCPMA and it was thought that the rule would "die its own death" when the last returned or defaulted timber sale pursuant to FTCPMA was processed. However, this has not been the case. Instead, having

both 36 CFR 211.17 and 36 CFR part 217 is causing confusion to both the agency and the public because the Forest Service routinely processes defaulted timber sales (although not pursuant to FTCPMA) and it is not clear which rule applies in case of an appeal.

It is clear in the preamble to the final rule that 36 CFR 211.17 applied only to those timber sales returned or defaulted pursuant to FTCPMA. Therefore, as all valid timber sales that were subject to appeal under 36 CFR 211.17 have been processed, a conforming amendment to part 211 to delete 36 CFR 211.17 is made.

**Regulatory Impact**

This technical rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of \$100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

**Environmental Impact**

This action is a technical correction of the rules, is necessary to correct technical errors and omissions in the amendment to 36 CFR part 217, and does not represent a change in Agency policy or intended procedures. Because of its technical nature, this final rule will not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

**Controlling Paperwork Burdens on the Public**

This technical rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

**List of Subjects in 36 CFR Parts 211 and 217**

Administrative practice and procedure, National forests.

**PART 211—ADMINISTRATION [AMENDED]**

1. The authority citation for part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

**Subpart B—Appeal of Decisions Concerning the National Forest System [Amended]**

2. Add a new paragraph (q) to § 211.17 to read as follows:

**§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.**

(q) Applicability and effective date. The procedures of this section shall not apply to any decision signed on or after September 13, 1991.

**PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS**

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

Authority: 16 U.S.C. 551, 472.

2. Revise paragraph (a) of § 217.12 to read as follows:

**§ 217.12 Resolution of issues.**

(a) When a decision is appealed, appellants or intervenors may request meetings with the Deciding Officer to discuss the appeal, either together or separately, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. Reviewing Officers may, on their own initiative, request the Deciding Officer to meet with participants to discuss the appeal and explore opportunities to resolve the issues. However, Reviewing Officers may not participate in such discussions. At the request of the Deciding Officer, or on their own initiative, Reviewing Officers may extend the time periods for review to allow for conduct of meaningful negotiations. Such extensions may occur only after the time period for intervention and for the Deciding Officer to transmit the decision documentation has elapsed. In granting an extension, the Reviewing Officer must establish a specific time period for the conduct of negotiations.

2. In § 217.19, revise paragraph (a) to read as follows:

**§ 217.19 Applicability and effective date.**

(a) The appeal procedures established in this part apply to all appealable

decision documents published on or after February 6, 1991.

\* \* \* \* \*

§ 217.20 [Removed]

3. Remove § 217.20.

Dated: September 6, 1991.

George M. Leonard,

Associate Chief, Forest Service.

[FR Doc. 91-22097 Filed 9-12-91; 8:45 am]

BILLING CODE 3410-11-M

## POSTAL SERVICE

### 39 CFR Part 111

#### Eligibility Requirements for Certain Special Bulk Rate Third-Class Mail

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This notice adopts a proposed rule which was published with an invitation to comment in the *Federal Register* on March 19, 1991. It amends the regulations of the Postal Service governing the eligibility requirements for mail to be sent at the special bulk third-class rates of postage, and the administration of these requirements. The purpose in amending the regulations is to implement new subsections (j) and (k) of 39 U.S.C. 3626, signed into law as part of the 1991 Postal Service Appropriations Act on November 5, 1990.

**EFFECTIVE DATE:** September 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jerome M. Lease, Office of Classification and Rates Administration, U.S. Postal Service, at (202) 268-5188.

**SUPPLEMENTARY INFORMATION:** The purpose of this rulemaking is to implement the provisions in 39 U.S.C. 3626 (j) and (k), which were enacted on November 5, 1990, as part of the Postal Service Appropriations Act of 1991 (Pub. L. 101-509, title II). Proposed rules were published on March 19, 1991. 56 FR 11537. The deadline for submitting comments on the proposal was April 18, 1991, but was extended until May 20, 1991, at the request of parties who expressed interest in providing comments. All comments received have been considered, including one which was received several days after the May 20 deadline.

The Postal Service received a total of 30 comments on the proposed rule. A number of commenters expressed their support for the intent of the legislation and the Postal Service's efforts to restrict commercial uses of special bulk third-class mail, some suggesting the need to restrict further what may be

mailed at the special bulk third-class rates. Other expressed concerns that the new rules as proposed may go too far, hindering the legitimate fundraising efforts of nonprofit organizations, or exceeding the expressed intent of Congress as stated in the legislation on which the proposed regulations are based.

In the establishment and administration of eligibility requirements for special bulk third-class matter, the Postal Service adheres to the expressed intent of Congress. The mail which is eligible for the special rates is matter specified by Congress for that privilege, and Congress appropriates funds to subsidize those rates. 39 U.S.C. 2401(c), 3626(a). Accordingly, the goal of the Postal Service is to accept at the special rates only the matter identified by Congress as eligible for those rates, while denying those rates to matter which has not been identified as entitled to the subsidy.

Accordingly, arguments that the Postal Service should have gone further in its rulemaking, e.g., prohibit mailings of all solicitations at the special rates, are misplaced here. The Postal Service seeks only to implement the policies set out by Congress, and will accept mail at the special rates as long as Congress appropriates funds to subsidize that matter. Similarly, assertions that the statutes are too restrictive cannot govern Postal Service actions. If Congress restricts the types of matter it chooses to subsidize, the Postal Service must administer the rates in accordance with what desire. Thus, the issue here is the implementation of rules which adhere to the eligibility requirements set out by Congress, rather than the implementation of standards, however desirable one may argue them to be, that are beyond or outside of those laws.

Approximately half of the 30 commenters expressed as a general theme an objection to the Postal Service's statement in the proposal that it considers the new regulations to be supplementary to existing regulations which prohibit improper cooperative mailings at the special bulk third-class rates.

Referring to arrangements where the vendor or other for-profit organization bears some or all of the "risk" in a travel or insurance program, these commenters assert that, with respect to such programs, the continued use of established criteria for determining eligibility of mail matter to be sent at the special rates is not in accordance with the desires of Congress. Accordingly, the commenters assert that the Postal Service should consider only the new criteria expressly stated in the new law

in determining whether a mailing involving either travel or insurance programs is eligible for the special rates.

After careful review of the comments and the legislation, the Postal Service remains of the opinion that the new rules are supplementary to the existing rules that a qualified nonprofit organization may mail only its "own" matter at the special rates, and may not send matter "in behalf of or produced for" an ineligible person or organization. These criteria have been upheld in Federal court as a valid rule limiting the use of the special rates to the material Congress intended to subsidize under 39 U.S.C. 3626. *National Retired Teachers Association v. United States Postal Service*, 593 F.2d 1360 (DC Cir. 1979), *affirming* 430 F. Supp. 141 (D.D.C. 1977). Indeed, the district court noted that these common sense restrictions prevent a nonprofit organization from acting as the special-rate mailing agent of a commercial enterprise, and stated that the failure to stop such practices "would have been an egregious breach of (the Postal Service's) statutory duty." 430 F. Supp. at 147. Nothing in the text or history of new section 3626(j) appears to be at odds with these existing criteria. Significantly, the legislation does not amend the existing subsections that were the basis for those rules, or provide any indication that the rules would not apply to certain mailings. Instead, the legislation simply added a further restriction to the existing laws, in the form of new subsection (j). The Service also notes as additional support of its position, that the Postal Rate Commission in its Report To The Congress: Third-Class Nonprofit Mail Study, PRC Docket No. SS91-1 (July 8, 1991), stated, at page 30 of that Report, that "we fully agree with the Service's position that the new regulations supplement longstanding postal regulations restricting cooperative mailings."

Consequently, the final rule which is adopted here will be considered by the Postal Service to be supplementary to existing regulations. However, the Postal Service intends to make further efforts to educate mailers concerning these regulations. Further comments concerning these matters are provided below in conjunction with the explanation regarding section 625.522.

A second general theme found in many of the comments concerned a perception that the Postal Service has authorized "the use of administrative subpoenas" and subjected mailers to penalties which were not contemplated by the enabling legislation. Concerns were expressed that the Postal Service

should demonstrate "reasonable grounds" before requiring mailers to furnish files and records, and that a time frame should be established before "overly harsh consequences are invoked."

Rules requiring mailers to provide the documents needed to determine eligibility for special rates, and establishing sanctions for failing to do so, are necessary for the administration of mail classification provisions, including the provisions concerning special bulk third-class rates. These provisions are well within the general authority granted to the Postal Service. See, e.g., 39 U.S.C. 401(2), (10), 403(a), (c), 404(a)(2). The provisions questioned here are largely patterned after existing rules which permit the Postal Service to seek necessary information from mailers, and provide sanctions for any failure to provide the requested information. See, e.g., DMM 148.2, 423.162, and 626.33. The Postal Service is not aware of any serious uncorrected incidents of abuse of these provisions, nor does it expect such abuses to occur. Each of these provisions requires the exercise of sound administrative discretion, and the Postal Service expects its mail classification officials to use good judgment in utilizing all of these provisions. Thus, it expects that mailers will be given adequate time to respond to requests, and that before any sanctions are levied, mailers will be warned of the need to supply the requested information and the consequences of a refusal. Sanctions will not be imposed on the mailer in circumstances where information cannot be supplied for reasons beyond the mailer's control. Finally, while the Postal Service expects that the reasons underlying information requests will generally be obvious, there is no reason why mailers cannot request, and receive, an explanation why a request has been made where the purpose is not as apparent.

Seven commenters were concerned with regard to the treatment of "space advertisements" in periodicals and other publications produced by authorized nonprofit organizations, in view of the ban on special bulk third-class rates being used for the entry of material which "advertises, promotes, offers, or for a fee or consideration, recommends, describes, or announces the availability of" certain financial, travel, and insurance programs. As discussed above, the Postal Service believes that it has little discretion to decide what may be mailed at the special rates. The new statute explicitly prohibits certain types of advertisements from being mailed at

the special bulk third-class rates. While it enacts certain exceptions, as set forth in new section 3626(j)(2), there is no exception made for space advertisements. The Postal Service notes too that such an exception was contained in early drafts of the statute, but was excluded from the statute as enacted. Accordingly, while the arguments made may have some logical appeal, the Postal Service must follow the standard set forth in the statute. Therefore, with the exception of permissible references under new section 625.523, advertisements for materials prohibited from the special rates under § 625.522, including space advertisements, will not be allowed in periodicals and other publications mailed at the special bulk third-class rates by authorized nonprofit organizations.

After giving full consideration to the comments received, the Postal Service believes it is appropriate to adopt, with minor revisions, the proposed changes in eligibility requirements at this time. As explained below, however, some sections of the new regulations will require further rulemaking in order to clarify their intent. Such rulemaking will follow shortly after the publication of these final rules. Further, the Postal Service has determined that the public interest requires that these regulations be effective immediately. The rules are necessary to implement a statute, which was intended to reduce the level of appropriations for revenue forgone. The Postal Service believes that there is little danger of surprise or prejudice to mailers in these final rules, since they are based on statutory provisions and the Postal Service provided an extended period for comments. Finally, the Postal Service understands that some mailers have been reluctant to submit mailings at the special rates until final rules are adopted. The immediate implementation of these rules should benefit these mailers.

#### **Evaluation of Comments Received Regarding Specific Sections of the Proposed Regulations**

##### *Section 148.2 Appeal of Ruling (Revenue Deficiency)*

There were no specific comments regarding the proposed change to this section, although one comment favored the new provisions of related section 625.526, which provides an additional level of administrative review on appeals of revenue deficiency assessments under DMM 625.

##### *Section 625.522 Nonpermissible Mailings*

As described above, some of the comments asserted that, with respect to travel and insurance advertising, the Act's restrictions replace the test set forth in the cooperative mailing rules. (Since the Act and this new section prohibit entirely credit card advertising at the special rates, the application of current rules is moot.)

Regarding the application of the cooperative mailing rule, other commenters objected to considering which party bears the commercial or financial "risk" in the venture supported by the mailing.

For the reasons previously explained, the Postal Service reaffirms its view that the new rules supplement existing regulations. The Service stresses, however, that any understanding that the Postal Service would invariably consider a mailing ineligible for special rates if a for-profit entity incurs any of the "risk" in a venture supported by the mailing improperly interprets past postal rulings. The allocation of commercial or financial "risk" in a venture is an extremely useful, but not necessarily a fool-proof, way to distinguish between a mailing which promotes a nonprofit organization's own activity, and one which is merely sent on behalf of a for-profit enterprise. These decisions are made on a case-by-case basis, with each turning on its particular facts. It is conceivable, depending upon the circumstances of a case, that a finding that a for-profit entity incurs "risk" in a venture would not prohibit matter from being mailed at the special rates. For example, to use a hypothetical suggested by some commenters, a travel mailing would not become ineligible for the special rates simply because a travel vendor added the nonprofit organization making the mailing to its general liability policy (presumably, thereby incurring risk). Depending of course on the remaining circumstances, this fact, in and of itself, would not necessarily demonstrate that the mailing was ineligible for the special rates. However, the Postal Service intends to make further efforts to educate mailers concerning these regulations.

One commenter proposed adding punctuation and numbers to section 625.522(c) in order to clarify the intent of that section. We believe that such changes are not necessary and should not be adopted. It was also suggested that clarifying language might be added if, as this commenter understood, this section would not prohibit mere mention in newsletters, publications, etc., of such

travel as day trips to theatres and shopping excursions for the benefit of members. The Postal Service believes that this additional clarification is not needed since new section 625.523 will make clear that some references to travel will not, in and of themselves, disqualify materials mailed at the special rates.

A number of commenters asserted that provisions of section 625.522(b) need to be clarified to define examples of eligible insurance mailings where it is determined that the "coverage provided by the policy is not generally otherwise commercially available." The Service agrees that further rules may be useful to clarify this area and will not follow this rule with a new rulemaking which will attempt to define eligible insurance mailings.

#### *Section 625.523 Permissible References to Commercial Products or Organizations*

Four commenters expressed concern that the wording of this section of the proposed regulations is vague or "too narrowly drawn" to comply with Congress' intentions. The final rule follows more closely the wording of the Act. The changes entail two specific areas and in each case the Postal Service has concluded that the eliminated language was unnecessary. First, the Postal Service eliminated the reference which limited the applicability of the section to cases arising under new section 625.522. The new rule states that a mailing will not be held cooperative solely on the basis of the specified references, but does not preclude consideration of such references along with other evidence in the course of such a decision. Since this rule essentially codifies past practice with respect to decisions under the existing cooperative mailing rule, it is unnecessary, if not confusing, to limit the applicability of section 625.523 to cases arising out of 625.522. Second, the Postal Service eliminated the use of the term "incidental reference" as a measurement of the amount of material subject to the exception. The statute and the final rule ensure that the publication of specified references will not be the primary objective of the mailers through consideration whether the piece is "primarily devoted" to that material.

#### *Section 625.524 Evidence*

Fourteen commenters expressed a view that new section 625.524 gives the Postal Service "excessive and unregulated subpoena authority" to obtain records and files from nonprofit mailers. Some believed that without a "show cause" requirement, there would

exist a potential for the harassment of nonprofit organizations. Several of these commenters were concerned about wording in the new section which would indicate that a nonprofit organization might be required to "cause evidence held by another party to be furnished to the Postal Service." Another concern was that the Postal Service exceeded its legislative mandate by including language in the regulation indicating that a nonprofit organization's authorization to mail at the special rates could be revoked for failure to furnish or cause to be furnished information requested in support of a mailing sent at the special rates.

The Postal Service has previously explained its conclusion that the proposed provisions are in accordance with general authority granted to the Postal Service and should be adopted. Moreover, the Service again emphasizes that sound judgment will be exercised in the administration of this authority, much as is done in conjunction with similar authority in other classification procedures.

There are two aspects of the proposed rule which build upon existing regulations. The first is the requirement that permitholders cause relevant evidence held by another party to be furnished to the Postal Service upon request. The Postal Service considers this requirement to be eminently reasonable. The mailings in issue are generally made in connection with one or more other parties. Moreover, relevant evidence concerning the permitholder may be held by the Internal Revenue Service or other organizations. Postal Service efforts to ensure that only eligible matter is mailed at the special rates would be hindered if evidence could be shielded merely by "parking" it with a party other than the permitholder. This rule requires permitholders to make a good faith effort to cause such evidence to be turned over to the Postal Service.

Revoking a permitholder's authorization for failure to provide information also expands upon existing rules, but is reasonable in the view of the Postal Service. The Service's fulfillment of its statutory duties requires reviewing the eligibility of matter to be mailed at the special rates. If an organization continuously thwarts such efforts, by refusing to provide evidence or cause others to do so, and thereby deprives the Postal Service of the means to determine whether its matter is eligible to be mailed at the special rates, it is appropriate to deny the organization the future use of such rates. As explained previously, the

Postal Service intends to utilize sound discretion in administering these rules. This will ensure that mailers are not punished for actions of others that are beyond their control, that mailers are aware of the consequences of refusing to provide information and are given adequate time to comply, and that revocation will be used only where no other remedy is adequate.

#### *Sections 625.525, 625.526, and 625.527*

Four commenters specifically discussed sections 625.525, .526, and .527. One suggests that the Postal Service lacks statutory authority to hold parties, other than the nonprofit organizations making the mailings, liable for deficiencies caused by an ineligible mailing sent at the special rates. Two commenters were concerned that the new regulations may be used to hold commercial firms responsible for deficiencies incurred as a result of mailings. One suggests that the Postal Service must ensure due process is afforded third-party organizations which might be held liable for a deficiency under these sections. The other believes that this provision is "grossly unfair." As stated above, the new statute (39 U.S.C. 3626(k)(2)), permits assessments against any person or organization that mailed, or caused to be mailed, ineligible matter at the special rates. No exception is made for commercial organizations. Nevertheless, the Postal Service notes that all parties assessed under these rules, including commercial firms, are entitled to the same procedures including an initial assessment and appeal procedures. The Postal Service notes the new additional level of administrative review on appeals in these cases, and believes that this will help to ensure that a nonprofit organization or a commercial firm against which a cooperative mailing deficiency is assessed will have an adequate opportunity to present its arguments.

Finally, the Postal Service is urged by one commenter to use "discretion" invoking the authority expressed in new section 625.527 to collect unpaid deficiencies after administrative appeals have been exhausted. The Postal Service intends to exercise such discretion. Indeed, the regulation requires that the authority not be used for at least 30 days in order to provide the party an opportunity to pay the assessment. Nevertheless, it must be emphasized that the Postal Service has a duty to collect all debts owed to it, and will utilize the authority set forth in section 625.527 when necessary. This commenter also was concerned that

625.527 was constructed in such a way that the Postal Service may reach back further than Congress intended when accessing postage accounts. The Postal Service believes that Congress clearly intended to allow the Postal Service to use the specified procedures to collect twelve months' worth of debts owed on cooperative mailings if other administrative remedies have been exhausted but a deficiency remains unpaid. This should not be defeated by the need to collect evidence to assess the deficiency and decide appeals, particularly since the mailer may be able to slow that process by delaying to provide requested information.

#### List of Subjects in 39 CFR Part 111

Postal Service.

In view of the reasons discussed above, the Postal Service hereby adopts, with revisions, the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

#### PART 111—[AMENDED]

1. The authority citation for 39 CFR 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.

2. Parts 148 and 625 of the Domestic Mail Manual are revised to read as follows:

#### PART 48—REVENUE DEFICIENCY

\* \* \* \* \*

148.2 Appeal of Ruling Except as provided in 625.526, a mailer may appeal a ruling assessing a revenue deficiency by filing a written appeal, within 15 days of receipt of the ruling, with the general manager, rates and classification center (RCC), for the entry post office. [REMAINDER OF TEXT UNCHANGED]

\* \* \* \* \*

#### PART 625—ADDITIONAL CONDITIONS FOR SPECIAL BULK RATES ELIGIBILITY

\* \* \* \* \*

##### 625.5 What May be Mailed

\* \* \* \* \*

##### 625.52 Cooperative Mailings

625.521 General. Cooperative mailings may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings involving the mailing of any

matter in behalf of or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. If a mailer disagrees with a postmaster's decision that the regular rate of postage applies to a particular mailing, it may appeal the decision in accordance with 133. (See Form 3602–N, *Statement of Mailing with Permit Imprints*, or Form 3602–PC, *Statement of Mailing with Meter or Precanceled Postage Affixed*, for the certifications required of special bulk-rate mailers for mailings made under this section.)

625.522 Nonpermissible Mailings. Except as provided in 625.523, special bulk third-class rates shall not be used for the entry of material which advertises, promotes, offers, or for a fee or consideration, recommends, describes, or announces the availability of any of the following:

a. Any credit, debit, or charge card or similar financial instrument or account, provided by or through an arrangement with any person or organization not authorized to mail at the special bulk third-class rates at the entry post office.

b. Any insurance policy, unless the organization which promotes the purchase of such policy is authorized to mail at the special bulk rates at the entry post office; the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization; and the coverage provided by the policy is not generally otherwise commercially available.

c. Any travel arrangement, unless the organization which promotes the arrangement is authorized to mail at the special bulk rates at the entry post office; the travel contributes substantially (aside from the cultivation of members, donors, or supporters, or the acquisition of income or funds) to one or more of the purposes which constitute the basis for the organization's authorization to mail at the special bulk rates; and the arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization.

625.523 Permissible Reference to Commercial Products or Services, and Organizations or Individuals

An authorized nonprofit organization's material will not be disqualified from being mailed at the special rates solely because that material contains, but is not primarily devoted to:

a. Acknowledgments of organizations or individuals who have made donations to the authorized organization; or

b. References to and a response card or other instructions for making inquiries concerning services or benefits available as a result of membership in the authorized organization, provided that advertising, promotional, or application materials specifically concerning such services or benefits are not included.

625.524 Evidence. Upon request, an organization authorized to mail at the special bulk rates shall furnish evidence to the Postal Service, or cause evidence held by another party to be furnished to the Postal Service, concerning the eligibility of any of its mail matter or mailings to be sent at those rates. Any failure to furnish evidence necessary for a ruling on the eligibility of matter to be sent at the special rates, or to cause such evidence to be furnished, will be a sufficient basis for a finding that the matter is not eligible for the special rates, as well as for the revocation of the organization's authorization to mail at the special rates.

625.525 Other Restrictions. No person or organization shall mail, or cause to be mailed by contractual agreement or otherwise, any ineligible matter at the special rates.

625.526 Revenue Deficiency and Appeal Procedure. A revenue deficiency may be assessed in the amount of the unpaid postage against any person or organization that mailed, or caused to be mailed, ineligible matter at the special bulk third-class rates in violation of 625.525. That party may appeal the decision in writing within 30 days to the postmaster at the post office where the mailing was entered. The postmaster will forward the appeal to the general manager of the rates and classification center (RCC) (see 132), who will issue the initial agency decision on the appeal. The decision of the general manager will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to the Director, Office of Classification and Rates Administration, who will issue the final agency decision. If the general manager of an RCC issues the initial decision assessing the revenue deficiency, the initial decision on the appeal will be made by the General Manager of the Business Requirements Division, Office of Classification and Rates Administration. The decision of the General Manager, Business Requirements Division, will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to

the Director, Office of Classification and Rates Administration, who will issue the final agency decision. If a general manager of any division within the Office of Classification and Rates Administration issues the initial decision assessing the revenue deficiency, the initial decision on the appeal will be made by the Director of the Office of Classification and Rates Administration. The decision of the Director will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to the Senior Assistant Postmaster General, Marketing and Customer Service Group, who will issue the final agency decision.

625.527 Collection. Any deficiency assessed under 625.526 which is found to be due and payable to the Postal Service following the issuance of a final agency decision must be paid promptly. If the Postal Service does not receive payment within 30 days, the amount of that deficiency incurred within twelve (12) months of the date of the final mailing upon which the deficiency was assessed may be deducted from any postage accounts or other monies of the violator in the possession of the Postal Service.

\* \* \* \* \*

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the *Federal Register* as provided by 39 CFR 111.3.

Stanley F. Mires,

*Assistant General Counsel, Legislative Division.*

[FR Doc. 91-22107 Filed 9-12-91; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OR6-1-5247; FRL-3993-6]

#### Approval and Promulgation of Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today approves amendments to the State of Oregon Air Quality Control Program, submitted by the Oregon Department of Environmental Quality (ODEQ) on February 17, 1989 as a revision to the Oregon state implementation plan (SIP). These amendments are to the

Procedures for Issuance, Denial, Modification, and Revocation of Permits (OAR 340-14-007, -010, -020, and -025), Air Contaminant Discharge Permit Notice Policy (OAR 340-20-150), and the New Source Review Procedural Requirements (OAR 340-20-230). In addition, EPA is approving an amendment to the rules for Notice of Construction and Approval of Plans (OAR 340-20-030) which was submitted on September 14, 1989. EPA is approving these amendments because the changes improve the public participation in the ODEQ's permitting procedures.

**DATES:** This action will be effective on November 12, 1991 unless notice is received before October 15, 1991 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period.

**ADDRESSES:** Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.  
Air & Radiation Branch, Environmental Protection Agency, Docket # OR6-1-5247, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 S.W., Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air & Radiation Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air & Radiation Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553-4253, FTS: 399-4253.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 17, 1989, the Oregon State Department of Environmental Quality (ODEQ) submitted amendments to their State of Oregon Air Quality Control Program. These amendments to the Procedures for Issuance, Denial, Modification, and Revocation of Permits (OAR 340-14-007, -010, -020, and -025), Air Contaminant Discharge Permit Notice Policy (OAR 340-20-150) and New Source Review Procedural Requirements (OAR 340-20-230) revised

the public participation procedures for proposed permit actions.

The revisions clarify the procedures for submittal of public comments on proposed permits, the criteria for ODEQ decisions regarding public hearings on proposed permits, and the content of the public notice for proposed permits. The revisions also make several administrative and cleanup changes.

In addition, the ODEQ, on September 14, 1989, submitted an additional amendment to their State of Oregon Air Quality Control Plan. This amendment to the rules for Notice of Construction and Approval of Plans (OAR 340-20-030) delegates the authority to issue an order prohibiting the construction, installation, or establishment of new sources of air contamination from the Environmental Quality Commission (EQC) to the Director of the Department of Environmental Quality (ODEQ).

EPA has reviewed these amendments and finds that they comply with EPA's public participation requirements as set forth in 40 CFR 51.161 and 51.166 (c).

## II. EPA Action

Today EPA approves amendments to the Procedures for Issuance, Denial, Modification and Revocation of Permits; the Air Contaminant Discharge Permit Notice Policy; the New Source Review Procedural Requirements; and the Notice of Construction and Approval of Plans as revisions to the State of Oregon Implementation Plan. Specifically, EPA is approving revisions to OAR 340-14-007; OAR 340-14-010(3); OAR 340-14-020(1), (4)(b), and (5); OAR 340-14-025(2) through (6) OAR 340-20-150; OAR 340-20-230(3)(D); and OAR 340-20-030(4)(a).

## III. Administrative Review

The public should be advised that this action will be effective 60 days from the date of publication in the *Federal Register*. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on these revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in

light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1991.

Dana A. Rasmussen,  
Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register on July 1, 1982.

Title 40, chapter I, part 52 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart—MM Oregon

2. Section 52.1970 is amended by adding paragraphs (c)(85) and (c)(91) to read as follows:

##### § 52.1970 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(85) On February 17, 1989, the State of Oregon Department of Environmental Quality submitted amendments to the Procedures for Issuance, Denial, Modification, and Revocation of Permits (OAR 340-14-007, 010, 020 (and 025), Air Contaminant Discharge Permit Notice Policy (OAR 340-20-150), and the New Source Review Procedural Requirements (OAR 340-20-230).

(i) Incorporation by reference.  
(A) February 17, 1989 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 14 (Procedures for Issuance, Denial, Modification, and Revocation of Permits), section -007 (Exceptions); -010 (Definitions) (3); -020 (Application for a Permit) (1), (4)(b), and (5); -025 (Issuance of a Permit) (2), (3), (4), (5), and (6) as adopted by the Environmental Quality Commission on June 10, 1988.

(C) Oregon Administrative Rules, Chapter 340, Division 20 (Air Pollution Control, Air Contaminant Discharge Permit), Section -150 (Air Contaminant Discharge Permit Notice Policy) as adopted by the Environmental Quality Commission on June 10, 1988.

(D) Oregon Administrative Rules, Chapter 340, Division 20 (Air Pollution Control, New Source Review), Section -230 (Procedural Requirements) (3)(D) as adopted by the Environmental Quality Commission on June 10, 1988.

\* \* \* \* \*

(91) On September 14, 1989, the State of Oregon Department of Environmental Quality submitted an amendment to the rules for Notice of Construction and Approval of Plans (OAR-340-20-030).

(i) Incorporation by reference.  
(A) September 14, 1989 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 20 (Air Pollution Control, Notice of Construction and Approval of Plans) Section -030 (Procedure), (4)(a) as adopted by the Environmental Quality Commission on April 14, 1989.

3. Section 52.1977 is revised to read as follows:

#### § 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan:

##### State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

##### Section

1. Introduction (1-86)
2. General Administration (1-86)
  - 2.1 Agency Organization (1-86)
  - 2.2 Legal Authority (1-86)
  - 2.3 Resources (1-86)
  - 2.4 Intergovernmental Cooperation and Consultation (1-86)
  - 2.5 Miscellaneous Provisions (1-86)
3. Statewide Regulatory Provisions
  - 3.1 Oregon Administrative Rules—Chapter 340 (1-86)
    - Division 12—Civil Penalties
      - Sec. 030 Definitions (11-8-84)
      - Sec. 035 Consolidation of Proceedings (9-25-74)
      - Sec. 040 Notice of Violation (12-3-85)
      - Sec. 045 Mitigating and Aggravating Factors (11-8-88)
      - Sec. 050 Air Quality Schedule of Civil Penalties (11-8-84)
      - Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11-8-84)
      - Sec. 075 Compromise or Settlement of Civil Penalty by Director (11-8-84)
    - Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4-15-72)
      - Sec. 005 Purpose (4-15-72)
      - Sec. 007 Exceptions (6-10-88)
      - Sec. 010 Definitions (4-15-72), except (3) "Director" (6-10-88)
      - Sec. 015 Type, Duration, and Termination of Permits (12-16-76)
      - Sec. 020 Application for a Permit (4-15-72), except (1), (4)(b), (5) (6-10-88)
      - Sec. 025 Issuance of a Permit (4-15-72), except (2), (3), (4), (5), (6) (6-10-88)
      - Sec. 030 Renewal of a Permit (4-15-72)
      - Sec. 035 Denial of a Permit (4-15-72)
      - Sec. 040 Modification of a Permit (4-15-72)
      - Sec. 045 Suspension or Revocation of a Permit (4-15-72)
      - Sec. 050 Special Permits (4-15-72)
    - Division 20—General
      - Sec. 001 Highest and Best Practicable Treatment and Control Required (3-1-72)
      - Sec. 003 Exceptions (3-1-72)
- Registration
  - Sec. 005 Registration in General (9-1-70)
  - Sec. 010 Registration Requirements (9-1-70)
  - Sec. 015 Re-registration (9-1-70)
- Notice of Construction and Approval of Plans
  - Sec. 020 Requirement (9-1-70)
  - Sec. 025 Scope (3-1-72)
  - Sec. 030 Procedure (9-1-72), except (4)(a) Order Prohibiting Construction (4-14-89)

**Sec. 032 Compliance Schedules (3-1-72)****Sampling, Testing, and Measurement of Air Contaminant Emissions**

- Sec. 035 Program (9-1-70)
- Sec. 037 Stack Heights & Dispersion Techniques (4-25-86)
- Sec. 040 Methods (9-11-70)
- Sec. 045 Department Testing (9-1-70)
- Sec. 046 Records; Maintaining and Reporting (10-1-72)
- Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9-30-85)
- Air Contaminant Discharge Permits**
- Sec. 140 Purpose (1-6-86)
- Sec. 145 Definitions (1-6-76)
- Sec. 150 Notice Policy (6-10-88)
- Sec. 155 Permit Required (5-31-83)
- Sec. 160 Multiple-Source Permit (1-6-78)
- Sec. 165 Fees (3-14-86)
- Sec. 170 Procedures for Obtaining Permits (1-11-74)
- Sec. 175 Other Requirements (6-29-79)
- Sec. 180 Registration Exemption (6-29-79)
- Sec. 185 Permit Program for Regional Air Pollution Authority (1-6-76)

**Conflict of Interest**

- Sec. 200 Purpose (10-13-78)
- Sec. 205 Definitions (10-13-78)
- Sec. 210 Public Interest Representation (10-13-78)
- Sec. 215 Disclosure of Potential Conflicts of Interest (10-13-78)

**New Source Review**

- Sec. 220 Applicability (9-8-81)
- Sec. 225 Definitions (10-16-84)
- Sec. 230 Procedural Requirements (10-16-84), except (3)(D) (6-10-88)
- Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9-8-81)
- Sec. 240 Requirements for Sources in Nonattainment Areas (4-18-83)
- Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10-16-85)
- Sec. 250 Exemptions (9-8-81)
- Sec. 255 Baseline for Determining Credit for Offsets (9-8-81)
- Sec. 260 Requirements for Net Air Quality Benefit (4-18-83)
- Sec. 265 Emission Reduction Credit Banking (4-18-83)
- Sec. 270 Fugitive and Secondary Emissions, (9-18-81)
- Sec. 275 Repealed
- Sec. 276 Visibility Impact (10-16-85)

**Plant Site Emission Limits**

- Sec. 300 Policy (9-8-81)
- Sec. 301 Requirement for Plant Site Emission Limits (9-8-81)
- Sec. 305 Definitions (9-8-81)
- Sec. 310 Criteria for Establishing Plant Site Emission Limits (9-8-81)
- Sec. 315 Alternative Emission Controls (9-8-81)
- Sec. 320 Temporary PSD Increment Allocation (9-8-81)

**Stack Heights and Dispersion Techniques**

- Sec. 340 Definitions (4-18-83)
- Sec. 345 Limitations (4-18-83)

**Division 21—General Emission Standards for Particulate Matter**

- Sec. 005 Definitions (1-16-84)
- Sec. 010 Special Control Areas (7-11-70)
- Sec. 015 Visible Air Contaminant Limitations (7-11-70)
- Sec. 020 Fuel Burning Equipment Limitations (9-1-82)
- Sec. 025 Refuse Burning Equipment Limitations (1-16-84)
- Sec. 027 Municipal Waste Incinerator in Coastal Areas (1-16-84)
- Sec. 030 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (3-1-72)

**Particulate Emissions from Process Equipment**

- Sec. 035 Applicability (3-1-72)
- Sec. 040 Emission Standard (3-1-72)
- Sec. 045 Determination of Process Weight (3-1-72)

**Fugitive Emissions**

- Sec. 050 Definitions (3-1-72)
- Sec. 055 Applicability (3-1-72)
- Sec. 060 Requirements (3-1-72)

**Upset Conditions**

- Sec. 065 Introduction (3-1-72)
- Sec. 070 Scheduled Maintenance (3-1-72)
- Sec. 075 Malfunction of Equipment (3-1-72)

**Woodstove Certification**

- Sec. 100 Definitions (6-26-84)
- Sec. 105 Requirements for Sale of New Woodstoves in Oregon (6-26-84)
- Sec. 110 Exemptions (6-26-84)
- Sec. 115 Emissions Performance Standards and Certification (6-26-84)
- Sec. 120 Testing Criteria and Procedures (6-26-84)
- Sec. 125 General Certification Procedures (6-26-84)
- Sec. 130 Changes in Woodstove Design (6-26-84)
- Sec. 135 Labelling Requirements (6-26-84)
- Sec. 140 Permanent Label (6-26-84)
- Sec. 145 Contents of Permanent Label (6-26-84)
- Sec. 150 Removable Label (6-26-84)
- Sec. 155 Label Approval (6-26-84)
- Sec. 160 Laboratory Accreditation Requirements (6-26-84)
- Sec. 165 Accreditation Criteria (6-26-84)
- Sec. 170 Application for Laboratory Accreditation (6-26-84)
- Sec. 175 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (6-26-84)
- Sec. 180 Accreditation Application Deficiency, Notification and Resolution (6-26-84)
- Sec. 185 Final Department Review and Certificate of Accreditation (6-26-84)
- Sec. 190 Civil Penalties, Revocation, and Appeals (6-26-84)

**Division 22—General Gaseous Emissions Sulfur Content of Fuels**

- Sec. 005 Definitions (3-1-72)
- Sec. 010 Residual Fuel Oils (8-25-77)
- Sec. 015 Distillate Fuel Oils (3-1-72)
- Sec. 020 Coal (1-29-82)
- Sec. 025 Exemptions (3-1-72)

**General Emission Standards for Sulfur Dioxide****Sec. 050 Definitions (3-1-72)**

- Sec. 055 Fuel Burning Equipment (3-1-72)
- Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6-15-89)

**Division 23—Rules for Open Burning**

- Sec. 022 How to Use These Open Burning Rules (9-8-81)
- Sec. 025 Policy (9-8-81)
- Sec. 030 Definitions (6-16-84)
- Sec. 035 Exemptions, Statewide (6-16-84)
- Sec. 040 General Requirements Statewide (9-8-81)
- Sec. 042 General Prohibitions Statewide (6-16-84)
- Sec. 043 Open Burning Schedule (6-16-84)
- Sec. 045 County Listing of Specific Open Burning Rules (9-8-81)

**Open Burning Prohibitions**

- Sec. 055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood, River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9-8-81)
- Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6-16-84)
- Sec. 065 Clackamas County (6-16-84)
- Sec. 070 Multnomah County (6-16-84)
- Sec. 075 Washington County (6-16-84)
- Sec. 080 Columbia County (9-8-81)
- Sec. 085 Lane County (6-16-84)
- Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9-8-81)
- Sec. 100 Letter Permits (6-16-84)
- Sec. 105 Forced Air Pit Incinerators (9-8-81)
- Sec. 110 Records and Reports (9-8-81)
- Sec. 115 Open Burning Control Areas (6-16-84)

**Division 24—Visible Emissions****Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards**

- Sec. 300 Scope (4-1-85)
- Sec. 301 Boundary Designations (9-9-88)
- Sec. 305 Definitions (4-1-85)
- Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12-31-83)
- Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8-1-81)
- Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9-9-88)
- Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12-31-83)
- Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9-9-88)
- Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9-9-88)
- Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8-1-81) Subpart (3) (9-12-86)
- Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9-12-86)
- Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12-31-83)
- Sec. 350 Gas Analytical System Licensing Criteria (9-9-88)

**Division 25—Specific Industrial Standards  
Construction and Operation of Wigwam  
Waste Burners**

- Sec. 005 Definitions (3-1-72)  
Sec. 010 Statement of Policy (3-1-72)  
Sec. 015 Authorization to Operate a Wigwam Burner (3-1-72)  
Sec. 020 Repealed  
Sec. 025 Monitoring and Reporting (3-1-72)  
**Hot Mix Asphalt Plants**  
Sec. 105 Definitions (3-1-73)  
Sec. 110 Control Facilities Required (3-1-73)  
Sec. 115 Other Established Air Quality Limitations (3-1-73)  
Sec. 120 Portable Hot Mix Asphalt Plants (4-18-83)  
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3-1-73)

**Primary Aluminum Plants**

- Sec. 255 Statement of Purpose (6-18-82)  
Sec. 260 Definitions (6-18-82)  
Sec. 265 Emission Standards (6-18-82)  
Sec. 270 Special Problem Areas (12-25-73)  
Sec. 275 Highest and Best Practical Treatment and Control Requirement (12-25-73)  
Sec. 280 Monitoring (6-18-82)  
Sec. 285 Reporting (6-18-82)

**Regulations for Sulfite Pulp Mills**

- Sec. 350 Definitions (5-23-80)  
Sec. 355 Statement of Purpose (5-23-80)  
Sec. 360 Minimum Emission Standards (5-23-80)  
Sec. 365 Repealed  
Sec. 370 Monitoring and Reporting (5-23-80)  
Sec. 375 Repealed  
Sec. 380 Exceptions (5-23-80)

**Laterite Ore Production of Ferronickel**

- Sec. 405 Statement of Purpose (3-1-72)  
Sec. 410 Definitions (3-1-72)  
Sec. 415 Emission Standards (3-1-72)  
Sec. 420 Highest and Best Practicable Treatment and Control Required (3-1-72)  
Sec. 425 Compliance Schedule (3-1-72)  
Sec. 430 Monitoring and Reporting (3-1-72)

**Division 26—Rules for Open Field Burning  
(Willamette Valley)**

- Sec. 001 Introduction (7-3-84)  
Sec. 003 Policy (3-7-84)  
Sec. 005 Definitions (3-7-84)  
Sec. 010 General Requirement (3-7-84)  
Sec. 011 Repealed  
Sec. 012 Registration, Permits, fees, Records (3-7-84)  
Sec. 013 Acreage Limitations, Allocations (3-7-84)  
Sec. 015 Daily Burning Authorization Criteria (3-7-84)  
Sec. 020 Repealed  
Sec. 025 Civil Penalties (3-7-84)  
Sec. 030 Repealed  
Sec. 031 Burning by Public Agencies (Training Fires) (3-7-84)  
Sec. 035 Experimental Burning (3-7-84)  
Sec. 040 Emergency Burning, Cessation (3-7-84)  
Sec. 045 Approved Alternative Methods of Burning (Propane Flaming) (3-7-84)

**Division 27—Air Pollution Emergencies**

- Sec. 005 Introduction (10-24-83)  
Sec. 010 Episode State Criteria for Air Pollution Emergencies (10-24-83)  
Sec. 012 Special Conditions (10-24-83)

- Sec. 015 Source Emission Reduction Plans (10-24-83)  
Sec. 020 Repealed  
Sec. 025 Regional Air Pollution Authorities (10-24-83)

**Division 30—Specific Air Pollution Control  
Rules for the Medford-Ashland Air  
Quality Maintenance Area**

- Sec. 005 Purposes and Application (4-7-78)  
Sec. 010 Definitions (5-6-81)  
Sec. 015 Wood Waste Boilers (10-29-80, 6-13-86)  
Sec. 020 Veneer Dryer Emission Limitations (1-28-80)  
Sec. 025 Air Conveying Systems (4-7-78)  
Sec. 030 Wood Particle Dryers at Particleboard Plants (5-6-81)  
Sec. 031 Hardwood Manufacturing Plants (5-6-81)  
Sec. 035 Wigwam Waste Burners (10-29-80)  
Sec. 040 Charcoal Producing Plants (4-7-78)  
Sec. 043 Control of Fugitive Emissions (4-18-83)  
Sec. 044 Requirement for Operation and Maintenance Plans (4-18-83)  
Sec. 045 Compliance Schedules (4-18-83)  
Sec. 050 Continuous Monitoring (4-7-83)  
Sec. 055 Source Testing (4-7-78)  
Sec. 060 Repealed  
Sec. 065 New Sources (4-7-78)  
Sec. 070 Open Burning (4-7-78)

**Division 31—Ambient Air Quality Standards**

- Sec. 005 Definitions (3-1-72)  
Sec. 010 Purpose and Scope of Ambient Air Quality Standards (3-1-72)  
Sec. 015 Suspended Particulate Matter (3-1-72)  
Sec. 020 Sulfur Dioxide (3-12-72)  
Sec. 025 Carbon monoxide (3-1-72)  
Sec. 030 Ozone (1-29-82)  
Sec. 035 Hydrocarbons (3-1-72)  
Sec. 040 Nitrogen Dioxide (3-1-72)  
Sec. 045 Repealed  
Sec. 050 Repealed  
Sec. 055 Ambient Air Quality Standard for Lead (1-21-83)

**Prevention of Significant Deterioration**

- Sec. 100 General (6-22-79)  
Sec. 110 Ambient Air Increments (6-22-79)  
Sec. 115 Ambient Air Ceilings (6-22-79)  
Sec. 120 Restrictions on Area Classifications (6-22-79)  
Sec. 125 Repealed  
Sec. 130 Redesignation (6-22-79)

**3.2 Lane Regional Air Pollution Authority  
Regulations Title 11 Policy and General  
Provisions**

- 11-005 Policy (8-2-72)  
11-010 Construction and Validity (8-2-72)  
11-015 Definitions (6-29-79).013 Air Conveying Systems (3-11-82)

**Title 12 General Duties and Powers of Board  
and Director**

- 12-005 Duties and Powers of Board of Directors (6-29-79)  
12-010 Duties and Function of the Program Director (6-29-79)  
12-015 Civil Penalties (8-2-72)  
12-020 Advisory Committee (8-2-72)  
12-025 Confidential Information (8-2-72)  
12-025 Conflict of Interest (9-9-88)

**Title 13 Enforcement Procedures (6-29-79)**

**Title 20 Indirect Sources**

- 20-100 Policy and Jurisdiction (11-18-75)  
20-110 Definitions (6-29-79)  
20-115 Indirect Sources Required to Have Indirect Source Construction Permits (6-29-79)  
20-120 Establishment of an Approved Regional Parking and Circulation Plan(s) by a City, County or Regional Planning Agency (6-29-79)  
20-125 Information and Requirements Applicable to Indirect Source(s) Construction Permit Applications Where An Approved Regional Parking and Circulation Plan is on File (6-29-79)  
20-129 Information and Requirements Applicable to Indirect Source(s) Construction Permit Application Where No Approved Regional Parking and Circulation Plan is on File (6-29-79)  
20-130 Issuance or Denial of Indirect Source Construction Permits (6-29-79)  
20-135 Permit Duration (11-18-75)

**Title 21 Registration, Reports & Test  
Procedures**

- 21-005 Registration of Sources (8-2-72)  
21-010 Authority to Construct (6-29-79)  
21-015 Submission of Plans & Specifications (8-2-72)  
21-020 Notice of Approval (8-2-72)  
21-025 Deviation from Approved Plans or Specifications (8-2-72)  
21-030 Order Prohibiting Construction—Order Posting (6-29-79)  
21-035 Notice of Completion (8-2-72)  
21-040 Compliance Schedule (8-2-72)  
21-045 Source Emission Tests (8-2-72)  
21-050 Upset Conditions (8-2-72)  
21-055 Records (8-2-72)  
21-060 Restart of Existing Sources (8-2-72)

**Title 22 Permits, except for Definition  
Number 7 "Dispersion Techniques" and  
Definition Number 11 "Good Engineering  
Practice Stack Height" (4-13-82)**

**Title 31 Ambient Air Standards**

- 31-005 General (8-2-72)  
31-015 Suspended Particulate Matter (8-2-72)  
31-025 Sulfur Dioxide (8-2-72)  
31-030 Carbon Monoxide (8-2-72)  
31-035 Ozone (7-12-83)  
31-040 Hydrocarbons (8-2-72)  
31-045 Nitrogen Dioxide (8-2-72)

**Title 32 Emission Standards**

- 32-005 General (6-29-79)  
32-010 Restriction in Emission of Visible Air Contaminant (6-29-79)  
32-025 Exceptions—Visible Air Contaminant Standards (8-2-72)  
32-030 Particulate Matter Weight Standards (8-2-72)  
32-035 Particulate Matter Weight Standards—Existing Sources (8-2-72)  
32-040 Particulate Matter Weight Standards—New Sources (8-2-72)  
32-045 Process Weight Emission Limitations (8-2-72)  
32-055 Particulate Matter Size Standard (8-2-72)  
32-080 Airborne Particulate Matter (8-2-72)  
32-065 Sulfur Dioxide Emission Limitations (8-2-72)  
32-100 Plant Site Emission Limits Policy (9-14-82)

- 32-101 Requirement for Plant Site Emission Limits (9-14-82)
- 32-102 Criteria for Establishing Plant Site Emission Limits (9-14-82)
- 32-103 Alternative Emission Controls (Bubble) (9-14-82)
- 32-104 Temporary PSD Increment Allocation (9-14-82)
- 32-800 Air Conveying Systems (1-8-85)
- 32-990 Other Emissions (8-2-72)
- Title 33 Prohibited Practices and Control of Special Classes**
- 33-020 Incinerator and Refuse Burning Equipment (8-2-72)
- 33-025 Wigwam Waste Burners (8-2-72)
- 33-030 Concealment and Masking of Emissions (8-2-72)
- 33-045 Gasoline Tanks (8-2-72)
- 33-055 Sulfur Content of Fuels (8-2-72)
- 33-060 Board Products Industries (8-2-72)
- 33-065 Charcoal Producing Plants (5-15-79)
- 33-070 Kraft Pulp Mills (9-14-82)
- Title 36 Rules for Open Outdoor Burning (1-30-80)**
- Title 42 Rules of Practice and Procedure—Hearing Procedure (6-29-79)**
- Title 44 Rules of Practice and Procedure (6-29-79)**
- Title 45 Rules of Practice and Procedure—Decision and Appeal (6-29-79)**
- Title 51 Air Pollution Emergencies**
- 51-005 Introduction (8-2-72)
- 51-010 Episode Criteria (8-2-72)
- 51-015 Emission Reduction Plans (8-2-72)
- 51-020 Preplanned Abatement Strategies (8-2-72)
- 51-025 Implementation (8-2-72)
- 51-026 Effective Date (8-2-72)
- 4. Control Strategies for Nonattainment Areas (1-86)**
- 4.1 Portland-Vancouver AQMA-Total Suspended Particulate (12-19-80)
- 4.2 Portland-Vancouver AQMA-Carbon Monoxide (7-16-82)
- 4.3 Portland-Vancouver AQMA-Ozone (7-16-82)
- 4.4 Salem Nonattainment Area-Carbon Monoxide (7-79)
- 4.5 Salem Nonattainment Area-Ozone (9-19-80)
- 4.6 Eugene-Springfield AQMA-Total Suspended Particulate (1-30-81)
- 4.7 Eugene-Springfield AQMA-Carbon Monoxide (6-20-79)
- 4.8 Medford-Ashland AQMA-Ozone (1-85)
- 4.9 Medford-Ashland AQMA-Carbon Monoxide (8-82)
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 405

[BPD-322-F]

RIN 0938-AB68

#### Medicare Program; Review of Information Collection and Recordkeeping Requirements for Providers of Outpatient Physical Therapy and/or Speech Pathology Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes several regulations to reduce information collection and recordkeeping requirements. The requirements, which were identified by the Office of Management and Budget, are contained primarily in the Medicare conditions of participation for providers of outpatient physical therapy and outpatient speech pathology services, and the Medicare conditions for coverage of the services of physical therapists in independent practice. The purpose of this rule is to remove or make modification of those information collection and recordkeeping requirements and to explain the basis for retaining others.

**EFFECTIVE DATE:** The rules are effective October 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Israel Brauner, (301) 966-4640.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and implementing regulations authorize the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal regulations. OMB's regulations to implement this authority are at 5 CFR 1320.14.

Under § 1320.14(f), OMB may review agency regulations and question whether reporting or information collection requirements are excessive. Questions may be raised about existing regulations, some of which may have been in place prior to the enactment of the Paperwork Reduction Act of 1980 or publication of implementing regulations, as well as proposed new or changed regulations. When an OMB question is raised, the affected agency must publish in the *Federal Register* a notice informing the public which reporting burden or information collection requirement has been questioned and solicit comments on either retaining or revising the requirement. The agency also informs the public whether OMB has approved continuation of existing requirements during the time needed to consider proposed changes.

In a review of collection of information requirements for Medicare providers of outpatient physical therapy and/or speech pathology services, several requirements were identified as possibly being overly prescriptive. In accordance with the requirements of 5 CFR 1320.14(f), a notice was published in the *Federal Register* on August 9, 1985 (50 FR 32238) to inform the public of this action and to state that OMB had granted approval for continued application of the requirements in the interim.

On December 31, 1986, we published in the *Federal Register* (51 FR 47266), a proposed rule in which we suggested removal or modification of certain information collection and recordkeeping requirements, and retention of others, and solicited public comments on the proposals for elimination, change or retention. The requirements identified were contained primarily in the Medicare conditions of participation for home health agencies and providers of outpatient physical therapy and outpatient speech pathology services, and the Medicare conditions for coverage of the services of independent laboratories and physical therapists in independent practice.

Since publication of our proposal, a number of regulations with questioned information collection requirements were significantly revised, usually in response to legislation affecting the program area (see 53 FR 12010, April 12, 1988, and 54 FR 38677 September 20, 1989). Any information collection requirements in those regulations were subject to OMB clearance under 5 CFR 1320.14 and that action superseded our December 31, 1986 proposal.

In response to the December 31, 1986 proposed rule, we received 34 timely items of correspondence on the portion of the rule that pertained to outpatient physical therapy and speech pathology. Some or all of the comments made by five respondents were unrelated to the subject matter of the proposed revisions. These comments addressed concerns about timeframes for social/vocational reevaluation, the importance of physicians' certifications, State versus Federal qualifications for social workers, whether home health agencies can be considered public health agencies, how homebound status is met for home health agencies, and the timing of progress notes. We are not responding to those comments in this regulation because they relate to issues and requirements outside the scope of the proposed rule, which was limited to information collection issues.

## II. Comments and Responses

Two commenters generally favored the proposed revisions and did not raise specific concerns.

The comments made by three commenters were so broad and nonspecific that we could not relate them to any particular part of the proposed revisions. These comments expressed the views that government regulations are too restrictive and unfair, that surveyor criteria are antiquated, and that Medicare regulations are blatantly discriminatory. The remaining comments and our responses are discussed below.

*Section 405.1720(b). Condition of Participation-Rehabilitation Program. Standard: Arrangements for Social or Vocational Services.*

This standard permits rehabilitation agencies to provide social or vocational adjustment services under a written contract with others (that is, other than salaried employees), provided the agency retains responsibility for, and control and supervision of, these services. The terms of the contract must be specified in detail.

### Statutory Basis

The introductory phrase of section 1861(p) of the Social Security Act (the Act) defines "outpatient physical therapy services" as services furnished by the agency "or by others under an arrangement with, and under the supervision of," such agency. Section 1861(p)(4)(A)(v) of the Act requires that each clinic or agency meet other health and safety requirements that the Secretary finds necessary.

### Proposal

We proposed to revise the regulations by removing explicit contractual requirements such as the geographic areas in which services are to be furnished, the completion and submission of clinical record information, and the participation in conferences required to coordinate patient care. We proposed instead to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel, as set forth in 42 CFR part 405, subpart Q, and that the agency be responsible for control and supervision of services.

*Comment:* One commenter expressed concern that the requirement may conflict with the conditions of participation for skilled nursing facilities (SNFs) that require SNFs to retain responsibility for social and vocational services that are provided to their inpatients under contract.

*Response:* New requirements for Medicare SNFs and Medicaid nursing facilities (NFs) are effective October 1, 1990 (see final rules published February 2, 1989 at 54 FR 5316 and December 29, 1989 at 54 FR 53611). There is no conflict. Under the new requirements, § 483.45 requires a facility that does not provide specialized rehabilitative services needed by its residents to obtain those services from an outside provider in accordance with § 483.75(j). A rehabilitation agency could be the outside provider. Section 483.75(j) requires a Medicare SNF to make arrangements for services furnished to its residents by an outside resource. This means that the SNF, rather than the rehabilitation agency, becomes responsible as the provider of services. A Medicaid NF, under the same section, is required to make an arrangement or an agreement and assume responsibility for obtaining services that meet applicable standards and principles, and for the timeliness of the services. Consequently, when a Medicare SNF or Medicaid NF obtains services for its residents from a rehabilitation agency as an outside resource, the SNF or NF assumes responsibility for the services.

In addition, although the commenter did not mention hospitals, sections 1862(a)(14) and 1866(a)(1)(H) of the Act require that a Medicare hospital must make arrangements for all Medicare covered services (other than the services of physicians and certified registered nurse anesthetists) furnished to its patients by an outside resource.

The basic requirements in § 405.1720 that a rehabilitation agency provide "social or vocational adjustment

services to all patients in need of such services" applies only to the agency's own patients, not to patients of hospitals, SNFs or NFs, that have an arrangement or agreement with the agency as an outside resource. In the latter case, the primary provider is responsible for seeing that the needs of its patients are met. We are adding a clarifying statement to remove any confusion on this point. Therefore, the responsibility required in § 405.1720(b) pertains only to services furnished to the agency's own patients.

### Provisions in Final Rule

We are revising proposed § 405.1720(b) to remove the 6 numbered contract requirements, and substituting a general statement to specify the requirements of this standard.

*Section 405.1721(a). Condition of Participation-Arrangements for Physical Therapy and Speech Pathology Services to be Performed by Other than Salaried Organization Personnel. Standard: Contract Provisions*

This standard contains specific requirements for the terms of a contract under which an organization provides outpatient physical therapy or speech pathology services under an arrangement with others.

### Statutory Basis

Section 1861(p)(4)(A)(i) of the Act requires that each clinic or agency have the necessary personnel to carry out the program offered. Sections 1861(p)(4)(A)(v) and (B) provide that the clinics and agencies must meet the health and safety requirements the Secretary finds necessary.

### Proposal

We proposed to delete the list of contractual provisions and instead require that all nonsalaried personnel furnishing services meet the same requirements as salaried personnel. We also proposed to make a conforming change to this section to make it consistent with other proposed changes published in the *Federal Register* on February 24, 1986 (51 FR 6429) that would include "podiatrist" in the definition of "physician."

*Comment:* One commenter expressed concern about the requirement that services be furnished at a specific site and that the survey verify what equipment is available, while another commenter expressed concern that too much time is required for reviewing records and keeping records not related to patient care and outcomes.

*Response:* We agree that parts of § 405.1721(a) concerning the site of contracted services and associated recordkeeping appear to be overly burdensome and unnecessary in terms of assuring patient health and safety and we are further revising this section to delete paragraphs (a)(4) and (a)(5). Requirements for adequate facilities and equipment are addressed in §§ 405.1718(b), 405.1719(b), 405.1724 and 405.1732.

#### *Provisions in Final Rule*

We are revising the content of § 405.1721(a) as proposed, and in addition, are also deleting the recordkeeping requirements in paragraphs (a)(4) and (a)(5) of that section. For editorial clarity, we are designating the introductory text as paragraph (a) and redesignating existing paragraph (a) as paragraph (b).

Since the clinical records requirements are similar for both providers and independent therapists, we will discuss §§ 405.1722 and 405.1736 together.

#### *Section 405.1722. Conditions of Participation-Clinical Records*

This section specifies requirements for maintaining records for providers of outpatient physical therapy and speech pathology services.

#### *Statutory Basis*

Section 1861(p)(4)(A)(iii) of the Act requires that providers of outpatient physical therapy and outpatient speech pathology services must maintain clinical records on all patients.

#### *Proposal*

We planned no changes to § 405.1722, because the recordkeeping requirements are consistent with accepted standards of care. However, we requested comments on which of the requirements are still needed to ensure that medically necessary services of acceptable quality are furnished to program beneficiaries.

*Comment:* Three commenters objected to the requirements that clinical records be maintained for all patients, but they did not specify alternatives. Two other commenters stated that clinical records should be maintained on all patients.

*Response:* We believe that health and safety of all patients can be assured only if adequate clinical records are maintained. As noted above, this view is expressly stated in the statute at section 1861(p)(4)(A)(iii), which excludes any service furnished by a clinic or

rehabilitation agency unless the provider "maintains clinical records on all patients."

*Comment:* Two commenters objected to the requirements pertaining to maintaining documentation for all patients, in that individuals participating in other insurance programs or who submit bills to private pay carriers do not need to have their documents reviewed by HCFA personnel.

*Response:* We disagree. We believe that adequate documentation of each patient's condition is necessary in order to ensure the health and safety of the patient. Furthermore, as noted earlier, the recordkeeping requirements are consistent with accepted standards of care.

*Comment:* One commenter stated that to have detailed treatment noted for each patient visit is excessive, expensive and inappropriate. The state of art for professional documentation has changed over the last decade and documentation every two weeks of patients' progress would be more appropriate.

*Response:* This comment appears to relate to the requirement that the medical record contain documentation of the care and services provided. However, we do not believe a clinical record would be adequate if it did not document each occasion of service. Progress notes, on the other hand, are only required to be completed periodically.

#### *Section 405.1736(b) and (d) Condition for Coverage-Clinical Records. Standard: Content, and Standard: Retention and Preservation*

These standards specify requirements for the content and retention of clinical records by physical therapists in independent practice.

#### *Statutory Basis*

Section 1861(p) of the Act provides that independently practicing physical therapists must meet those requirements that the Secretary may find necessary.

#### *Proposal*

We planned no changes to § 405.1736(b) and (d) because the recordkeeping activities described therein are consistent with accepted standards of practice. Nevertheless, we requested comments on which of the requirements may still be necessary to ensure the quality and appropriateness of services and which may no longer be necessary. The majority of commenters shared a general view that requirements for specific clinical records

documentation of physician involvement should not be applied to non-Medicare patients.

On March 28, 1990 (55 FR 11372), we published a final rule that revised 42 CFR 405.1717 and 405.1733 to remove the requirements that physicians provide the referrals, periodic visits, and direction of treatment for non-Medicare patients. That final rule was based on section 1861(p) of the Act, as amended by section 8424 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Accordingly, there is no need for further revision.

#### *Provisions in Final Rule*

We did not propose changes to §§ 405.1722 and 405.1736(b) and (d) but merely published to solicit comments. No changes to the rules are required.

### **III. Regulatory Impact Statement**

Executive Order (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets any of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physical therapists, and all providers of outpatient physical therapy and outpatient speech pathology services are treated as small entities.

We examined each provision in this preamble as to potential effects on affected providers. Several changes will benefit providers by reducing certain recordkeeping requirements, such as those relating to personnel records and contractual provisions. However, we are retaining those currently existing requirements we believe are necessary to assure compliance. The time and manpower required by providers during the survey process to demonstrate

compliance with the retained requirements will be minimal.

Therefore, we have determined that this final rule, in itself, will not produce any effects that will meet any of the criteria of E.O. 12291. For the same reasons, we have determined and the Secretary certifies that this final rule will not have significant effect on a substantial number of small entities. Thus, a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

#### IV. Information Collection Requirement

Sections 405.1720 and 405.1721 of this rule contain information collection requirements subject to the Office of Management and Budget review under to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). These requirements will be sent to OMB for review, and a notice will be published in the *Federal Register* after approval is obtained.

#### List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting and Recordkeeping requirements, Rural areas, X-rays.

For reasons set forth in the preamble, 42 CFR chapter IV, part 405, subpart Q is amended as follows:

### PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

#### Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

##### Subpart Q—[Amended]

1. The authority citation for subpart Q continues to read as follows:

Authority: Secs. 1102, 1861(p), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(p), 1395hh).

2. In § 405.1720, the introductory text and paragraph (b) are revised to read as follows:

#### § 405.1720 Condition of participation-rehabilitation program.

At a minimum, a rehabilitation agency provides physical therapy or speech pathology services, and a rehabilitation program that in addition to physical therapy or speech pathology services, includes social or vocational adjustment services to all its patients in need of such services by making provision for special, qualified staff to evaluate the social or vocational factors involved in a patient's rehabilitation, to counsel and advise on social or vocational problems arising from the patient's illness or injury, and to make appropriate referrals for required services.

When hospitals, skilled nursing facilities, or Medicaid nursing facilities obtain services for their patients from the agency this requirement does not apply to those patients.

\* \* \* \* \*

(b) *Standard: Arrangements for social or vocational services.* If a rehabilitation agency does not provide social or vocational adjustment services through salaried employees, it may provide such adjustment services by means of a written contract with others who must meet the same requirements and responsibilities as salaried personnel as set forth in this subpart. The contract must specify the period of time the contract is to be in effect and the manner of termination or renewal, and provide for retention by the agency of responsibility for, and control and supervision of, the services.

3. Section 405.1721 is revised to read as follows:

#### § 405.1721 Condition of participation—arrangements for physical therapy and speech pathology services to be performed by other than salaried organization personnel.

(a) *Conditions.* When an organization provides outpatient physical therapy and/or speech pathology services under an arrangement with others, such services are to be furnished in accordance with the terms of a written contract, which provides for retention by the organization of professional and administrative responsibility form and control and supervision of, such services.

(b) *Standard: Contract provisions.* The terms of the contract:

(1) Require that personnel furnishing services must meet the same requirements as salaried personnel as set forth in this subpart;

(2) Specify the financial arrangements that provide that the contracting outside resource may not bill the patient or the health insurance program for covered services (because, pursuant to section 1861(w)(1) of the Act (42 U.S.C. 1395x(w)(1)), covered services furnished under arrangements must be billed through the provider exclusively and receipt of payment by the provider for such services on behalf of an entitled individual discharges the liability of such individual or any other person to pay for such services); and

(3) Specify the period of time the contract is to be in effect and the manner of termination or renewal.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 11, 1991.

Gail R. Wilensky,  
Administrator, Health Care Financing  
Administration.

Approved: May 16, 1991.

Louis W. Sullivan,  
Secretary.

[FR Doc. 91-21802 Filed 9-12-91; 8:45 am]

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#### 42 CFR Part 417

[BPD-422-F]

RIN 0938-AD-14

#### Medicare Program; Explanation of Enrollee Rights and Other Provisions Applicable to Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

**SUMMARY:** This rule revises current Medicare requirements relating to health maintenance organizations and competitive medical plans. It eliminates the requirement that an organization enroll two new Medicare beneficiaries for each present Medicare enrollee converted from a cost to a risk contract (the "two-for-one" rule), expands the amount and type of information which an organization must provide to enrollees, and requires annual notice of enrollees' rights under the plan. This rule also authorizes HCFA to terminate a contract with an organization for noncompliance with the composition of enrollment standard requiring that no more than 50 percent of an organization's membership be comprised of Medicare or Medicaid enrollees (hereinafter referred to as the "50/50 rule") and authorizes sanctions when an organization fails to comply with the 50/50 rule or the terms of any waiver or exception to that rule.

These provisions conform our regulations with changes made by the Omnibus Budget Reconciliation Acts of 1986, 1987 and 1989.

**EFFECTIVE DATE:** These regulations are effective October 15, 1991, except for the definition of "affiliated organization" at § 417.401, which is effective September 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Joan Mahanes at (301) 966-4642 for two-for-one rule, and explanation of enrollee rights. Jean LeMasurier at (202) 619-2070 for 50 percent composition of enrollment rule.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. General*

Section 1876 of the Social Security Act (the Act) as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, provides for Medicare payment on a predetermined, per capita basis to eligible organizations that have entered into risk contracts with HCFA, and for payment on an interim basis subject to annual adjustments based on reasonable costs to eligible organizations that have reasonable cost contracts. The definition of an eligible organization includes health maintenance organizations (HMOs) that have been Federally qualified under title XIII of the Public Health Service (PHS) Act, and competitive medical plans (CMPs) that meet the requirements of section 1876(b)(2) of the Act. Eligible organizations which choose to contract on a risk basis assume financial risk for providing health care services to

enrolled members, in exchange for a prospectively determined periodic payment made by the member or on the member's behalf. Medicare enrollees of organizations with risk contracts generally are required to receive covered services only through the organization, except for emergency services and urgently needed out-of-area services. Medicare enrollees of organizations with cost contracts may receive covered services through the organization or through any other Medicare qualified provider or supplier.

*B. Two-for-One Rule*

Section 114(c)(2)(A) of TEFRA provided that HMOs that had enrolled individuals under an existing cost contract could convert such individuals to enrollment under a new risk contract only under limited circumstances. This provision, known as the two-for-one rule, required the organization to enroll two "new" Medicare enrollees under its risk contract for each "current non-risk Medicare enrollee" it converted to enrollment under the risk provisions of its contract. As defined in section 114(c)(2)(D) of TEFRA, a Medicare enrollee was "new" if the individual was not enrolled in the organization either prior to the time that the organization entered into a risk contract or prior to the time that the individual became entitled to Medicare. Regulations implementing the two-for-one rule and the established procedures for conversion are at 42 CFR 417.446. The Omnibus Budget Reconciliation Act of 1986 (OBRA 86), Public Law 99-509, repealed this conversion requirement.

*C. Enrollment Restrictions*

Section 1876(c)(3)(B) of the Act provides that an eligible Medicare beneficiary may enroll with an eligible organization which has a contract with Medicare in the manner prescribed in regulations and may terminate his enrollment with the organization as of the beginning of the first calendar month after the beneficiary requests that his enrollment be terminated.

*D. Enrollee Rights*

Section 1876(c)(3)(C) of the Act provides that the Secretary may prescribe the procedures and conditions under which an eligible organization under contract with HCFA may advertise its product and enroll eligible Medicare beneficiaries. Prior to OBRA 86, there were no specific statutory provisions pertaining to disclosure of benefits, services and patient rights for Medicare beneficiaries enrolling in an HMO or CMP, although our regulations at 42 CFR 417.436 require

that the organization maintain membership rules explaining certain matters, such as procedures for paying premiums and other charges and for obtaining services from the organization. The membership rules must also explain the organization's procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrolled Medicare beneficiaries, as required by section 1876(c)(5)(A) of the Act. Our regulations also require that the organization provide a copy of the rules to each Medicare enrollee and that it notify enrollees at least 30 days prior to any change in the rules.

Section 4011(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Public Law 100-203, amended section 1876(c)(3) of the Act by requiring that organizations with risk contracts notify individuals considering enrollment or already enrolled with the organization of the organization's option to terminate or fail to renew the contract at the conclusion of its term, and that non-renewal of the contract may result in termination of the individual's enrollment in the organization.

*E. Fifty Percent Composition of Enrollment*

Section 1876(f) of the Act requires that an HMO or CMP with a Medicare contract maintain an enrollment consisting of no more than 50 percent Medicare beneficiaries and Medicaid recipients. Prior to the enactment of OBRA 86, this section also authorized the Secretary to modify or waive the 50/50 rule if he or she determined that special circumstances warranted a modification or exception and the organization was making reasonable efforts to enroll individuals not entitled to Medicare or Medicaid. Regulations at 42 CFR 417.413 implemented the statutory requirement for composition of enrollment and the waiver or exception authority.

**II. Notice of Proposed Rulemaking**

On July 22, 1988 we published a proposed rule with a 60 day comment period (53 FR 27718) that would revise subpart C of 42 CFR part 417. The proposed rule would incorporate OBRA 86 and OBRA 87 provisions essentially without elaboration and make additional clarifying revisions. Briefly, these proposed changes to the regulations would—

*Two-for-One Rule—*

- Delete all reference to the two-for-one rule.

*Enrollment Restrictions*

• Require organizations converting from a cost to a risk contract to inform current non-risk Medicare enrollees within 60 days of signing a risk contract of their right to remain as cost members until HCFA determines, for administrative reasons or because there are fewer than 75 current nonrisk Medicare enrollees remaining in the organization, that remaining cost enrollees must be covered under the risk provisions of the contract. Current nonrisk Medicare enrollees must also be informed of their right to convert at any time to a risk enrollment.

*Composition of Enrollment*

- Provide that HCFA may waive compliance with composition of enrollment requirements for an organization where Medicare beneficiaries and Medicaid recipients constitute more than 50 percent of the population in the geographic area.
- Provide a waiver of the composition of enrollment requirements for a government owned and operated organization that has taken and is making reasonable efforts to enroll individuals who are not entitled to Medicare or Medicaid. Such a waiver may not exceed a period of up to three years after the date the organization first enters into a Medicare contract.
- Specify that an organization which has received a waiver or exception to the composition of enrollment rule on or before October 21, 1986 may continue its waiver or exception if it makes reasonable efforts to meet scheduled enrollment goals approved by HCFA.
- Specify and describe the sanctions that HCFA may apply against an organization not in compliance with the composition of enrollment rule prior to instituting termination proceedings.
- Specify that HCFA may terminate an organization's contract if the organization does not substantially comply with the composition of enrollment requirements.

*Enrollee Rights*

• Require organizations to inform eligible individuals in their marketing materials that the organization's contract with HCFA is subject to termination at any time during the year, or to nonrenewal at the expiration of the contract's term, and that termination or expiration and nonrenewal of an organization's contract will result in termination of an individual's enrollment.

• Add additional requirements to make clear that a copy of the membership rules must be furnished to each Medicare enrollee at the time of enrollment and at least annually thereafter.

• Require that the membership rules include an explanation of the benefits provided by the organization, the amount of any premium or other charges imposed on the beneficiary, restrictions on coverage for non-emergency services that are not received through the organization, the organization's coverage of emergency services and services which are urgently needed while the enrollee is absent from the organization's geographic area, and appeal rights of enrollees.

• Require that membership rules state that the organization's contract with HCFA may be terminated, either by HCFA or the organization, for various reasons such as failure by either party to renew the contract at the expiration of its term, and that beneficiaries will, if the contract is terminated, be terminated as well as from their enrollment in the organization.

*Clarifications of Previous Regulations*

- Define extended absence from the organization's geographic area as absent for a period of more than 90 days but less than one year.
- Clarify that the exception permitting continued enrollment of beneficiaries during an extended absence is available to all CMPs, but only to those Federally qualified HMOs that are affiliated with another eligible organization serving the geographic area where the beneficiary will be located temporarily.
- Define an "affiliated organization," for purposes of the exception permitting continued enrollment of beneficiaries during an extended absence, as an organization which has a contract under section 1876 of the Act, and (1) is under the common ownership or control of another organization seeks to retain absent members, or (2) has written agreement in effect with that organization to furnish items and services to enrollees who are on an extended absence from the geographic area of the original organization.

**III. Analysis of and Response to Public Comments**

In response to the July 22, 1988 proposed rule, we received eight timely items of correspondence. The comments were from groups health associations, a medical school, health insurance plans and a law firm. A summary of these comments and our responses to them are discussed below:

*A. Two-for-One Rule*

We received no public comments on this area.

*B. Enrollee Rights*

*Comment:* One commenter suggested that § 417.436(a) be revised to state that organizations should maintain membership rules "for any other matters related to membership which HCFA may prescribe" rather than "any other matters that HCFA may prescribe", because this modification more accurately states the intended scope of this provision "which assures rules which are reasonable and necessary for the member to make well informed decisions".

*Response:* We do not agree that such a modification is necessary. We do not intend to require plans to include in membership rules matters which are of no interest or utility to Medicare enrollees, but we want to assure that the scope of membership rules includes all matters which Medicare enrollees need to know.

*Comment:* One commenter stated that it is meaningless to include premium information in membership rules because, for enrollees who are also enrolled under another group, the operative figure would be the actual out-of-pocket expenses for the enrollee, and that figure would vary depending on the group's contribution and/or the benefit level selected by or for the enrollee. The commenter suggested that membership rules simply state the source from which the premium amount could be obtained.

*Response:* As a result of this comment we have reevaluated our proposal. Section 1876(c)(3)(E) of the Act does not require that premium information be included in membership rules. Therefore, we are accepting the recommended change and revising § 417.436 to permit organizations to omit the actual premium from the membership rules, if it is not feasible to include it, as long as the source for the information is clearly identified and a telephone number is included. However, this change does not affect the organization's obligation to inform HCFA and enrollees of changes to the premium in a timely fashion, as required by § 417.436(c).

*Comment:* One Commenter requested clarification of HCFA's requirement that enrollees be informed of any services that the organization chooses to furnish outside of the organization's own providers.

*Response:* As requested, we are clarifying § 417.436(a)(5) to include an additional example of the services

which should be disclosed.

Organizations contracting on a risk basis must disclose any exceptions to the lock-in restriction permitted under § 417.448, such as, any that may apply in a "preferred provider organization," which permits members to choose to receive specified services from providers with whom the organization does not have arrangements.

*Comment:* One commenter stated that HCFA's requirement that plans include in membership rules the fact that the organization's contract with the Medicare program may end may be confusing to beneficiaries who have coverage from a group contract as well as from the Medicare contract. The organization suggested that continuing coverage under other contract should be described as well.

*Response:* We have no objection to including additional information not strictly pertinent to the Medicare contract in the membership rules, as long as the information will alleviate confusion among enrollees, and as long as the organization submits the language for review according to § 417.436(c).

#### C. Fifty-percent Composition of Enrollment Requirement

*Comment:* One commenter stated that there are certain factors beyond its control which may cause the organization to violate the rule requiring that no more than 50 percent of an organization's members be comprised of Medicare and Medicaid enrollees. For instance, an employer group could drop the plan without sufficient notice, the expected number of commercial enrollees could fail to enroll, or a higher number of retirees of a commercial plan, who are also Medicare beneficiaries, could enroll in the plan. The organization requested that Medicare beneficiaries who are members of employer group health plans or other commercial groups be permitted to enroll even though the plan is in violation of the 50/50 rule.

*Response:* The 50/50 rule affords protections to all Medicare beneficiaries whether they are enrolled in an HMO or CMP through an employer plan or on their own. These protections would be nullified if group members were allowed to enroll in violation of the 50/50 rule.

While we intend to enforce the 50/50 rule as required by the law, we do not intend to impose sanctions arbitrarily. If an organization inadvertently violates the 50/50 rule, it should notify HCFA immediately and advise HCFA of how it intends to rectify the violation, such as closing Medicare enrollment or seeking more commercial enrollees.

*Comment:* One commenter questioned the provision of § 417.313(d)(2)(ii) which states that a waiver of the 50/50 rule for organizations which are owned and operated by a government entity may not be extended beyond 3 years, since the statute at section 1876(f)(2) of the Act does not prohibit extensions of the waiver.

*Response:* We disagree. The statute clearly states that the Secretary may waive the requirement "only" with respect to the first three contract years, thus implicitly prohibiting any extensions.

#### D. Termination of Contract for Failure to Comply with 50/50 Rule

*Comment:* Several commenters questioned HCFA's authority to terminate the contract of a plan that substantially fails to meet the 50/50 rule or the terms of any waiver or exception to that rule. The commenters stated that such a termination goes beyond the legislative intent and is an excessive penalty.

*Response:* The requirement in section 1876(f) of the Act is that an organization must meet the 50/50 requirement. Under the plain language of section 1876(i)(1)(C) of the Act, the Secretary is expressly authorized to terminate the contract of any organization that substantially fails to comply with the requirements of section 1876(f). If an organization's failure to comply with the rule, or the conditions of any modification or waiver of the rule, is determined to be insubstantial, HCFA may take interim sanctions permitted under the law, i.e., suspension of enrollment, under the provisions of section 1876(f)(3) of the Act. Suspension of enrollment protects beneficiaries enrolled in the organization by preventing the violation of the 50/50 rule from becoming worse. If the violation is so substantial that suspension of enrollment will not make a significant improvement, termination of the contract is the only other method available to HCFA to protect beneficiaries from the effects of an organization's failure to comply with contract conditions.

*Comment:* One commenter requested that HCFA be more specific concerning the requirement that organizations "substantially" meet the 50/50 composition of enrollment requirement, and give examples of what efforts to meet the 50/50 requirement HCFA would find "reasonable."

*Response:* The number of Medicare and Medicaid recipients enrolled in an organization should never be above 50 percent of the total enrolled population in order to meet the 50/50 rule, as

required under section 1876(f) of the Act. The organization must ensure that this is the case and must notify HCFA when it is in jeopardy of violating the rule. The organization that is diligent in following the rules, keeping HCFA informed, and correcting temporary enrollment imbalances quickly, will be considered to be in substantial compliance with the rule. HCFA expects organizations to devise plans for correcting violations of the 50/50 rule. Examples of efforts HCFA would find reasonable to correct violations would be documented efforts, with a likelihood of success, to recruit private enrollees or employer groups for enrollment and/or voluntary closure of enrollment of Medicare and Medicaid recipients. Lack of diligence in informing HCFA of enrollment imbalances, or in devising and pursuing corrective action, and/or inability to demonstrate success in, or the likelihood of success of, corrective action, will be considered "substantial" violation of the 50/50 rule.

*Comment:* One commenter was concerned that it is prevented from enrolling the number of Medicaid recipients it might otherwise wish to because the 50/50 rule counts Medicaid enrollees against the 50 percent limit and because its request to HCFA for a waiver was denied. The organization stated that it should be the mission of publicly sponsored organizations to serve publicly sponsored patients.

*Response:* The statutory requirements are clear on this issue. We have no authority to make an exception on the basis suggested by the commenter.

#### E. Distribution of Membership Rules

*Comment:* One commenter suggested that annual distribution of complete membership rules may be too costly and that HCFA consider an abbreviated booklet or newsletter article as meeting the requirement of the statute at section 1876(c)(3) of the Act. The commenter also requested an interpretation of the requirement that membership rules be distributed at the time of enrollment.

*Response:* We recognize that organizations will incur additional administrative costs because of annual distribution of membership rules. However, we cannot agree as a general rule that abbreviated booklets or addenda to previously published material would satisfy the intent of the law. Each case would have to be judged on its merit according to whether the presentation of the material will serve the purpose of formally notifying enrollees of their rights and responsibilities as enrollees of the organization. We suggest that each organization consult with its contract officer before incurring unnecessary

expense in reprinting all handbooks. HCFA will advise organizations, if requested, whether less expensive alterations will suffice. Newsletter articles would not be acceptable because they are likely to be overlooked or discarded by enrollees.

Marketing material must contain an explanation of membership rules and other information sufficient for the beneficiary to make an informed decision about enrollment. The purpose of membership rules, on the other hand, is to inform beneficiaries of their rights and responsibilities once enrolled in the organization. We encourage organizations to give enrollees the membership rules as early as possible after the application for enrollment is received. However, in every case the enrollee should be given the membership rules prior to the effective date of the enrollment.

*Comment:* One commenter requested that HCFA specifically state the meaning of the requirement that organizations "furnish" a copy of membership rules to enrollees. The commenter suggested that distribution of membership rules be left up to employer and other groups, when appropriate, rather than distributed directly by the organization, and that the timing of the annual distribution similarly be left up to groups.

*Response:* We see no problem with organizations coordinating the preparation of membership rules with groups when Medicare enrollees are also enrolled under another contract with an employer or other group. We also see no problem with the group distributing the rules, as long as the organization recognizes that it remains responsible if the group fails to comply with the rule. We are not changing the proposed rule, as we prefer that organizations consult individually with their contract officers on appropriate methods and procedures for distribution. If membership rules vary group by group, each version should be submitted for review under the provisions of § 417.436(c).

#### F. Absence of the Enrollee from the Geographic Area

*Comment:* One commenter objected to the proposed limitation of one year on "extended absence" from the geographic area during which an enrollee would be permitted to retain membership in the organization. The commenter termed such limitation "unduly restrictive" because there may be some instances when absences could extend beyond one year and the organization may be willing to retain the beneficiary. Two commenters objected because the 90 day limit on temporary absences after

which disenrollment would be warranted and the one year limit on retention of enrollees who are absent from the geographic area are not "statutorily based", and they disadvantage Medicare enrollees.

*Response:* We disagree. The provision in § 417.460(a)(2)(iv) was originally intended to assist beneficiaries who take extended vacations in other areas of the country, and did not wish to disenroll from the "mother" organization. However, it was never meant to include persons who would be leaving the geographic area for more than a few months or those who leave permanently. We believe the time limits we proposed, 90 days and one year respectively, are more than enough time to accommodate seasonal preferences and other extended, but nonpermanent, absences from the geographic area, and are advantageous to enrollees. The statute at section 1876(d) requires enrollees to reside within the organization's geographic area. It is within our authority to define by regulation the length of absence which indicates the beneficiary no longer lives in that area.

Beneficiaries must be disenrolled if they "permanently move" out of the service area. There are two ways to determine whether a permanent move has occurred: First, as described in § 417.460(a)(2)(i)(A), if there is a written statement from the beneficiary, or "other evidence acceptable to HCFA", and second, if an extended absence extends beyond a certain period of time, the beneficiary may be "deemed" to have made a permanent move. Previously, this period of time was defined to be 90 days.

This regulation amends this provision, and makes a new distinction. If a beneficiary is on an "extended absence," which is defined as more than 90 days, the HMO may deem the absence to be permanent, and disenroll the beneficiary, or if the HMO determines that the beneficiary does not intend to make a permanent move, it may retain the beneficiary if the various conditions in §§ 417.460(a)(2)(iv) are met. However, HCFA has determined that for Medicare purposes, a beneficiary who is absent for more than a year cannot reasonably be considered to "reside" in the service area, and must be disenrolled. Accordingly, §§ 417.460(a)(2)(iv)(B) has been revised to make clear that beneficiaries may remain enrolled during extended absences, but not if they "reside" outside the service area.

*Comment:* One commenter stated that HCFA should reconsider rules concerning retention of members who

are absent from the geographic area, depending on whether the enrollee is a member of the organization under another group contract. The organization stated that enrollees who are absent for more than one year and must be disenrolled under the Medicare contract may lose the other group membership as well, because the group does not cover enrollment in an organization outside a specific geographic area.

*Response:* These rules govern only Medicare enrollment in an HMO/CMP and are being promulgated to afford all Medicare beneficiaries protection, whether they are enrolled by virtue of their relationship with a former employer or on their own. We understand that a group retiree's situation may be different from an individual enrollee's. It is true, for example, that a group retiree may suffer consequences beyond the individual's control if he or she is disenrolled after a one year absence. The former employer might cease coverage of health benefits altogether or reduce the amount it pays on the group retiree's behalf. The HMO/CMP should clearly state in its marketing material the need for group retirees to consult with their former employers if they will be absent from the geographic area.

If the employer group would terminate coverage if it knew that the beneficiary had left the area, then the beneficiary should be made aware of the implication of his or her decision to leave. Group retirees who lose group coverage because their former employer does not cover enrollment in an organization outside a specific geographic area have several options. Sometimes employers offer other kinds of group coverage outside of the specific area (such as Medigap policies) which a retiree might elect. The group retiree could also join the affiliated organization, or any other organization with a Medicare contract as an individual enrollee.

#### G. Geographic Limitation

*Comment:* One commenter pointed out that § 417.460(a)(2)(iv)(D), which requires that organizations that wish to limit the geographic areas in which they will retain members during an extended absence may do so only if there is an "affiliated organization" in that area, does not contain a definition of the term "affiliated organization". The commenter suggested that an affiliated organization should be defined as one where a contract exists, where a second organization agrees to provide or arrange services of the first organization, or alternatively, plans

should be free to "lock-in" beneficiaries to any provider with which it has made arrangements. The same commenter stated that the legislative and regulatory history does not support a definition which would require "affiliated organizations" to be under common ownership or control.

*Response:* We agree with the commenter that it is desirable to define the term "affiliated organization," and have revised the regulations accordingly. We also agree with the commenter that the definition should not be limited to organizations under common ownership or control of the original organization, although we do not agree that the statute or legislative history mandates such a result, or would prevent HCFA from exercising its rulemaking authority to implement a different policy. Therefore, under the new definition, an organization may be "affiliated" if it is under common ownership or control of, or has a written agreement with, the organization which wishes to retain members who leave its geographic area.

However, we believe that written agreements or common ownership alone would not provide sufficient protections to beneficiaries who exercise the option of remaining enrolled in an organization during an extended absence. Therefore, we have chosen to impose an additional limitation on the definition of "affiliated organization." The affiliated organization must also have a Medicare contract under section 1876. Since the affiliated organization must therefore meet the qualifying conditions in §§ 417.410 through 417.418 and all the other requirements of subpart C which the original organization must meet, it will ensure that beneficiaries receive the same quality of services from the affiliated organization as from the original organization. We have chosen to delay the implementation date for the definition for one year in order to give organizations an opportunity to comply with the rule.

*Comment:* The same commenter and several other commenters stated that the limitation we proposed, to confine the extended absences which could be covered under the provisions of § 417.460(a)(2)(iv), to absences in which the enrollee remains within the United States, should be stricken. One commenter stated that disenrollment should be an option but not a requirement.

*Response:* We disagree. Section 417.460(a)(2)(iv)(B) permits a beneficiary to remain enrolled if he or she is absent from the geographic area for more than 90 days, but only if the HMO or CMP provides the enrollee with the full scope

of Medicare covered services as well as any additional or supplemental benefits. There are at least two reasons why it is impossible for any HMO or CMP to comply with this requirement if the beneficiary is absent from the United States for an extended period.

First, section 1862(a)(4) of the Act has the effect of precluding Medicare coverage for any service provided outside the United States (with narrow exceptions for certain services in Canada and Mexico). Therefore, since no services provided outside the United States are considered to be covered, it is not possible for an HMO or CMP to meet the requirement to provide an enrollee with Medicare covered services if that enrollee is outside the United States. We note that if there were any basis for concluding that this prohibition did not apply to services provided by an HMO or CMP, it would mean that all HMOs and CMPs would be required to provide emergency and out-of-area urgently-needed services to all of their Medicare enrollees anywhere in the world.

Second, it is not possible to provide Medicare covered physicians' services (or any other Medicare covered services which require the involvement of a physician) outside the United States. Section 1861(r) of the Act defines a physician as someone "legally authorized to practice medicine and surgery by the State in which he performs such function \* \* \*" (emphasis added). Thus, even if services are performed by physicians licensed in the United States, they would not be performing the services in the States which license them. Furthermore, the statutory definition of a State under sections 1861(x) and 210(h) of the Act clearly does not include a foreign country.

*Comment:* One commenter felt that HCFA should permit HMOs/CMPs to retain enrollees who leave the country for more than 90 days because: (1) HCFA may not object to an organization's selection of additional benefits (beyond the scope of Medicare covered services) except if the Secretary determines that the additional services will substantially discourage enrollment of Medicare beneficiaries in the organization (section 1876(c)); (2) the exclusion of payment for items and services furnished outside the United States does not apply to HMOs/CMPs, since HCFA does not pay HMOs/CMPs for items and services furnished to enrollees; (3) the rule has a discriminatory impact on ethnic Americans who travel outside the United States during their retirement years; (4) the rule infringes on the

beneficiary's constitutional right to travel and prevents Medicare contracting HMOs/CMPs from bridging this coverage gap in the Medicare program; (5) HMOs/CMPs may be subject to unfair recoupment of monthly payments by HCFA if the enrollee leaves the country without informing the organization; and (6) HCFA cannot enforce the rule.

*Response:* We considered the commenter's arguments and decided not to change the proposed rule for the following reasons: (1) and (2) An organization cannot furnish the full scope of benefits, as required by § 417.460(a)(2)(iv) to enrollees absent from the United States, as stated in the previous response. Therefore, it is not possible for an HMO or CMP to meet the requirement to provide an enrollee with Medicare covered service if that enrollee is outside the United States. (3) section 1862(a)(4) of the Act clearly precludes payment in most instances for any services provided outside the United States to Medicare beneficiaries who are not enrolled in HMOs/CMPs. Therefore, rather than being discriminated against, HMO enrollees who travel abroad are in a better position than other beneficiaries, if the HMO chooses to pay for services during absences of 90 days or less. (4) HMOs/CMPs may provide coverage of services they choose as optional supplemental benefits, including services provided outside the United States, if the enrollee is absent from the country for 90 days or less. However, organizations may not retain as an enrollee a beneficiary who is absent from the United States for more than 90 days as discussed in the previous response. (5) Organizations should include the rule requiring disenrollment of beneficiaries leaving the United States for more than 90 days in their membership rules, but are not responsible for enrollees' failure to notify the organization of such absences. On the other hand, the organization that has been informed of an enrollee's absence from the country, for instance by the presentation of a bill for emergency services received while outside the United States, is expected to follow up to ensure that the enrollee has or will return within 90 days, or to initiate disenrollment according to the procedures outlined in § 417.460(a)(2). (6) HCFA will enforce the rule by requiring HMO/CMP compliance and by monitoring the performance of organizations under the contract.

*Comment:* Several commenters questioned why the exception in § 417.460(a)(2)(iv) permitting organizations to retain enrollees who

leave the geographic area for 90 days to one year would not be available to Federally qualified HMOs. Additionally, Federally qualified HMOs should be permitted to retain those enrollees who are moving to an area other than where there is an affiliated organization.

*Response:* We have reviewed the regulations and have reconsidered our position on this question. Under the regulation at § 417.108(a), if a Federally qualified HMO complies with relevant Medicare requirements with respect to its Medicare members, then its Federal qualification will not be jeopardized even if the Medicare requirements are less restrictive than the Federal qualification requirements. Section 417.460(a)(2)(iv) permits an HMO or CMP with a Medicare contract to retain Medicare members who leave its service area, even if they do not move to an area where the HMO or CMP has an affiliate organization. Therefore, we believe that this exception may be used by Federally qualified HMOs with respect to their Medicare members. Further, we believe that the disadvantages in retaining members who move out of the HMO's service area, including added financial risk, provide adequate incentives to utilize this exception with caution.

*Comment:* One commenter recommended that HCFA consider replacing the current rules on temporary, extended, and permanent moves with a policy which would permit the organization to retain all members regardless of the length of absence from the geographic area. Another commenter suggested that there should be different policies depending on different circumstances, such as how far away the enrollee's new permanent residence is, or whether the enrollee "ages in" to Medicare enrollment because he or she was previously an enrollee of the organization, and is becoming eligible for Medicare.

*Response:* We disagree with the first comment. We believe it is essential to impose limits on an organization's ability, or obligation, to retain members who are absent from the organization's geographic area. As we stated in the proposed rule, it is important to specify a period during which an enrollee can be absent from the geographic area (such as on a vacation) without fear of being arbitrarily disenrolled. This would prevent organizations from, for example, trying to avoid responsibility for emergency or urgently needed out-of-area services during that time. However, some limits are necessary so that HMO/CMPs are not held responsible

indefinitely for an enrollee who has permanently left the geographic area.

At the same time, even if organizations wish to retain enrollees indefinitely, it is not fair to beneficiaries, who do not have access to facilities of the organization in which they are enrolled, or to HCFA, which continues full capitation payments to the organization during the beneficiaries' absences. Accordingly, we continue to believe that the regulations we have proposed allow as much flexibility as possible to organizations and beneficiaries, while protecting all parties from abuse. The rules permit an organization and a beneficiary to establish that an absence of less than a year is not "permanent," but provides that any absence of more than a year must be considered permanent, and the beneficiary must be disenrolled.

With respect to the second two comments, the general rule is that where the beneficiary clearly does not reside in the geographic area covered by the organization's Medicare contract, he or she is not eligible to enroll, or remain enrolled under the contract. There are numerous protections afforded to beneficiaries with respect to area covered by a Medicare contract, which may not apply in other areas served by the organization.

However, with respect to HMO/CMP commercial enrollees who "age-in" to Medicare, there is a specific regulation, at 42 CFR 417.432(a), which requires the organization to retain the members.

#### H. Application of the Rules

*Comment:* One commenter criticized the proposed rules' failure to distinguish between cost and risk contracts, and to clarify which rules apply to which type of organization.

*Response:* All the regulations at §§ 417.400 through 417.694 apply equally to organizations with either a cost or risk contract under section 1876, except for those subsections that specifically identify cost or risk organizations in the title or in the title of a group of subsections. For instance, §§ 417.442 through 417.448 apply only to organizations with risk contracts, and the titles of those sections specifically indicate risk contracting organizations. Sections 417.530 through 417.576, by contrast, are specifically grouped and labeled for cost contracting organizations.

It is possible for an organization to have a risk contract, but to retain cost members from a previous cost contract. Although the organization does not have a separate contract for remaining cost enrollees, in general it applies cost contracting rules to cost enrollees and

risk contracting rules to risk enrollees. For instance, an organization may not apply the restriction on obtaining services from outside the organization under § 417.448 to cost enrollees.

#### IV. Provisions of the Final Regulations

After consideration of the comments received and our further analysis of specific issues we are publishing as final the July 22, 1988 proposed regulations with minor editorial clarifications and the revisions identified below.

In § 417.401, we are adding a definition of "affiliated organization."

In § 417.413(d)(6), we are revising language concerning suspension of enrollment when an organization is found not in compliance with the 50/50 rule, to clarify that organizations must stop accepting new applications for enrollment after a date specified by HCFA, or that HCFA may stop adding new enrollees to its records after a date specified by HCFA.

In § 417.436(a)(3), we are clarifying that the lock-in applies only in risk organizations.

We are revising § 417.436(a)(6) to permit organizations to omit the actual amount of the premium from the membership rules, if it is not feasible to include it, as long as the source for the information is clearly identified and a telephone number for obtaining that information is included.

We are also making conforming changes to § 417.596(a) to remove the deadline for the establishment of new benefit stabilization funds for HMOs/CMPs which have risk contracts under section 1876 of the Act, and deleting § 417.597(e) which specifies the deadline date for HMO/CMP use of these funds.

These changes, which were not included in the proposed rule, are mandated by section 6212(c) of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101-239, which deleted sections 2350(b) (3) and (4) of the Deficit Reduction Act of 1984, Public Law 98-369 and amended section 1876(g)(5) of the Act. The amendment repealed the time limitations on the establishment of new benefit stabilization funds and on the period for HMO/CMPs to use the fund monies.

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite prior public comment on the proposal. The notice identifies the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issue involved. The proposed rulemaking can be waived when an agency finds that it is impracticable, unnecessary or

contrary to the public interest, and incorporates a statement of the finding of good cause in the final rule.

This change conforms HCFA regulations to a self-executing amendment to Medicare law (title XVIII of the Social Security Act). This amendment to the Act is so specific that it leaves no room for alternative interpretations or implementation. Accordingly, we find that there is good cause to dispense with a proposed rulemaking on this change.

#### V. Regulatory Impact Statement and Flexibility Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the Executive Order 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a final regulatory flexibility analysis that is consistent with Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

The final rule generally reflects statutory changes that serve to codify in our regulations those practices which are required by recent legislation. The statutory changes repealing the "two-for-one" requirement, requiring an explanation of enrollee rights, and granting waivers for 50-percent composition of enrollment will increase Medicare program expenditures independently of the promulgation of this final rule. These provisions, in themselves, will have a negligible impact on Medicare expenditures. Although the technical change provisions of this rule are new requirements, we expect that the impact on Medicare expenditures also will be negligible.

Therefore, we have determined that this final rule, in itself, will not produce any effects that will meet any of the criteria of Executive Order 12291. For the same reason, we have determined and the Secretary certifies that this final

rule would not have a significant economic impact on a substantial number of small entities. Thus, a regulatory impact analysis under Executive Order 12291 and a regulatory flexibility analysis under the RFA are not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. For purposes of the RFA, we treat all providers and fiscal intermediaries as small entities.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have significant economic impact on the operations of substantial number of small rural hospitals.

#### VI. Information Collection Requirement

Sections 417.428 and 417.436 of this final rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. These final regulations apply to organizations contracting with the Medicare program to provide services to Medicare beneficiaries on a prepaid basis.

There are two requirements which are potential information collection requirements: (1) That organizations include in their marketing materials given to prospective enrollees the fact that the organization's contract with Medicare is subject to periodic termination or nonrenewal, and that the individual's enrollment with the organization will terminate if the contract with Medicare is terminated or not renewed; and (2) the explanation furnished to enrollees of the organization and the fact that these rules now must be furnished on an annual basis rather than only upon enrollment and when changes are made, as was the case previously.

Respondents who provide the information include HMOs and CMPs contracting with Medicare.

HMOs/CMPs will not collect any information in order to comply with the requirements; rather, they will disseminate this information to the public and to enrollees. The reporting burden for the addition to marketing materials required under § 417.428 is very negligible, since the information

can be added to previously printed marketing materials by the use of an addendum. The previous rules required that marketing materials be subject to Federal review. The burden for the expanded information which must be included in membership rules under § 417.436 similarly can be provided by printing addenda to previously published materials, and are already subject to review. There are currently about 2 million Medicare beneficiaries enrolled in organizations subject to these rules. Distribution of these rules on an annual basis will require additional expenditure by HMOs/CMPs to print and distribute additional copies of the rules.

#### List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 subpart C is amended as set forth below:

#### PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

**Authority:** Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97-248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99-509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

#### Subpart C—Health Maintenance Organizations and Competitive Medical Plans

2. The table of contents for part 417, subpart C is amended to remove § 417.446.

3. Section 417.401 is amended by adding in alphabetical order the definition of "Affiliated organization" to read as follows:

#### § 417.401 Definitions.

\* \* \* \* \*

*Affiliated organization*, for purposes of the exception at § 417.460(a)(2)(iv) permitting continued enrollment of beneficiaries during an extended absence, means an organization which has a contract under section 1876 of the Act, and (1) is under the common ownership or control of the organization which seeks to retain absent members, or (2) has an agreement in effect with

that organization to furnish items and services to enrollees who are on an extended absence from the geographic area of the original organization.

\* \* \*

4. In § 417.413 paragraph (d) is revised, paragraph (e) is removed and paragraph (f) is redesignated as (e) and revised as follows:

**§ 417.413 Qualifying condition: Operating experience and enrollment.**

\* \* \*

(d) *Standard: Composition of enrollment*—(1) *Requirement.* Except as specified in paragraphs (d)(2) and (e) of this section, not more than 50 percent of an organization's enrollment may be Medicare beneficiaries and Medicaid recipients.

(2) *Waiver of composition of enrollment standard.* HCFA may waive compliance with the requirements of paragraph (d)(1) of this section if the organization has made and is making reasonable efforts to enroll individuals who are not Medicare beneficiaries or Medicaid recipients, and it meets either of the following requirements:

(i) The organization services a geographic area in which Medicare beneficiaries and Medicaid recipients constitute more than 50 percent of the population.

However, HCFA will not grant a waiver that would permit the percentage of Medicare and Medicaid enrollees to exceed the percentage of Medicare beneficiaries and Medicaid recipients in the organization's geographic area.

(ii) The organization is owned and operated by a government entity. The waiver may be for a period up to three years after the date the organization first enters into a contract under this subpart, and may not be extended.

(3) *Waiver granted on or before October 21, 1986.* An organization (or a successor organization) that as of October 21, 1986, had been granted an exception, waiver, or modification of the requirements of paragraph (d)(1) of this section, but that does not meet the requirements of paragraph (d)(2) of this section, must make (and throughout the period of the exception, waiver, or modification continue to make) reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by HCFA. If HCFA determines that the organization has—

(i) Complied, or made significant progress toward compliance, with the approved schedule of compliance, and that an extension is in the best interest of the Medicare program, HCFA may extend such waiver or modification.

(ii) Not complied with the approved schedule. HCFA may apply the sanctions described in paragraphs (d)(6) and (d)(7) of this section.

(4) *Basis for application of sanctions.* HCFA may, as an alternative to contract termination, apply the sanctions specified in paragraph (d)(6) of this section if HCFA determines that the organization is not complying with the requirements in paragraphs (d)(1), (d)(2), or (d)(3) of this section, as applicable.

(5) *Notice of sanction.* Prior to applying the sanctions specified in paragraph (d)(6) of this section, HCFA will send a written notice to the organization stating the proposed action and its basis. HCFA will give the organization 15 days after the date of the notice to provide evidence establishing the organization's compliance with the requirements in paragraph (d)(1), (d)(2), or (d)(3) of this section, as applicable.

(6) *Sanctions.* If, following review of the organization's timely response to HCFA's notice, HCFA determines that an organization does not comply with the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this section, HCFA may apply the following sanctions:

(i) HCFA will require the organization to stop accepting new enrollment applications after a date specified by HCFA, or

(ii) HCFA will not make payment to organizations for individuals who have not yet been formally added or "accreted" to HCFA's records by a date specified by HCFA.

(7) *Termination by HCFA.* In addition to the sanctions described in paragraph (d)(6) of this section, HCFA may decline to renew an organization's contract in accordance with § 417.492(b), or terminate its contract in accordance with § 417.494(b) if HCFA determines that the organization no longer substantially meets the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(e) *Standard: Open enrollment.* (1) Except as specified in paragraph (e)(2) of this section, an organization must enroll Medicare beneficiaries on a first-come, first-served basis to the limit of its capacity and provide annual open enrollment periods of at least 30 days duration for Medicare beneficiaries.

(2) HCFA may waive the requirement of paragraph (e)(1) of this section if compliance would prevent compliance with the limitation on enrollment of Medicare beneficiaries and Medicaid recipients (paragraph (d) of this section) or result in an enrollment substantially nonrepresentative of the population of the organization's geographic area. The enrollment would be "substantially

nonrepresentative" if the proportion of a subgroup to the total enrollment exceeded, by 10 percent or more, its proportion of the population in the organization's geographic area, as shown by census data or other data acceptable to HCFA. For purposes of this paragraph, a subgroup means a class of Medicare enrollees as defined in § 417.582.

5. In § 417.428, the introductory text of paragraph (a) is republished and the section is amended by adding a new paragraph (a)(4) to read as follows:

**§ 417.428 Marketing activities.**

(a) *Required marketing activities.* An organization must meet the following requirements:

\* \* \*

(4) Include in the organization's written materials provided to prospective enrollees prior to enrollment, notice that the organization is authorized by law to terminate or refuse to renew its contract with HCFA, that HCFA may also choose to terminate or refuse to renew its contract with the organization and that termination or nonrenewal may result in termination of the individual's enrollment in the organization.

**§ 417.432 [Amended]**

6. In § 417.432, paragraph (f) is removed.

7. Section 417.436 is revised to read as follows:

**§ 417.436 Membership rules for enrollees.**

(a) *Maintaining rules.* An organization must maintain written membership rules that deal with, but need not be limited to—

(1) All benefits provided under the contract, as described in § 417.440;

(2) How and where to obtain services from or through the organization;

(3) The restrictions on coverage for services furnished from sources outside an organization contracting on a risk basis, as described in § 417.448, other than emergency services and urgently needed services (as defined in § 417.401);

(4) The obligation of the organization to assume financial responsibility and provide reasonable reimbursement for emergency services and urgently needed services as required by § 417.414(c);

(5) Any services the organization chooses to provide, as permitted by this part from sources outside the organization, other than emergency services and urgently needed services. A cost contracting organization must disclose that the enrollee may receive

services through any Medicare providers and suppliers;

(6) Premium information, including the amount, (or if the amount cannot be included, the telephone number of the source from which this information may be obtained) and the procedures for paying premiums and other charges for which enrollees may be liable;

(7) Grievance and appeal procedures;

(8) Disenrollment rights;

(9) The obligation of an enrollee who is leaving the organization's geographic area for more than 90 days to notify the organization of the move or extended absence and the organization's policies concerning retention of enrollees who leave the geographic area for more than 90 days, as described in § 417.460(a)(2);

(10) The expiration date of the organization's contract with HCFA and notice that the organization is authorized by law to terminate or refuse to renew the contract, that HCFA may also terminate or refuse to renew the contract and that termination or nonrenewal of the contract may result in termination of the individual's enrollment in the organization; and

(11) Any other matters that HCFA may prescribe.

(b) *Availability of rules.* The organization must furnish a copy of the rules to each Medicare enrollee at the time of enrollment and at least annually thereafter.

(c) *Changes in rules.* If an organization changes its rules, it must submit the changes to HCFA in accordance with § 417.428(a)(3), and notify its Medicare enrollees of the changes at least 30 days before the effective date of the changes.

8. In § 417.444, the introductory text of paragraph (a) is republished, paragraphs (a)(2) and (b) are revised; paragraph (c) is removed. The section reads as follows:

**§ 417.444 Special rules for current nonrisk Medicare enrollees of an organization under a risk contract.**

(a) *Condition for additional benefits.* Current nonrisk Medicare enrollees of a risk organization may retain that status indefinitely and, therefore, are not entitled to the additional benefits under § 417.442 unless HCFA determines that the enrollee's status must be changed or a change is requested by the enrollee, as follows:

(2) A current nonrisk Medicare enrollee requests, using the same or a similar form to that described in paragraph (a)(1) of this section, that he or she be covered under the risk portion of the contract.

(b) *Notification.* Organizations converting from a cost to a risk contract must, within 60 days of signing the risk contract, inform current nonrisk Medicare enrollees of their right to remain current nonrisk Medicare enrollees or to convert to risk enrollment at any time under the provisions of paragraph (a)(2) of this section.

**§ 417.446 [Removed]**

9. Section 417.446 is removed.

10. In § 417.448, paragraphs (c) and (d) are revised to read as follows:

**§ 417.448 Restriction on payments for services received by Medicare enrollees of risk organizations.**

(c) *End of restriction.* The restriction of payments imposed by paragraph (a) of this section ends when a Medicare enrollee leaves the organization's geographic area for an extended period as defined in § 471.460(a)(2) and the organization and enrollee make arrangements for membership to continue as provided in § 417.460(a)(2)(iv).

(d) *Timing.* The effective date for the end of the restriction on payments, as discussed in paragraph (c) of this section is the first day of the first month following the month in which the enrollee notifies the organization as required in § 417.436(a)(9), that he or she has left the organization's geographic area for an extended period.

11. Section 417.460(a)(2)(iv) is revised to read as follows:

**§ 417.460 Disenrollment of beneficiaries and termination of payments to an organization.**

(a) \* \* \*

(2) \* \* \*

(iv) *Exception.* An organization may retain a Medicare enrollee who is absent from the organization's geographic area for an extended period, but who remains within the United States as defined in § 400.200, if the enrollee agrees. For purposes of this exception, the following provisions apply:

(A) An absence for an extended period means an uninterrupted absence from the organization's geographic area for more than 90 days but less than one year.

(B) The organization and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee is absent for an extended period from the organization's geographic area. However, restrictions may not be imposed on the scope of services described in § 471.440.

(C) When the enrollee returns to the organization's geographic area, the

restrictions under § 417.448(a) prohibiting Medicare payment for services not provided or arranged for by the organization apply again immediately.

(D) Organizations that choose to exercise this exception must make the option available to all Medicare enrollees who are absent for an extended period from the organization's geographic area. (However, organizations may limit this option to enrollees who go to a geographic area served by an affiliated organization.)

(E) If the enrollee fails to return to the organization's geographic area within 1 year of the date he or she left the geographic area, then the organization must disenroll the beneficiary on the first day of the month following the anniversary of the date the enrollee left the geographic area under the provisions of paragraph (a)(2)(i) of this section.

12. Section 417.494 is amended by republishing paragraph (b)(1) introductory text, revising (b)(1)(iii) and adding paragraph (b)(1)(iv) to read as follows:

**§ 417.494 Modification or termination of contract.**

(b) Termination by HCFA. (1) HCFA may terminate a contract for any of the following reasons:

(iii) The organization has failed substantially to comply with the composition of enrollment requirements specified in § 417.413(d).

(iv) HCFA determines that the organization no longer meets the applicable conditions necessary to qualify as an eligible organization under section 1876 of the Act and this subpart.

13. Section 417.596(a) is revised to read as follows:

**§ 417.596 Establishment of a benefit stabilization fund.**

(a) *General.* If an organization is required to provide its Medicare enrollees with additional benefits as described in § 417.592, the organization may request that HCFA withhold a part of its monthly per capita payment in a benefit stabilization fund. The fund will be used to prevent excessive fluctuation in the provision of those additional benefits in subsequent contract periods.

14. In § 417.597 paragraph (e) is removed and paragraph (b) is revised to read as follows:

**§ 417.597 Withdrawal from a benefit stabilization fund.**

(b) *Criteria for HCFA approval.* HCFA will approve an organization's request for a withdrawal from its benefit stabilization fund for use during the next contract period only if—

- (1) The organization's average of its per capita rates of payment for the next contract period is less than that of the previous contract period;
- (2) The organization's ACR for the next contract period is significantly higher than that of the previous contract period; or
- (3) The organization's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period and the ACR for the next contract period results in an additional benefits package that is less in total value than that of the previous contract period.

15. Section 417.640(c) is revised to read as follows:

**§ 417.640 Determinations subject to appeal.**

(c) A determination to terminate, or to refuse to renew, a contract with an organization because—

- (1) The organization has failed substantially to carry out the terms of the contract;
- (2) The organization is carrying out the contract in a manner that is inconsistent with the efficient and effective administration of section 1876 of the Act;
- (3) The organization no longer meets the applicable conditions necessary to qualify as an eligible organization under section 1876 of the Act and this subpart; or
- (4) The organization has failed to comply with the composition of enrollment requirements specified in § 417.413(d).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program; No. 93.714, Medical Assistance)

Dated: March 18, 1991.

Gail R. Wilensky,  
Administrator, Health Care Financing Administration.

Approved: May 18, 1991.

Louis W. Sullivan,  
Secretary.

[FR Doc. 91-21805 Filed 9-12-91; 8:45 am]

BILLING CODE 4120-01-M

**DEPARTMENT OF TRANSPORTATION**

**Urban Mass Transportation Administration**

**49 CFR Part 665**

[Docket No. 89-B]

RIN 2132-AA30

**Bus Testing**

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Interim rule.

**SUMMARY:** On October 9, 1990, the Urban Mass Transportation Administration (UMTA) published an Interim Final Rule for its bus testing facility program. At that time, UMTA anticipated publishing a final rule on July 1, 1991. Because of the complex nature of the issues involved, however, UMTA believes that additional time is required to draft a final rule. Today's document amends the termination date of the interim final rule and gives notice of continued effectiveness of the interim procedures.

**DATES:** These procedures, which became effective on August 23, 1989 (54 FR 35158), with further modifications published on October 9, 1990 (55 FR 41174), remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Douglas G. Gold, Assistant Chief Counsel for General Law, Office of the Chief Counsel, (202) 366-1938. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863-1889.

**SUPPLEMENTARY INFORMATION:** On May 25, 1989, UMTA published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds obligated by UMTA after September 30, 1989, under the Urban Mass Transportation Act of 1964, as amended, may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

To ensure that bus testing procedures were in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the

agency's final rule. The guidance was provided in the interim final rule issued on August 23, 1989 (54 FR 35158). UMTA invited comments on the interim procedures.

While the NPRM proposed the testing of all vehicles used in mass transit after April 2, 1987 (the effective date of STURAA), the interim final rule narrowed the scope of the proposed rule. It provided that only certain larger-sized buses would be subject to the testing procedures. The interim final rule also stated that the agency, after appropriate notice and as conditions warranted, might expand the scope of vehicles to be tested at the facility during the interim period.

On October 9, 1990 (55 FR 41174), the agency modified the interim final rule and invited comments on the changes. The modification extended the interim period to July 1, 1991; added medium-duty body-on-chassis designs to the category of buses to be tested; and modified the definition of "new bus model" to include a bus being produced with a major change in configuration or components. Examples of a major change in configuration and a major change in components were provided. UMTA received numerous comments on these modifications to the interim final rule.

The bus testing rule involves complex and technical issues. UMTA requires additional time to examine and consider these issues and to make a careful review of the public comments received as a result of the October 1990 modifications. As a result, UMTA is extending the effective date of the interim final rule until further notice. The agency continues to reserve the right, after appropriate notice, to make further modifications to the interim final rules.

UMTA does not consider the extension of the effective date of this rule an action which requires an additional notice of proposed rulemaking. Since its first NPRM, the agency's intent has remained clear—to implement the provisions of the UMT Act relating to bus testing in the most effective and efficient manner. The agency has effected this policy through a staged implementation of these provisions, in a series of interim rules.

Because this rule merely extends the effective date of the current regulation, the agency has determined that a recitation of compliance with the various rulemaking executive orders and statutes is unnecessary. Information on the agency's compliance with these requirements may be reviewed in its

October 9, 1990, interim final rule (55 FR 41174).

**List of Subjects in 49 CFR Part 665**

Vehicle testing, Grant programs—  
transportation, Mass transportation.

For the reasons cited above, the  
Urban Mass Transportation  
Administration amends 49 CFR part 665  
as set forth below:

**PART 665—BUS TESTING**

1. The authority citation for part 665  
continues to read as follows:

**Authority:** Urban Mass Transportation Act  
of 1964, as amended, 49 U.S.C. 1601, *et seq.*,  
1608(h), section 317, Surface Transportation  
and Uniform Relocation Assistance Act of  
1987, and 49 CFR 1.51.

**§ 665.3 [Amended]**

2. Section 665.3 is amended by  
removing the second sentence.

Issued On: September 9, 1991.

**Brian W. Clymer,**

*Administrator.*

[FR Doc. 91-22041 Filed 9-12-91; 8:45 am]

**BILLING CODE 4910-57-M**

# Proposed Rules

Federal Register

Vol. 56, No. 178

Friday, September 13, 1991

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

### Commodity Credit Corporation

#### 7 CFR Part 1413

#### 1992 Upland Cotton Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1992 crop of upland cotton. This action is required by section 103B of the Agricultural Act of 1949, as amended (the 1949 Act).

**DATES:** Comments must be received on or before—October 15, 1991—in order to be assured of consideration.

**ADDRESSES:** Comments must be mailed to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3741-S, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Charles V. Cunningham, Group Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, room 3758-S, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of \$100 million or more may result from implementation of the provisions of this proposed rule.

The preliminary regulatory impact analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this rule applies is: Cotton Production Stabilization—10.052 as found in the catalog of Federal Domestic Assistance.

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

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

#### Background

In accordance with section 103B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1992 crop of upland cotton if it is determined that the total supply of upland cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers of upland cotton,

whether or not an ARP for upland cotton is in effect, if needed to assist in adjusting the total national acreage of upland cotton to desirable goals. If, at the time of final announcement of the ARP, the projected carry-over of upland cotton for the crop year is equal to or greater than 8 million bales, a paid land diversion shall be offered to upland cotton producers. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm plus any upland cotton acreage planted in accordance with the flexibility provisions are ineligible for upland cotton loans and payments with respect to that farm.

If it is determined that an ARP for the 1992 crop of upland cotton is needed, a preliminary announcement of the ARP uniform percentage requirement (from 0 to 25 percent) must be made not later than November 1 of the calendar year preceding the year in which the crop is harvested. Not later than January 1 of the calendar year in which the crop is harvested, a final announcement of the ARP uniform percentage requirement must be made. Producers in early planting areas may elect to participate in the program on the terms of the ARP first announced for the crop, or as subsequently revised, if the Secretary determines that the producers may be unfairly disadvantaged by the revision.

The ARP for the 1992 crop of upland cotton must be set at a level that will result in a ratio of carry-over to total disappearance of 30 percent, based on the most recent projection of carry-over and total disappearance at the time of announcement of the ARP. For the purposes of this provision, the term "total disappearance" means all upland cotton utilization, including total

domestic, total export, and total residual disappearance.

Based on August 1991 supply/use estimates, ending stocks for the 1992 marketing year under a 5-percent ARP, a 10-percent ARP and a 15-percent ARP are 5,200 thousand bales, 4,800 thousand bales and 4,400 thousand bales, respectively. Such ARP levels would

result in ratios of carry-over to total disappearance of 0.331, 0.310 and 0.288, respectively. For the purposes of this proposed rule, these three ARP options will be considered. However, because of changes in the supply/use situation that may develop between now and November 1, the actual announced

preliminary ARP may be different from the options discussed in this notice.

The 1992 ARP options considered are:

- Option 1. 5 percent ARP.
- Option 2. 10 percent ARP.
- Option 3. 15 percent ARP.

The estimated impacts of the ARP options are shown in Table 1.

TABLE 1—UPLAND COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
ARP (%).....	5	10	15
Participation (%).....	87	86	84
Planted Acres (thousand).....	13,540	12,970	12,420
Production (thousand bales).....	16,800	16,200	15,600
Domestic Use (thousand bales).....	8,850	8,800	8,750
Exports (thousand bales).....	6,850	6,700	6,550
Ending Stocks (thousand bales).....	5,200	4,800	4,400
Carry-over/Disappearance.....	0.331	0.310	0.288
Deficiency Payments (\$ million).....	723	644	562

Accordingly, comments are requested as to the 1992 acreage reduction percentage for upland cotton. The final determination of this percentage will be set forth at 7 CFR part 1413.

**List of Subjects in 7 CFR Part 1413**

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

**PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STABLE COTTON, WHEAT AND RELATED PROGRAMS**

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441-2, 1444-2, 1444f, 1445b-3a, 1461-1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by redesignating paragraph (a)(4) as (a)(5); and adding a new paragraph (a)(4) and revising paragraphs (a)(3) and (d) to read as follows:

**§ 1413.54 Acreage reduction program provisions.**

- (a) \* \* \*
- (3)(i) 1991 upland cotton, 5 percent; and
- (ii) 1992 upland cotton shall be within the range of 0 to 25 percent, as determined and announced by CCC;
- (4) 1991 ELS cotton, 5 percent;
- \* \* \* \* \*
- (d) Paid land diversion program payments shall not be made available to producers of the 1992 crops of wheat, feed grains and upland cotton.
- \* \* \* \* \*

Signed at Washington, DC on September 6, 1991.

Keith D. Bjerke,  
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-21929 Filed 9-12-91; 8:45 am]

BILLING CODE 3410-05-M

**Rural Electrification Administration**

**7 CFR Part 1755**

RIN 0572-AA56

**REA Specification for Filled Telephone Cables with Expanded Insulation**

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Electrification Administration (REA) proposes to amend 7 CFR 1755.97, Incorporation by Reference of Telephone Standards and Specifications by rescinding REA Bulletin 345-89, REA Specification for Filled Telephone Cables with Expanded Insulation, PE-89 and replacing it with Bulletin 1753F-208 (PE-89). The new bulletin will update the end product performance requirements of filled cables brought about through technological advancements made during the last five years.

**DATES:** Comments must be received by REA or postmarked no later than October 15, 1991.

**ADDRESSES:** Comments should be mailed to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-

1500. REA requests an original and three copies of all comments (7 CFR 1700). Comments received may be inspected Monday through Friday in room 2835 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, room 2832, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-8667.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

**Regulatory Flexibility Act Certification**

Gary C. Byrne, Administrator, REA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most borrowers of REA loan funds do not meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

**Information Collection and Recordkeeping Requirements**

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section

3504 of that Act, information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572-0077 which expires on 1/31/94. Comments concerning these requirements should be directed to the Office of Information and Regulator Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

#### National Environmental Policy Act Certification

Gary C. Byrne, Administrator, REA, has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

#### Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

#### Background

REA has issued a series of publications titled "Bulletin" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series, REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to rescind Bulletin 345-89, "REA Specification for Filled Telephone Cables with Expanded Insulation PE-89," and replace it with Bulletin 1753F-208(PE-89). Specification No. PE-89, would become part of REA

Bulletin No. 1753F-208(PE-89) and no longer be shown in the "Specification No." column of the table in § 1755.97.

The American National Standard Institute (ANSI) and the Insulated Cable Engineers Association (ICEA) are scientific and technical organizations formed for the development of standards on characteristics and performance of materials, products, systems, and services. An ANSI/ICEA standard represents a common viewpoint of those parties concerned with its provisions; namely producers, users and general interest groups. The standard is intended to aid industry, government agencies, and the general public.

It is REA policy to use the standards, rules, and regulations of such engineering and standards groups as ANSI, the ICEA, the American Society for Testing and Materials (ASTM), and the various national engineering societies, and such references as the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), to the greatest extent practicable as determined by REA. REA is also guided by OMB Circular No. A-119, Federal Participation in the Development and Use of Voluntary Standards in its activities. In the absence of national standards, or where REA determines that existing national standards are not satisfactory, standards will be prepared for material and equipment as necessary.

REA has determined that by revising the current specification, borrowers will be provided with the opportunity to increase subscriber services through enhanced cable designs brought about through technological advancements made during the last five years in an economical and efficient manner. This revision will also allow cable manufacturers to reduce their production costs by providing one uniform cable design to both REA and non-REA telephone companies which presently is not being done today. This reduction in manufacturing costs will result in lower cable costs for borrowers without any degradation in cable performance.

#### List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural Areas, Telephone.

For reasons set out in the preamble, REA proposes to amend 7 CFR 1755 as follows:

### PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*

2. Section 1755.97 is amended by removing the entry REA Bulletin No. 345-89 and adding new entry REA Bulletin No. 1753F-208(PE-89) to read as follows:

#### § 1755.97 Incorporation by reference of telephone standards and specifications.

REA Bulletin No.	Specification No.	Date last issued	Title of standard or specification
1753F-208(PE-89).	(will be left blank).	(Month and year of Final Rule will be inserted).	REA specification for filled telephone cables with expanded insulation.

Dated: September 5, 1991.

Gary C. Byrne,  
Administrator.

[FR Doc. 91-22036 Filed 9-12-91; 8:45 am]

BILLING CODE 3410-15-M

#### Farmers Home Administration

##### 7 CFR Part 1940

#### System for Delivery of Certain Rural Development Programs

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to add a new regulation, subpart T, System for Delivery of Certain Rural Development Programs, to part 1940—General. This action is taken by FmHA to comply with legislation authorizing a 5-year pilot program in up to five States whereby a State rural economic development review panel will be established to review and rank applications requesting assistance from designated rural development programs. It also authorizes the use of grant funds, from grants appropriated under provision of section 306(a) of the Consolidated Farm and Rural Development Act, for administrative costs associated with the review panel operations, and to allow loan level transfers within a State

among certain rural development programs. The intended effect of this action is to permit up to five States to establish a rural economic development review panel to review and rank certain rural development program applications in order to help assure that the social and economic needs of rural areas are funded according to approved development plans for rural areas within a State.

**DATES:** Written comments must be received on or before October 15, 1991.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis, and Control Branch, Farmers Home Administration, USDA, South Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response, with an average of 6.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mildred W. McGlothlin, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., room 6330, Washington, DC 20250, Telephone (202) 382-9589.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major." The action is not likely to result in any of the following: (a) An annual effect on the economy of \$100 million or more, (b) a major

increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial.

**Intergovernmental Review**

The grant program will be listed in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Environmental Impact**

This proposed action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the national Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

**Regulatory Flexibility Act**

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on small entities. Eligibility is extended only to States and in terms of total number of entities, less than 25 will be affected annually.

**Background**

Under current FmHA procedures for funding or guaranteeing Community and Business Program projects, and Agency reviews and ranks applications, assigning particular weight to important factors such as the type of applicant, population and income. FmHA also considers availability of funds within each program. This action proposes to establish a pilot program that would modify the method by which applications are selected for funding. In particular, this proposal would add a new regulation to select up to five States for a 5-year period to operate a modified application review and ranking procedure. Once selected, this procedure will become the State's exclusive method by which allocated funds are disbursed to eligible applicants. Selected States cannot "opt out" of the procedure and revert to the old ranking and applicant selection process.

Governors will establish a State rural economic development review panel consisting of sixteen voting and up to four nonvoting members to review and rank applications requesting funds from designated rural development programs. Projects selected for funding under the panel review process will be selected considering area and regional development plans of the State. FmHA will fund projects based upon the panel's prioritized list as funds are available. The proposed regulation also authorizes loan level transfers within a State among certain loan programs, and authorizes grant funds to pay administrative costs associated with panel operation. Even though the 1990 Farm Bill authorizes an appropriation of funds for the panels, Federal funds may or may not be appropriated or otherwise made available by Congress. It may be necessary, therefore, for States to fund all panel expenses.

FmHA proposes to add subpart T to part 1940 to comply with Public Law 101-624.

**List of Subjects in 7 CFR Part 1940**

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

FmHA proposes to amend chapter XVIII, title 7, code of Federal Regulations as follows:

**PART 1940—GENERAL**

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart T of part 1940, consisting of §§ 1940.951 through 1940.1000, is added to read as follows:

**Subpart T—System for Delivery of Certain Rural Development Programs**

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Sec.	
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1940.952	[Reserved].
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1940.960	Federal employee panel members.
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## Sec.

- 1940.964 [Reserved].  
 1940.965 Processing project applications.  
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 1940.968 Rural Economic Development Review Panel Grant ('Panel Grant').  
 1940.969 Forms, exhibits and subparts.  
 1940.970 [Reserved].  
 1940.971 Delegation of authority.  
 1940.972-1940.999 [Reserved].  
 1940.1000 OMB control number. [Reserved].

**§ 1940.951 General.**

This subpart sets forth Farmers Home Administration (FmHA) policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), as amended.

(a) The Administrator shall designate not more than five States in which to make rural economic development review panels applicable during any particular period for the purpose of reviewing and ranking applications for funding submitted under certain rural development programs.

(b) If a State desires to participate in this delivery program, the Governor of the State may submit an application to the Administrator, Washington, DC 20250 in accordance with § 1940.954 of this subpart.

(c) Assistance under each designated rural development program shall be provided in eligible States to qualified projects in accordance with this subpart.

(d) This subpart shall apply to any State designated by the Administrator under paragraph (a) of this section until September 30, 1996. If a designated State does not remain an eligible State during this 5-year period, the State will not be eligible to participate in this program.

(e) Federal statutes provide for extending FmHA financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

**§ 1940.952 [Reserved]****§ 1940.953 Definitions.**

For the purpose of this subpart:

*Administrator.* The Administrator of Farmers Home Administration.

*Area plan.* The long-range development plan developed for a local or regional area in a State.

*Designated agency.* An agency designated by the Governor of the State to provide the panel and the State coordinator with support for the daily operation of the panel.

*Designated State.* A State selected by the Administrator to participate in this 5-year program, in accordance with § 1940.954 of this subpart.

*Designated rural development program.* A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which funds are available at any time during the fiscal year under such section, including, but not limited to, the following:

- (1) Water and Waste Disposal Insured or Guaranteed Loans;
- (2) Development Grants for Community Domestic Water and Waste Disposal Systems;
- (3) Technical Assistance and Training Grants;
- (4) Emergency Community Water Assistance Grants;
- (5) Community Facilities Insured and Guaranteed Loans;
- (6) Business and Industry Guaranteed Loans;
- (7) Industrial Development Grants;
- (8) Intermediary Relending Program;
- (9) Drought and Disaster Relief Guaranteed Loans;
- (10) Disaster Assistance for Rural Business Enterprises;
- (11) Nonprofit National Rural Development and Finance Corporations.

*Eligible State.* With respect to a fiscal year, a State that has been determined eligible in accordance with § 1940.954 of this subpart.

*Qualified project.* Any project:

- (1) For which the designated agency has identified alternative Federal, State, local or private sources of assistance and has identified related activities in the State; and
- (2) To which the Administrator is required to provide assistance.

*State.* Any of the fifty States.

*State coordinator.* The officer or employee of the State appointed by the Governor to carry out the activities described in § 1940.957 of this subpart.

*State Director.* The head of Farmers Home Administration at the local level charged with administering designated rural development programs.

*State rural economic development review panel or 'panel'.* An advisory panel that meets the requirements of § 1940.956 of this subpart.

**§ 1940.954 State participation.**

(a) *Application.* If a State desires to participate in this 5-year program, the Governor may submit an original and one copy of Form SF 424-1, "Application for Federal Assistance (For Non-

construction)," to the Administrator, Farmers Home Administration, Washington, DC 20250. The five States designated by the Administrator to participate in this program will be selected from among applications received not later than 60 calendar days from the effective day of this subpart. States should include the following information with Form SF 424-1:

(1) A narrative signed by the Governor including reasons for State participation in this program and reasons why a project review and ranking process by a State panel will improve the economic and social conditions of rural areas in the State.

(2) A proposal outlining the method for meeting all the following eligibility requirements and the timeframes established for meeting each requirement:

(i) Establishing a rural economic development review panel in accordance with § 1940.956 of this subpart. When established, the name, title, and address of each proposed member should be included and the chairperson and vice chairperson should be identified.

(ii) Governor's proposed designation of a State agency to support the State coordinator and the panel. The name, address, and telephone number of the proposed agency's contact person should be included.

(iii) Governor's proposed selection of a State coordinator in accordance with § 1940.957 of this subpart, including the title, address, and telephone number.

(iv) Development of area development plans for all areas of the State that are eligible to receive assistance from designated rural development programs.

(v) The review and evaluation of area development plans by the panel in accordance with § 1940.956 of this subpart.

(vi) Development of written policy and criteria used by the panel to review and evaluate area plans in accordance with § 1940.956 of this subpart.

(vii) Development of written policy and criteria the panel will use to evaluate and rank applications in accordance with § 1940.956 of this subpart.

(3) Preparation of a proposed budget that includes three years projections of income and expenses associated with panel operations. If funds from other sources are anticipated, sources and amounts should be identified.

(4) Development of a financial management system that will provide for effective control and accountability of all funds and assets associated with the panel.

(5) A schedule to coordinate the submission, review, and ranking process of preapplications/applications in accordance with § 1940.956 (a).

(6) Other information provided by the State in support of its application.

(b) *Selecting designated States.* The Administrator will review the application and other information submitted by the State and designate not more than five States to participate in this 5-year program. Additional States will not be added after the initial designations have been made.

(c) *Notification of designation.* (1) The Administrator will notify the Governor of each State whether or not the State was designated to participate in this program. Notification will include information a designated State must submit to the State Director in order to meet eligibility requirements in accordance with paragraph (d) of this section.

(2) The Administrator will send a copy of the notification to designated States to applicable State Directors along with material and information submitted with State applications.

(d) *Determining State eligibility.* (1) The Governor will provide the State Director with evidence that the State has complied with requirements of paragraph (a)(2) of this section.

(2) The State Director will review the material submitted by the Governor and make written recommendations to the Administrator in sufficient detail for the Administrator to determine if a State has complied with all eligibility requirements of this subpart. The State Director may include supporting documents with the recommendations.

(3) The Administrator will make eligibility determinations based upon the State Director's recommendations and supporting documents. Governors will be notified of the eligibility determination and whether or not the State is eligible to participate in this program. A copy of the notification will be sent to appropriate State Directors. The Administrator's decision is not appealable.

(e) *Eligibility requirements.*

(1) With respect to this subpart, the Administrator may determine a State to be an eligible State provided all of the following apply not later than October 1 of each fiscal year, except that a later date may be set by the Administrator for fiscal year 1992:

(i) The State has established a rural economic development review panel that meets the requirements of § 1940.956 of this subpart;

(ii) The Governor has appointed an officer or employee of the State Government to serve as State

coordinator to carry out the responsibilities set forth in § 1940.957 of this subpart; and

(iii) The Governor has designated an agency of the State Government to provide the panel and State coordinator with support for the daily operation of the panel.

(2) If a State is determined eligible initially, and wishes to remain an eligible State, the Governor will submit documents and information not later than September 1 of each subsequent fiscal year, in sufficient detail for the State Director to determine that the State is still in compliance with all eligibility requirements of this subpart.

**§ 1940.955 Distribution of program funds to designated States.**

(a) Designated States will receive funds from designated rural development programs according to applicable program regulations until the end of fiscal year 1992, in order for States to have sufficient time to meet the eligibility requirements of this subpart. No funds will be administered under this subpart to an ineligible State.

(b) If a State becomes an eligible State any time prior to the end of fiscal year 1992, any funds from State allocations remaining unobligated, may be administered under this subpart.

(c) Beginning in fiscal year 1993 and continuing until the end of fiscal year 1996, all designated rural development program funds received by a designated State will be administered in accordance with §§ 1940.961-1940.965 of this subpart, provided the State is determined eligible at the beginning of each fiscal year in accordance with § 1940.954 of this subpart. No assistance will be provided under any designated rural development program in any designated State that is not an eligible State.

**§ 1940.956 State rural economic development review panel.**

(a) *General.* In order for a State to become or remain an eligible State, the State must have a rural economic development panel that meets all requirements of this subpart. Each designated State will establish a schedule whereby the panel and FmHA will coordinate the submission, review, and ranking process of preapplications/applications. The schedule will be submitted to the Administrator for concurrence and should consider the following:

(1) Timeframes should assure that applications selected for funding from the current fiscal year's allocation of funds can be processed by FmHA and funds obligated prior to the July 15

pooling established in § 1940.961(b) of this subpart;

(2) Initial submission of preapplications/applications from FmHA to the panel and any subsequent submissions during the first year;

(3) How often during each fiscal year thereafter should FmHA submit preapplications/applications to the panel for review and ranking;

(4) Number of working days needed by the panel to review and rank applications;

(5) Number of times during the fiscal year the panel will submit a list of ranked applications to FmHA for funding consideration;

(6) Consider the matching of available loan and grant funds to assure that all allocated funds will be used;

(7) How to consider ranked preapplications/applications at the end of the fiscal year that have not been funded; and

(8) How to consider requests for additional funds needed by an applicant to complete a project that already has funds approved; i.e., construction bid cost overrun.

(b) *Duties and responsibilities.* The panel is required to advise the State Director on the desirability of funding applications from funds available to the State from designated rural development programs. In relation to this advice, the panel will have the following duties and responsibilities:

(1) *Establish policy and criteria to review and evaluate area plans and to review and rank applications.*

(i) Area plan. The panel will develop a written policy and criteria to use when evaluating area plans. The criteria to be used when evaluating area plans will assure that the plan includes, as a minimum, the technical information included in § 1940.959 of this subpart. The criteria will be in sufficient detail for the panel to determine that the plan is technically and economically adequate, feasible, and likely to succeed in meeting the stated goals of the plan. The panel will give weight to area-wide or regional plans and comments submitted by intergovernmental development councils, or similar organizations made up of local elected officials charged with the responsibility for rural area or regional development. A copy of the policy and evaluating criteria will be provided to FmHA.

(ii) Applications. The panel will annually review the policy and criteria used by the panel to evaluate and rank applications in accordance with this subpart. The panel will assure that the policy and criteria are consistent with current rural development needs, and

that the public has an opportunity to provide input during the development of the initial policy and criteria. The Governor will provide a copy of the initial policy and criteria established by the panel when submitting evidence of eligibility in accordance with § 1940.954 of this subpart. Annually, thereafter, and not later than September 1 of each fiscal year, the State coordinator will send the State Director evidence that the panel has reviewed the established policy and criteria. The State coordinator will also send the State Director a copy of all revisions.

(A) The policy and criteria used to rank applications for business related projects will include the following:

(1) The extent to which a project will stimulate rural development by creating new jobs of a permanent nature or retaining existing jobs by enabling new small businesses to be started, or existing businesses to be expanded by local or regional area residents who own and operate the businesses.

(2) The extent to which a project will contribute to the enhancement and the diversification of the local or regional area economy.

(3) The extent to which a project will generate or retain jobs for local or regional area residents.

(4) The extent to which a project will be carried out by persons with sufficient management capabilities.

(5) The extent to which a project is likely to become successful.

(6) The extent to which a project will assist a local or regional area overcome severe economic distress.

(7) The distribution of assistance to projects in as many areas as possible in the State with sensitivity to geographic distribution.

(8) The technical aspects of the project.

(9) The market potential and marketing arrangement for the projects.

(10) The potential of such project to promote the growth of a rural community by improving the ability of the community to increase the number of persons residing in the community and by improving the quality of life for these persons.

(B) The policy and criteria used to rank applications for infrastructure and all other community facility-type projects will include the following:

(1) The extent to which the project will have the potential to promote the growth of a rural community by improving the quality of life for local or regional residents.

(2) The extent to which the project will affect the health and safety of local or regional area residents.

(3) The extent to which the project will improve or enhance cultural activities, public service, education or transportation.

(4) The extent to which the project will affect business productivity and efficiency.

(5) The extent to which the project will enhance commercial business activity.

(6) The extent to which the project will address a severe loss or lack of water quality or quantity.

(7) The extent to which the project will correct a waste collection or disposal problem.

(8) The extent to which the project will bring a community into compliance with Federal or State water or waste water standards.

(9) The extent to which the project will consolidate water and waste systems and utilize management efficiencies in the new system.

(2) *Review and evaluate area plans.* Each area plan submitted for a local or regional area will be reviewed and evaluated by the panel. After a plan has been reviewed and evaluated in accordance with established policy and criteria, the panel will:

(i) Accept any plan that meets established criteria unless the plan is incompatible with any other area plan for that area that has been accepted by the panel; or

(ii) Return any plan that is technically or economically inadequate, not feasible or is unlikely to be successful. Any plan that is not compatible with other area plans for that area that have been accepted by the panel will also be returned. When a plan is returned, the panel will include an explanation of the reasons for the return and suggest alternative proposals.

(iii) The State coordinator will notify the State Director, in writing, of the panel's decision on each area plan reviewed.

(3) *Review and rank preapplications/applications.* The panel will review, rank and transmit a ranked list of preapplications/applications according to the schedule prepared in accordance with paragraph (a) of this section, and the following:

(i) Review preapplications/applications. The panel will review each application for assistance to determine if the project to be carried out is compatible with the area plan in which the project described in the application is proposed, and either:

(A) Accept any application determined to be compatible with such area plan; or

(B) Return to the State Director any application determined not to be

compatible with such area plan. The panel will notify the applicant when applications are returned to the State Director.

(ii) Rank preapplications/applications. The panel will rank only those preapplications/applications that have been accepted in accordance with paragraph (b)(3)(i)(A) of this section. The panel will consider the sources of assistance and related activities in the State identified by the designated agency. Applications will be ranked in accordance with the written policy and criteria established in accordance with paragraph (b)(1)(ii) of this section and the following:

(A) Priority ranking for projects addressing health emergencies. In addition to the criteria established in paragraphs (b)(1)(ii) of this section, applications for projects designed to address a health emergency declared so by the appropriate Federal or State agency, will be given priority by the panel.

(B) Priority based on need. If two or more applications ranked in accordance with this subpart are determined to have comparable strengths in their feasibility and potential for growth, the panel will give priority to the applications for projects with the greatest need.

(C) If additional ranking criteria for use by a panel are required in any designated rural development program regulation, the panel will give consideration to the criteria when ranking applications submitted under that program.

(iii) Transmit list of ranked applications. After the applications have been ranked, the panel will submit a list of all applications received to the State coordinator. The list will clearly indicate each application accepted for funding and will list applications in the order established for funding according to priority ranking by the panel. The list will not include an application that is to be returned to the applicant in accordance with paragraph (b)(3)(i)(B) of this section. The State coordinator will send a copy of the list to the State Director for further processing of the application in accordance with § 1940.965 of this subpart. Once the panel has ranked and submitted the list to FmHA and the State Director has selected an application for funding, the application selected will not be replaced with an application received at a later date that may have a higher ranking.

(4) *Public availability of list.* If requested, the State coordinator will make the list of ranked applications available to the public and will include a brief explanation and justification of

why the project applications received their priority ranking.

(c) *Membership*—(1) *Voting members*. The panel will be composed of not more than sixteen voting members who are representatives of rural areas. The sixteen voting members will include the following:

(i) One of whom is the Governor of the State or the person designated by the Governor to serve on the panel on behalf of the Governor for that year;

(ii) One of whom is the director of the State agency responsible for economic and community development or the person designated by the director to serve on the panel on behalf of the director for that year;

(iii) One of whom is appointed by a statewide association of banking organizations;

(iv) One of whom is appointed by a statewide association of investor-owned utilities;

(v) One of whom is appointed by a statewide association of rural telephone cooperatives;

(vi) One of whom is appointed by a statewide association of noncooperative telephone companies;

(vii) One of whom is appointed by a statewide association of rural electric cooperatives;

(viii) One of whom is appointed by a statewide association of health care organizations;

(ix) One of whom is appointed by a statewide association of existing local government-based planning and development organizations;

(x) One of whom is appointed by the Governor of the State from either a statewide rural development organization or a statewide association of publicly-owned electric utilities, neither of which is described in any of paragraphs (c)(1) (iii) through (ix);

(xi) One of whom is appointed by a statewide association of counties;

(xii) One of whom is appointed by a statewide association of towns and townships, or by a statewide association of municipal leagues, as determined by the Governor;

(xiii) One of whom is appointed by a statewide association of rural water districts;

(xiv) The State director of the Federal small business development center or, if there is no small business development center in place with respect to the State, the director of the State office of the Small Business Administration;

(xv) The State representative of the Economic Development Administration of the Department of Commerce; and

(xvi) One of whom is appointed by the State Director from among the officers and employees of FmHA

(2) *Nonvoting members*. The panel will have not more than four nonvoting members who will serve in an advisory capacity and who are representatives of rural areas. The four nonvoting members will be appointed by the Governor and include:

(i) One from names submitted by the dean or the equivalent official of each school or college of business, from colleges and universities in the State;

(ii) One from names submitted by the dean or the equivalent official of each school or college of engineering, from colleges and universities in the State;

(iii) One from names submitted by the dean or the equivalent official, of each school or college of agriculture, from colleges and universities in the State; and

(iv) The director of the State agency responsible for extension services in the State.

(3) *Qualifications of panel members appointed by the Governor*. Each individual appointed to the panel by the Governor will be specifically qualified to serve on the panel by virtue of the individual's technical expertise in business and community development.

(4) *Notification of selection*. Each statewide organization that selects an individual to represent the organization on the panel must notify the Governor of the selection.

(5) *Appointment of members representative of statewide organization in certain cases*.

(i) If there is no statewide association or organization of the entities described in paragraph (c)(1) of this section, the Governor of the State will appoint an individual to fill the position or positions, as the case may be, from among nominations submitted by local groups of such entities.

(ii) If there is more than one of the statewide associations or organizations of the entities described in paragraph (c)(1) of this section, the Governor will select which organization is to name a member. The Governor will rotate the selection among such associations or organizations so that a representative of the selected association or organization serves no more than two years before a representative from another association or organization is selected by the Governor.

(d) *Failure to appoint panel members*. The failure of the Governor, a Federal agency, or an association or organization described in paragraph (c) of this section, to appoint a member to the panel as required under this subpart, shall not prevent a State from being determined an eligible State.

(e) *Panel vacancies*. A vacancy on the panel will be filled in the manner in

which the original appointment was made.

(f) *Chairperson and vice chairperson*. The panel will select two members of the panel who are not officers or employees of the United States to serve as the chairperson and vice chairperson of the panel. The term shall be for one year.

(g) *Compensation to panel members*—(1) *Federal members*. Except as provided in § 1940.960 of this subpart, each member of the panel who is an officer or employee of the Federal Government may not receive any compensation or benefits by reason of service on the panel, in addition to that which is received for performance of such officer or employee's regular employment.

(2) *Non-Federal members*. Each nonfederal member may be compensated by the State and/or from grant funds established in § 1940.968 of this subpart.

(h) *Rules governing panel meetings*—(1) *Quorum*. A majority of voting members of the panel will constitute a quorum for the purpose of conducting business of the panel.

(2) *Frequency of meetings*. The panel will meet not less frequently than quarterly.

(3) *First meeting*. The State coordinator will schedule the first panel meeting and will notify all panel members of the location, date and time at least seven days prior to the meeting. Subsequent meeting will be scheduled by vote of the panel.

(4) *Records of meetings*. The panel will keep records of the minutes of the meetings, deliberations, and evaluations of the panel in sufficient detail to enable the panel to provide interested agencies or persons the reasons for its actions.

(i) *Federal Advisory Committee Act*. The Federal Advisory Committee Act shall not apply to any State rural economic development review panel.

(j) *Liability of members*. The members of a State rural economic development review panel shall not be liable to any person with respect to any determination made by the panel.

#### § 1940.957 State coordinator.

The Governor will appoint an officer or employee of State government as State coordinator in order for a State to become and remain an eligible State under this subpart. The State coordinator will have the following duties and responsibilities:

(a) Manage, operate and carry out the instructions of the panel;

(b) Serve as liaison between the panel and the Federal and State agencies involved in rural development;

(c) Coordinate the efforts of interested rural residents with the panel and ensure that all rural residents in the State are informed about the manner in which assistance under designated rural development programs is provided to the State pursuant to this subpart, and if requested, provide information to State residents; and

(d) Coordinate panel activities with FmHA.

#### § 1940.958 Designated agency.

The Governor will appoint a State agency to provide the panel and the State coordinator with support for the daily operation of the panel. In addition to providing support, the designated agency is responsible for identifying:

- (a) Alternative sources of financial assistance for project applications reviewed and ranked by the panel, and
- (b) Related activities within the State.

#### § 1940.959 Area plan.

Each area plan submitted to the panel for review in accordance with § 1940.956 of this subpart shall identify the geographic boundaries of the area and shall include the following information:

(a) An overall development plan for the area with goals, including business development and infrastructure development goals, and time lines based on a realistic assessment of the area, including, but not limited to, the following:

- (1) The number and types of businesses in the area that are growing or declining;
- (2) A list of the types of businesses that the area could potentially support;
- (3) The outstanding need for water and waste disposal and other public services or facilities in the area;
- (4) The realistic possibilities for industrial recruitment in the area;
- (5) The potential for development of tourism in the area;
- (6) The potential to generate employment in the area through creation of small businesses and the expansion of existing businesses; and
- (7) The potential to produce value-added agricultural products in the area.

(b) An inventory and assessment of the human resources of the area, including but not limited to the following:

- (1) A current list of organizations in the area and their special interests;
- (2) The current level of participation of area residents in rural development activities and the level of participation required for successful implementation of the plan;

(3) The availability of general and specialized job training in the area and the extent to which the training needs of the area are not being met;

(4) A list of area residents with special skills which could be useful in developing and implementing the plan; and

(5) An analysis of the human needs of the area, the resources in the area available to meet those needs, and the manner in which the plan, if implemented, would increase the resources available to meet those needs.

(c) The current degree of intergovernmental cooperation in the area and the degree of such cooperation needed for the successful implementation of the plan.

(d) The ability and willingness of governments and citizens in the area to become involved in developing and implementing the plan.

(e) A description of how the governments in the area apply budget and fiscal control processes to the plan.

(f) The extent to which public services and facilities need to be improved to achieve the economic development and quality of life goals of the plan. At a minimum, the following items will be considered:

- (1) Law enforcement;
- (2) Fire protection;
- (3) Water, sewer, and solid waste management;
- (4) Education;
- (5) Health care;
- (6) Transportation;
- (7) Housing;
- (8) Communications; and
- (9) The availability of and capability to generate electric power.

(g) If plans submitted to the panel for review and acceptance are currently used successful in a rural area or region, the plan should include statements that indicate the degree to which the plan has met or is meeting all the requirements in paragraphs (a) through (f) of this section.

#### § 1940.960 Federal employee panel members.

(a) The State Director will appoint one FmHA employee to serve as a voting member of the panel established in § 1940.956(c)(1) of this subpart.

(b) The Administrator may appoint, temporarily and for specific purposes, personnel from any department or agency of the Federal Government as nonvoting panel members, with the consent of the head of such department or agency, to provide official information to the panel. The member(s) appointed shall have expertise to perform a duty described in

§ 1940.956(b) of this subpart that is not available among panel members.

(c) Federal panel members will be paid per diem or otherwise reimbursed by the Federal Government for expenses incurred each day the employee is engaged in the actual performance of a duty of the panel. Reimbursement will be in accordance with Federal travel regulations.

#### § 1940.961 Allocation of appropriated funds.

(a) *Initial allocation.* (1) Each fiscal year, from sums appropriated for direct loans, loan guarantees, or grants for any designated rural development program, funds will be allocated to designated States in accordance with subpart L of part 1940 of this chapter (available in any FmHA office).

(2) A percentage of the National Office reserve established in subpart L of part 1940 of this chapter will be allocated annually to each designated State at the same time initial allocations are made. The percent allocated will be based upon the same criteria used in subpart L of part 1940 to allocate program funds. Designated States may not participate in the remaining National Office reserve, including funds pooled from undesignated States.

(3) Each fiscal year, and normally within 30 days after the date FmHA receives an appropriation of designated rural development program funds, the Governor or each designated State will be notified of the amounts allocated to the State under each designated program for such fiscal year. The Governor will also be notified of the total amounts appropriated for the fiscal year for each designated rural development program.

(4) The State Director will fund projects from a designated State's allocation of funds, according to appropriate program regulations giving great weight to the order in which the applications for projects are ranked and listed by the panel in accordance with § 1940.956(b)(7) of this subpart.

(b) *Pooling.* On July 15 of each fiscal year, and from time to time thereafter during the fiscal year, as determined appropriate, unobligated funds will be pooled from among the designated States. Pooled funds will revert to National Office control and will be made available, according to need, to designated States on a project by project basis. Funds allocated to designated States and not obligated on or before yearend pooling, according to subpart L of part 1940, Exhibit A, of this chapter (available in any FmHA office) will

revert to National Office control and may be made available to all States.

(c) *Requests for funds.* State Directors may request funds pooled from designated States and funds for other designated rural development programs funds controlled by the National Office according to subpart L of part 1940, Exhibit A, Attachment 4, of this chapter (available in any FmHA office).

**§ 1940.962 Authority to transfer direct loan amounts.**

(a) *Transfer of funds.* If the amounts allocated to a designated State for direct Water and Waste Disposal or Community Facility loans for a fiscal year are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* (1) Amounts transferred within a designated State. The amount of direct loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(2) Amounts transferred on a National basis. The amount of direct loan funds transferred in a fiscal year, among the designated States, from a program under this subpart (after accounting for any offsetting transfers into such program) shall not exceed \$9,000,000, or an amount otherwise authorized by law.

(c) *National Office concurrence.* The State Director may transfer direct loan funds authorized in this section, after requesting and receiving concurrence from the National Office. The National Office will concur in requests on a first-come-first-served basis.

**§ 1940.963 Authority to transfer guaranteed loan amounts.**

(a) *Transfer of funds.* If the amounts allocated to a designated State for guaranteed Water and Waste Disposal, Community Facility or Business and Industry loans for a fiscal year are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraph (b) of this section.

(b) *Limitation on amounts transferred.* The amount of guaranteed loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full

amount of assistance requested for each project that ranked higher in priority on the panel's list.

(c) *National Office concurrence.* The State Director may transfer guaranteed loan funds authorized in this section, after requesting and receiving concurrence from the National Office. The National Office will concur in requests on a first-come-first-served basis.

**§ 1940.964 [Reserved].**

**§ 1940.965 Processing project applications.**

Except for the project review and ranking process established in this subpart, all requests for funds from designated rural development programs will be processed, closed and serviced according to applicable FmHA regulations, available in any FmHA office.

(a) *Preapplications/applications.* All preapplications/applications on hand that have not been selected for further processing will be submitted initially to the panel for review and ranking. Preapplications/applications on hand that had been selected for further processing prior to the time a State was selected to participate in this program may be funded by FmHA without review by the panel. Preapplications/applications selected for further processing by FmHA will not exceed the State's previous year's funding level. The State Director will provide the State coordinator a list of preapplications/applications that are in process and will be considered for funding without review by the panel. This list will be provided at the same time preapplications/applications are initially submitted to the State coordinator in accordance with paragraph (d) of this section.

(b) *FmHA review.* Preapplications/applications will be reviewed in sufficient detail to determine eligibility and, if applicable, determine if the applicant is able to obtain credit from other sources at reasonable rates and terms. Normally, within 45 days after receiving a complete preapplication/application, FmHA will notify the applicant of the eligibility determination. A copy of all notifications will be sent to the State coordinator.

(c) *Applicant notification.* The notification to eligible applicants will contain the following statements:

"Your application has been submitted to the State coordinator for review and ranking by the State rural economic development review panel. If you have questions regarding this review process,

you should contact the State coordinator. The address and telephone number are: (insert).

"You will be notified at a later date of the decision reached by the panel and whether or not you can proceed with the proposed project.

"You are advised against incurring obligations which cannot be fulfilled without FmHA funds."

These statements should be included in notifications to applicants with preapplications/applications on hand that had not been selected for further processing prior to the time a State was selected to participate in this program.

(d) *Information to State coordinator.* FmHA will forward a copy of the preapplication/application and other information received from the applicant to the State coordinator according to a schedule prepared in accordance with § 1940.956(a) of this subpart. The State coordinator will be advised that no further action will be taken on applications until they have been reviewed and ranked by the panel, and a priority funding list has been received from the State. Applications forwarded to the State coordinator will be reviewed and ranked for funding in accordance with § 1940.956 of this subpart.

(e) *FmHA review of priority funding list.* FmHA will review the list of ranked applications received from the State coordinator and determine if projects meet the requirements of the designated rural development program under which the applicant seeks assistance. Any project that does not meet program regulations will be removed from the list. Applicants will be notified of the decision reached by the panel and whether or not the applicant should proceed with the project. FmHA will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* FmHA will provide funds for projects whose application remains on the list, subject to available funds. Consideration will be given to the order in which the applications were ranked and prioritized by the panel. If FmHA proposes to provide assistance to any project without providing assistance to all projects ranked higher in priority by the panel than the project to be funded, 10 days prior to requesting an obligation of funds, the State Director will submit a report stating reasons for funding such lower ranked project to the following:

(1) Panel.

(2) National Office. The National Office will submit a copy of the notification to:

(i) Committee on Agriculture of the House of Representatives, Washington, DC.

(ii) Committee on Agriculture, Nutrition, and Forestry of the Senate, Washington, DC.

§§ 1940.966–1940.967 [Reserved].

**§ 1940.968 Rural Economic Development Review Panel Grant ('Panel Grant').**

(a) *General.* This section outlines FmHA's policies and authorizations and sets forth procedures for making grants to designated States for administrative costs associated with a State rural economic development review panel.

(b) *Objective.* The objective of the Panel Grant program is to make grant funds available annually to each designated State to use for administrative costs associated with the State rural economic development review panels meeting requirements of § 1940.956 of this subpart.

(c) *Authorities, delegations and redelegations.* The State Director is responsible for implementing the authorities in this section and to issue State supplements redelegating these authorities to appropriate FmHA employees. Grant approval authorities are contained in Subpart A of Part 1901 of this chapter.

(d) *Joint funds.* FmHA grant funds may be used jointly with funds furnished by the grantee or grants from other sources.

(e) *Eligibility.* A State designated by the Administrator to participate in this program is eligible to receive not more than \$100,000 annually under this section. A State must become and remain an eligible State in order to receive funds under this section.

(f) *Purpose.* Panel grant funds may be used to pay for reasonable administrative costs associated with the panel, including but not limited to the following:

- (1) Travel and lodging expenses;
- (2) Salaries for State coordinator and support staff;
- (3) Reasonable fees and charges for professional services necessary for establishing or organizing the panel. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations;
- (4) Office supplies, and
- (5) Other costs that may be necessary for panel operations.

(g) *Limitations.*

Grant funds will not be used to:

- (1) Pay costs incurred prior to the effective date of the grant authorized under this subpart;
- (2) Recruit applications for any designated rural development loan or

grant program or any loan or grant program;

(3) Duplicate activities associated with normal execution of any panel member's occupation.

(4) Fund political activities;

(5) Pay costs associated with preparing area development plans;

(6) Pay for capital assets; purchase real estate, equipment or vehicles; rent, improve or renovate office space; or repair and maintain State or privately owned property;

(7) Pay salaries to panel members; or

(8) Pay per diem or otherwise reimburse panel members unless distance traveled exceed 50 miles.

(h) *Other considerations.*

(1) *Equal opportunity requirements.*

Grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(2) *Environmental requirements.* The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made under this subpart.

(3) *Management assistance.* Grantees will be provided management assistance as necessary to assure that grant funds are used for eligible purposes for the successful operation of the panel. Grants made under this subpart will be administered under and are subject to the U.S. Department of Agriculture regulations 7 CFR, parts 3015, 3016, and 3017, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of Subpart M of Part 1940 of this chapter. Just prior to grant approval, the State must prepare and sign Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals."

(i) *Application processing.* (1) The State Director shall assist the State in application assembly and processing. Processing requirements should be discussed during an application conference.

(2) After the Governor has been notified that the State has been designated to participate in this program and the State has met all eligibility requirements of this subpart, the State may file an original and one copy of Form SF 424.1 with the State Director. The following information will be included with the application:

- (i) State's financial or in-kind resources, if applicable, that will maximize the use of Panel Grant funds;
- (ii) Proposed budget. The financial budget that is part of Form SF 424.1 may be used if sufficient for all panel income and expense categories;

(iii) Estimated breakdown of costs, including costs to be funded by the grantee or from other sources;

(iv) Financial management system in place or proposed. The system will account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State must be sufficient to permit preparation of reports required by Federal regulations and permit the tracing of funds to a level of expenditures adequate to establish that grant funds are used solely for authorized purposes.

(v) Method to evaluate panel activities and determine if objectives are met;

(vi) Proposed Scope of Work detailing activities associated with the panel and time frames for completion of each task, and

(vii) Other information that may be needed by FmHA to make a grant award determination.

(3) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets. The docket will include at least the following:

(i) Form FmHA 400-4, "Assurance Agreement;"

(ii) Scope of work prepared by the applicant and approved by FmHA;

(iii) Form FmHA 1940-1, "Request for Obligation of Funds," with Exhibit A of this subpart, and

(iv) Certification regarding a drug-free workplace in accordance with subpart M of part 1940 of this chapter.

(j) *Grant approval, obligation of funds and grant closing.* (1) The State Director will review the application and other documents to determine whether the proposal complies with this subpart.

(2) Exhibit A, "Requirements for Administration of Panel Grant," of this subpart (available from any FmHA State Office), shall be attached to and become a permanent part of the Form FmHA 1940-1 and the following paragraph will appear in the comment section of that form:

"The Grantee understands the requirements for receipt of funds under the Panel Grant Program. The Grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in FmHA instruction 1940-T, and 7 CFR parts 3015, 3016, and 3017, including revisions through \_\_\_\_ (date of grant approval). The Grantee further agrees to use grant funds for the purposes outlined in the Scope of Work approved by FmHA.

Exhibit A, "Requirements for Administration of Panel Grant," is incorporated as a part hereof."

(3) Grants will be approved and obligated in accordance with the applicable parts of § 1942.5(d) of subpart A of part 1942 of this chapter.

(4) An executed copy of the Scope of Work will be sent to the State coordinator on the obligation date, along with a copy of Form FmHA 1940-1 and the required exhibit. FmHA will retain the original of Form FmHA 1940-1 and the exhibit.

(5) Grants will be closed in accordance with the applicable parts of subpart A of part 1942 of this chapter, including § 1942.7. The grant is considered closed on the obligation date.

(6) A copy of Form FmHA 1940-1, with the required exhibit, and the Scope of Work will be submitted to the National Office when funds are obligated.

(7) If the grant is not approved, the State coordinator will be notified in writing of the reason(s) for rejection. The notification will state that a review of the decision by FmHA may be requested by the State under subpart B of part 1900 of this chapter.

(k) *Fund disbursement.* Grant funds will be disbursed on a reimbursement basis. Requests for funds should not exceed one advance every 30 days. The financial management system of the State shall provide for effective control and accountability of all funds, property and assets. (1) SF 270, "Request for Advance or Reimbursement," will be completed by the State coordinator and submitted to the State director not more frequently than monthly.

(2) Upon receipt of a properly completed SF 270, the State Director will request funds through the Automated Discrepancy Processing System. Ordinarily, payment will be made within 30 days after receipt of a properly prepared request for reimbursement.

(3) States are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20230.

(l) *Title.* Title to supplies acquired under this grant will vest, upon acquisition, in the State. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the grant awarded, and if the supplies are not needed for any other federally sponsored program, the

State shall compensate FmHA for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost principles established in OMB Circular A-87.

(n) *Budget changes.* Rebudgeting within the approved direct cost categories to meet unanticipated requirements which do not exceed ten percent of the current total approved budget shall be permitted. The State shall obtain prior approval from the State Director for any revisions which result in the need for additional funding.

(o) *Programmatic changes.* The State shall obtain prior written approval from the State Director for any change to the scope or objectives for which the grant was approved or for contracting out or otherwise obtaining services of third party to perform activities which are central to the purposes of the grant. Failure to obtain prior approval of changes to the scope can result in suspension or termination of grant funds.

(p) *Financial reporting.* Form SF 269, "Financial Status Report," and a Project Performance Report are required on a quarterly basis. The reports will be submitted to the State Director not later than 30 days after the end of each quarter. A final Form SF 269 and Project Performance Report shall be due 90 days after the expiration or termination of grant support. The final Report may serve as the last quarterly report. The State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis.

Performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with § 1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted

government auditing standards (GAGAS) using publication, "Standards for Audits of Governmental Organizations, Programs, Activities and Functions."

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with § 1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each subsequent year a State continues to meet eligibility requirements of this subpart.

#### § 1940.969 Forms, exhibits and subparts.

Forms, exhibits, and subparts of this chapter (all available in any FmHA office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

#### § 1940.970 [Reserved].

#### § 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

#### §§ 1940.972-1940.999 [Reserved].

#### § 1940.1000 OMB control number. [Reserved].

Dated: July 15, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-21980 Filed 9-12-91; 8:45 am]

BILLING CODE 3410-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter I

[Summary Notice No. PR-91-15]

#### Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 12, 1991.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. \_\_\_\_\_ 800, Independence Avenue, SE., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

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

**Denise Donohue Hall,**  
Manager, Program Management Staff Office  
of the Chief Counsel.

#### Petitions for Rulemaking

*Docket No.:* 26604.

*Petitioner:* Air Transport Association of America.

*Regulations Affected:* 14 CFR part 121, appendix I and part 145.

*Description of Petition:* Petitioner proposes to change the random sampling rate for drug testing to 10 percent annually; expand the list of safety and security related functions which determine who must be drug tested to include deicing, fueling, wing

walking (pushback/powerback and arrival), baggage and cargo loading, servicing of aircraft lavatory systems, directing aircraft ground movement, and tug, motor vehicle and ground power equipment in and around passenger aircraft. The petitioner also proposes to amend part 145 of the FARs to reflect the Federal Aviation Administration's actual regulatory authority over drug testing by certificated domestic repair stations whose employees perform the functions listed in part 121, appendix I.

*Petitioner's Reason for the Request:* The petitioner asserts that random drug testing at 50% is not cost effective, and random testing at a 10% rate provides a credible and cost-effective deterrent to illicit drug use. With respect to the safety and security related functions which determine who must be drug tested, the petitioner believes that including the employees performing the noted functions will have a beneficial effect on achieving a drug-free workforce in commercial aviation. Finally, the petitioner believes that because the FAA has direct regulatory authority over certificated domestic repair stations, the requirement to test employees who perform the functions identified in appendix I should now be incorporated into part 145.

*Docket No.:* 26603.

*Petitioner:* National Air Transportation Association.

*Regulations Affected:* 14 CFR 158.11.

*Description of Petition:* Petitioner proposes to amend the regulation by removing the one percent threshold requirement mandating collection of passenger facility charges from any air carrier enplaning more than one percent of the total number of passengers enplaned at the airport.

*Petitioner's Reason for the Request:* The petitioner believes that the proposed change would allow additional flexibility in a public agency's request for not requiring collection of passenger facility charges by a class of air carriers or foreign air carriers.

*Docket No.:* 26438.

*Petitioner:* Ralph Seely.

*Regulations Affected:* 14 CFR 91.215.

*Description of Petition:* Petitioner would amend the existing section by abolishing or modifying the 30-mile encoding transponder requirement (Mode C veil) around Seattle Tacoma International Airport.

*Petitioner's Reason for the Request:* The petitioner asserts that pilots who cannot afford to purchase and install encoding transponders are forced to fly over the mountainous terrain that surrounds Seattle. Flying over mountainous terrain is less safe than

flying over flat lands and, therefore, has an adverse impact on operational safety. The petitioner also states that relief from the Mode C transponder requirement would reduce the fuel consumption and maintenance expense of pilots who are forced to fly 30 miles off course if they do not have the required equipment.

*Disposition:* Denied. July 26, 1991.

*Docket No.:* 26594.

*Petitioner:* West Coast Air Charter, Inc.

*Regulations Affected:* 14 CFR 135.5.

*Description of Petition:* Petitioner proposes to restrict aircraft operators from doing business on any other operator's certificate and require that aircraft operators and operators of satellite operations submit and have approved, by their local Flight Standards District Office, their Operating Certificates and Operating Specifications.

*Petitioner's Reason for the Request:* The petitioner believes that the proposed amendment would halt the practice of some pilots operating unsupervised on other operator's certificates without the knowledge of the local Flight Standards District Office and without adhering to FAR part 135.

*Docket No.:* 26567.

*Petitioner:* National Association of Flight Instructors.

*Regulations Affected:* 14 CFR 61.1879(b).

*Description of Petition:* The petitioner proposes to amend the existing regulation to require that flight instruction be given by a person who has held a flight instructor certificate during the twelve months immediately preceding the date the instruction was given.

*Petitioner's Reason for the Request:* The petitioner believes that flight instructor applicants will be better served by a flight instructor who has more experience than that provided for in the minimum standards of the existing rule.

*Docket No.:* 26620.

*Petitioner:* Michael E. Gardner.

*Regulations Affected:* 14 CFR part 121, appendix I.

*Description of Petition:* The petitioner proposes to add airline aircraft engineers and maintenance and inspection managers to the list of employees who must be drug tested.

*Petitioner's Reason for the Request:* The petitioner asserts that aircraft engineers and maintenance and inspection managers perform duties which are critical to the safety of an aircraft, i.e. advising on repairs to

aircraft structure, giving authorization to continue a flight, and signing off on maintenance paperwork. The petitioner believes that subjecting these employees to random drug testing will better provide for a drug-free workplace and safe and reliable aircraft for the flying public.

[FR Doc. 91-22047 Filed 9-12-91; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 91-ANE-30]

#### Airworthiness Directives; Avco Lycoming Model IO-360-A1B6D and IO-360-A3B6D Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to Avco Lycoming IO-360-A1B6D and IO-360-A3B6D engines modified per Aircraft Design, Inc., Supplemental Type Certificate (STC) SE4757NM, which would require a decrease in the engine Manifold Air Pressure (MAP) limit from 38.5 inches Hg to 33.0 inches Hg, and installation of an instrument placard specifying the decreased MAP limitations. This proposal is prompted by test results which revealed that the engine operating at 38.5 inches Hg manifold pressure is producing more horsepower than its maximum certified level. This condition, if not corrected, could result in premature engine failure.

**DATES:** Comments must be received no later than October 16, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-30, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311, to the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Forgac, Seattle Aircraft Certification Office, Special Certification Branch, Modifications Section, ANM-191S; FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056, telephone (206) 227-2597.

#### SUPPLEMENTARY INFORMATION:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ANE-30". The postcard will be date/time stamped and returned to the commenter.

#### Discussion

Aircraft Design, Inc., is the holder of Supplemental Type Certificate (STC) No. SE4757NM, which allows modification of Avco Lycoming model IO-360-A1B6D and IO-360-A3B6D engines from naturally aspirated into turbocharged engines. These modified engines are installed on Mooney M20J aircraft in accordance with Aircraft Design, Inc., STC SE4756NM. The FAA has received reports that these modified engines when operated at a MAP of 38.5 inches Hg, will be producing more horsepower than the maximum certified value.

It was further determined, after an engine power calibration test was conducted, that the results of this test verified that the engine is producing at least 222 horsepower, which is 11% above the maximum certified horsepower. This condition, if not corrected, could result in premature engine failure.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require reduction of MAP to 33.0 inches Hg, and require installation of an instrument panel placard specifying the

reduced MAP limitation. This proposed AD would also require that a copy of the AD be added to the Aircraft Flight Manual as a supplement.

There are approximately 30 aircraft of U.S. registry affected by this AD, and that it would take approximately 2 manhours per aircraft at \$55 per hour. The cost of the required placard is estimated to be \$20 per aircraft. Based on these figures, the total cost impact of the AD on US operators is estimated to be \$3,900.

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA), proposes to amend 14 CFR 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. Section 39.13 is amended by adding the following new airworthiness directive (AD):

#### Avco Lycoming:

**Applicability:** Lycoming IO-360-A1B6D and IO-360-A3B6D engines modified per

Aircraft Design, Inc., STC SE4757NM, installed on Mooney M20J aircraft modified per Aircraft Design, Inc., STC SA4758NM.

**Compliance:** Required within the next 30 days after the effective date of this AD, unless previously accomplished.

To prevent possible premature engine failure, accomplish the following:

(a) Fabricate and install on the instrument panel a placard, in accordance with FAR 23.1541(b), stating "DO NOT OPERATE ENGINE ABOVE 33.0 IN Hg".

(b) Re-mark the manifold pressure gauge by removing the radial red line at 38.5 Hg and placing the radial red line at 33.0 Hg.

(c) Revise the Limitations and Normal Procedure Sections of the Aircraft Flight Manual Supplement as follows:

(1) Delete "38.5" Hg" as it appears in these sections and insert in lieu thereof "33.0" Hg."

(2) Delete "38.0 Hg" as it appears in Normal Climb Throttle and insert in lieu thereof "33.0 Hg."

(d) Attach this AD as a permanent appendix to Aircraft Flight Manual.

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in the AD may be approved by the manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

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

Issued in Burlington, Massachusetts, on August 30, 1991.

Jay J. Pardee,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-22050 filed 9-12-91; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 91-ANE-03]

#### Airworthiness Directives; General Electric Company (GE) CF6-45/-50 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM), withdrawal.

**SUMMARY:** This action withdraws an NPRM, which proposed a new airworthiness directive (AD), applicable to GE CF6-45/-50 series turbofan engines, which would have required rework of the fan rotor stage 1 disk platforms. Since issuance of the NPRM, the FAA has received reports that five uncontained failures of the reworked platforms have occurred. The FAA has therefore reviewed its position on this safety issue and the one comment received in response to the NPRM, and

has concluded that the proposed actions will not correct the unsafe conditions. Further, the airworthiness requirements necessary to correct the unsafe condition are beyond the scope of the NPRM. Accordingly, the NPRM is withdrawn.

#### FOR FURTHER INFORMATION CONTACT:

Robert Ganley, Engine Certification Office, ANE-140, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 272-5047.

#### SUPPLEMENTARY INFORMATION: A

proposal to amend Part 39 of the Federal Aviation Regulations to include a new AD, applicable to GE CF6-45/-50 series turbofan engines, which would require rework of the fan rotor stage 1 disk platforms was published in the Federal Register on February 20, 1991 (56 FR 6818).

There have been reports of five uncontained failures of reworked platforms since issuance of the NPRM. One comment was received stating that the manufacturer has advised members of the Airline Transportation Association (ATA) that rework of the platform has not been effective in reducing platform failures, and has requested operators to instead replace the platform with new units. The FAA agrees that the proposed requirements do not correct the unsafe condition. The necessary airworthiness requirements to correct the unsafe condition are being developed, and will be included in subsequent rulemaking. A preliminary assessment indicates that these new requirements will increase the economic burden and scope of the AD. Accordingly, the FAA has determined that it is appropriate to withdraw the proposed rule.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future regulatory action, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

#### The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration (FAA) withdraws the notice of proposed rulemaking, Docket No. 91-ANE-03, published in the Federal Register on February 20, 1991 (56 FR 6818).

(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.)

Issued in Burlington, Massachusetts, on August 30, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-22049 Filed 9-12-91; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

#### Ohio Permanent Regulatory Program; Revision of Administrative Rule

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of proposed Program Amendment Number 52 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to delete the provision that reclamation operations conducted without a coal mining permit cause or are likely to cause significant imminent environmental harm.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on October 15, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on October 8, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 30, 1991.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr.

Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review, at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, OH 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, OH 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 *Federal Register* (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated August 23, 1991 (Administrative Record No. OH-1570), Ohio submitted proposed Program Amendment Number 52. The amendment proposes one revision to Ohio Administrative Code (OAC) rule 1501:13-14-02 paragraph (A)(2) to delete the words "and reclamation." This change would delete the current provision of the rule that reclamation operations conducted without a coal mining permit constitute a condition which causes or can reasonably be expected to cause significant imminent environmental harm. Coal mining operations conducted without a valid permit would continue to be a condition which causes or is likely to cause significant imminent environmental harm.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on September 30, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-22066 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-05-M

**National Park Service**

**36 CFR Part 13**

**Glacier Bay National Park, Alaska; Fishing Regulations**

**AGENCY:** National Park Service, Interior.

**ACTION:** Extension of comment period and schedule of public hearings on proposed rule.

**SUMMARY:** In the *Federal Register* of Monday, August 5, 1991 (56 FR 37262), the National Park Service proposed to amend regulations regarding fishing in Glacier Bay National Park, Alaska. These proposed amendments will allow commercial fishing to continue, exempted from currently existing nationwide NPS prohibitions on such activities, until December 31, 1997. Any continuance of commercial fishing beyond that date would require a finding that such uses are compatible with protection of park values and purposes, and promulgation of a new regulation at that time. The statutory prohibition on commercial fishing in designated wilderness in the park is clarified by the regulations. Non-commercial consumptive fishing methods are designated and "subsistence" uses are prohibited by the regulations. The public hearing dates follow.

As originally announced, public comments were to be accepted through October 4, 1991. This notice extends the comment period by an additional thirty days, until November 3, 1991. This notice also sets forth dates, times, and locations of public meetings on the proposed rulemaking. Each meeting will consist of a question and answer session, followed by testimony on the record.

**DATES:** Written comments will be accepted until November 3, 1991.

Hearings are scheduled as follows:

1. September 17, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. (testimony) in Anchorage, Alaska.

2. September 18, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and

7 p.m. to 9:30 p.m. (testimony) in Ketchikan, Alaska.

3. September 19, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. (testimony) in Sitka, Alaska.

4. September 20, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. (testimony) in Juneau, Alaska.

5. September 23, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. in Gustavus, Alaska.

6. September 24, 1991, 1 p.m. to 2:45 p.m. (question and answer session) and 3 p.m. to 5 p.m. in Pelican, Alaska.

7. September 25, 1991, 1 p.m. to 2:45 p.m. (question and answer session) and 3 p.m. to 5 p.m. in Elfin Cove, Alaska.

8. September 26, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. in Hoonah, Alaska.

9. October 4, 1991, 5:30 p.m. to 6:45 p.m. (question and answer session) and 7 p.m. to 9:30 p.m. in Seattle, Washington.

**ADDRESSES:** Comments should be sent to: Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, room 107, Anchorage, Alaska 99503-2892.

Hearings will be held at the following locations:

1. Anchorage—Alaska Public Lands Information Center auditorium, 605 West 4th Avenue, Anchorage, Alaska.

2. Ketchikan—High School Auditorium, 2610 Fourth Avenue, Ketchikan, Alaska.

3. Sitka—Centennial Building, 330 Harbor Drive, Sitka, Alaska.

4. Juneau—Juneau Intl Airport, Taku Room, 1872 Shell Simmons Drive, Juneau, Alaska.

5. Gustavus—Community Firehall, Gustavus, Alaska.

6. Hoonah—City Office Council Chambers, 300 Front Street, Hoonah, Alaska.

7. Pelican—City Hall, Pelican, Alaska.

8. Elfin Cove—Community Hall, Elfin Cove, Alaska.

9. Seattle—Jackson Federal Building, room 150, 915 2nd Avenue, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, room 107, Anchorage, Alaska 99503-2892, telephone: (907) 257-2699; or, Marvin Jensen, National Park Service, Bartlett Cove, Gustavus, Alaska 99827, telephone: (907) 697-2230.

John M. Morehead,  
Regional Director.

David Moffitt,  
Acting Regional Director.

[FR Doc. 91-22228 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-70-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NH-3-1-5248, A-1-FRL-3995-8]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Withdrawal of Source-Specific Operating Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of New Hampshire. This revision requests that nine source-specific operating permits be withdrawn from the SIP. The intended effect of this action is to propose approval of the withdrawal of the source-specific operating permits from the New Hampshire SIP. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before October 15, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

**FOR FURTHER INFORMATION CONTACT:** Patricia C. Kelling, (617) 565-3249; FTS 835-3229.

**SUPPLEMENTARY INFORMATION:** On September 19, 1990, the New Hampshire Air Resources Division (NHARD) submitted a revision to its SIP asking for the withdrawal of previous SIP revisions consisting of source-specific operating permits issued by the NHARD to the nine facilities listed below:

1. ATC Petroleum, Inc., Newington, NH.
2. Mobile Oil Corporation, Newington, NH.
3. Nashua Corporation, Merrimack, NH.

4. Oak Materials Group, Franklin, NH.
5. Nashua Corporation, Nashua, NH.
6. Velcro U.S.A., Manchester, NH.
7. Markem Corporation, Keene, NH.
8. Ideal Tape Corporation, Exeter, NH.
9. Essex Group, Newmarket, NH.

#### Background

On May 25, 1988, EPA sent a letter to John H. Sununu, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the Clean Air Act (CAA) as amended notifying him that the New Hampshire SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA), and in the New Hampshire portion of the Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA) plus the remaining portion of Strafford County. On November 8, 1989, EPA sent a letter to Judd Gregg, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the CAA as amended notifying him that the New Hampshire SIP was substantially inadequate to achieve the NAAQS for ozone in the Manchester MSA plus the remaining portion of Merrimack County and the remaining portions of Hillsboro and Rockingham Counties outside of the Boston-Lawrence-Salem CMSA. EPA requested that the State respond to the SIP calls in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs.

On June 16, 1988, EPA sent a letter to the NHARD indicating the actions which were necessary in order to adequately respond to the SIP call. These actions included amendments to New Hampshire's volatile organic compound (VOC) reasonably available control technology (RACT) regulations and revisions to nine source-specific operating permits issued to VOC-emitting facilities and incorporated by reference into New Hampshire's SIP.

In that letter, EPA stated its position that an adequate response to the SIP call required New Hampshire to ensure that the nine facilities are subjected to all of the applicable control requirements contained in EPA's control technique guidelines (CTGs) and other guidance by either amending the source-specific operating permits, or requiring these sources to be subject to the corrected version of the regulations in the Rule Governing the Control of Air Pollution for the State of New Hampshire PART Env-A 1204, entitled "Volatile Organic Compounds," by withdrawing the nine operating permits

from the SIP. These operating permits were originally submitted as SIP revisions by the State on May 2, 1980, May 16, 1980, November 20, 1981, January 8, 1982, December 23, 1982, December 30, 1982, January 19, 1983, March 18, 1983, and December 22, 1983, and approved and incorporated by reference by EPA at 40 CFR 52.1520(c)(21), (c)(25) and (c)(32).

New Hampshire revised its VOC regulations in Part Env-A 1204 and adopted them on November 15, 1989, becoming effective on November 16, 1989. The revised regulations were proposed for approval by EPA on June 13, 1990 (55 FR 23950) and were finally approved by EPA as a SIP revision on June 13, 1991 (56 FR 27197).

New Hampshire submitted a letter to EPA on September 12, 1990 asking EPA to withdraw the nine source-specific operating permits from the SIP in order to satisfy the NHARD's obligation under EPA's May 24, 1988 and November 8, 1989 SIP call letters. On June 20, 1991, the NHARD held a public hearing completing the SIP submittal process.

This action addresses one of the two deficiencies listed in EPA's letter sent to Judd Gregg, Governor of New Hampshire, on June 11, 1991. This letter informed the State of EPA's finding that New Hampshire failed to make a required submittal under section 182(a)(2)(A) of the Clean Air Act Amendments of 1990 for the deficiencies in the State's VOC regulations.

EPA is proposing to approve the New Hampshire SIP revision withdrawing the nine source-specific operating permits from New Hampshire's federally approved SIP. Upon withdrawal of these operating permits from the SIP, the nine affected facilities will be subject to and regulated by the VOC regulations in Part

Env-A 1204 of the Rules Governing the Control of Air Pollution for the State of New Hampshire. EPA is soliciting public comments on this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

#### Proposed Action

EPA is proposing to approve the withdrawal of nine source-specific operating permits from the State of New Hampshire's SIP submitted on May 2, 1980, November 20, 1981, January 8, 1982, December 23, 1982, December 30, 1982, January 19, 1983, March 18, 1983, and December 22, 1983, and approved by EPA at 40 CFR 52.1520(C)(21), (c)(25) and (c)(32).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225).

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

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

relevant statutory and regulatory requirements.

EPA has reviewed the SIP revision for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. Although New Hampshire submitted this SIP revision prior to November 15, 1990, EPA has determined that this action is approvable. The revision may not include all of the new title I requirements, however, it strengthens the requirements in New Hampshire's existing SIP and conforms to all of EPA's current regulations. Furthermore, many of the provisions of the new law do not require state submittals until some time in the future. EPA is currently developing guidance for the States for title I and New Hampshire will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA has decided to propose to approve this revision today in order to strengthen the SIP and conform it to existing requirements during this transition period.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

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

Dated: August 30, 1991.

Patricia Meaney,

Acting Regional Administrator, Region I.  
[FR Doc. 91-22070 Filed 9-12-91; 8:45 am]

BILLING CODE 6560-50-M

# Notices

Federal Register

Vol. 56, No. 178

Friday, September 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket 91-130]

#### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test a Genetically Engineered Organism

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of a genetically engineered organism. The assessment provides a basis for the conclusion that the field testing of the genetically engineered organism will not present a risk of the introduction or dissemination of a plant

pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESSES:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologicals, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit number listed below.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into

the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the organism under the conditions described in the permit application. APHIS concluded that the issuance of the permit listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of the following permit to allow the field testing of a genetically engineered organism:

Permit No.	Permittee	Date issued	Organism	Field test location
91-106-01	DNA Plant Technology Corporation	08-13-91	Chrysanthemum plants genetically engineered to suppress a chrysanthemum chalcone synthase (CHS) gene, in order to modify pigment formation.	Contra Costa County, California; Lee County, Florida; Anderson County, South Carolina.

Done in Washington, DC, this 9th day of September 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-22065 Filed 9-12-91; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Agency:** Economic Development Administration.

**Title:** Current and Projected Employee Data.

**Form Number:** Agency Form ED-612. OMB-0810-0003.

**Type of Request:** Extension of the expiration date.

**Burden:** 800 respondents; 600 hours.

**Average Hours Per Response:** .75 hours.

**Needs and Uses:** To assist in determining compliance of entities assisted by EDA with title VI of Civil

Rights Act of 1964 and implementing Departmental and Agency regulations.

*Affected Public:* Applicants, recipients or other parties connected with EDA projects.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Gary Waxman 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H5327, 14th and Constitution Avenue, NW., Washington, DC 20203.

Dated: September 10, 1991.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-22102 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-CW-M

#### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* International Trade Administration.

*Title:* Foreign Trade Zone (FTZ) Application.

*Form Number:* Agency: None. OMB Number: 0625-0139.

*Type of Request:* Extension/Revision.

*Burden:* 100 respondents and a total of 9600 hours. Average hours per response is 96.

*Needs and Uses:* The information on the applications are used to approve or disapprove requests to establish or expand current foreign-trade zones.

*Affected Public:* Public or quasi-public corporations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* Gary Waxman, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room

3208, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1991.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-22103 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-CW-M

#### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* International Trade Administration.

*Title:* Mission/Exhibition Evaluation.

*Form Number:* Agency Form: ITA 4075P. OMB Number: 0625-0034.

*Type of Request:* Extension with no change.

*Burden:* 2500 respondents with a total of 208 hours and an average of 5 minutes per response.

*Needs and Uses:* The survey collects information on results of a firm's participation in an overseas trade event managed and funded from participant contributions. Data used to evaluate efficiency, impact and effectiveness of event from participant's perspective.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Gary Waxman 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1991.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-22104 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-CW-M

#### Bureau of the Census

[Docket No. 910920-1220]

#### Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** In conformity with title 13, United States Code, sections 182, 224, and 225, I have determined that a 1991 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

**ADDRESSES:** Director, Bureau of the Census, Washington, DC 20233.

**FOR FURTHER INFORMATION CONTACT:** C. Harvey Monk on (301) 763-2536.

**SUPPLEMENTARY INFORMATION:** The data collected in this survey will be within the general scope, type, and character of that which is covered in the economic censuses.

The proposed survey has been approved by the Office of Management and Budget under Control No. 0607-0444 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: September 6, 1991.

Barbara Everitt Bryant,  
*Director, Bureau of the Census.*

[FR Doc. 91-22081 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-07-M

**International Trade Administration**

[A-588-087]

**Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.); Negative Preliminary Determination of Circumvention of Antidumping Duty Order**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**EFFECTIVE DATE:** September 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

**Preliminary Determination**

We preliminarily determine that Brother Industries, Ltd. and Brother Industries (USA), Inc. (collectively "Brother") are not circumventing the antidumping duty order on portable electric typewriters ("PETs") from Japan. Interested parties are invited to comment on this preliminary determination.

**Background**

On May 9, 1980, the Department of Commerce ("the Department") published in the *Federal Register* (45 FR 30618) the antidumping duty order on PETs from Japan. Since that time, the original scope of the order was amended to include certain later-developed merchandise. (See "Scope of the Order" section of this notice for further discussion.) On March 18, 1991, the Department received a petition filed by the Smith Corona Corporation ("Smith Corona"), requesting that the Department conduct an anti-circumvention inquiry on the antidumping duty order on PETs from Japan, in accordance with section 781(a) of the Tariff Act of 1930, as amended ("the Act"). Smith Corona alleges that Brother is circumventing the antidumping duty order on PETs by importing parts and components from Japan, and assembling them into finished PETs for sale in the U.S. market and that the difference between the value of the parts from Japan and the value of the completed PET is small. On April 1, 1991, Brother challenged Smith Corona's standing to file an anti-circumvention petition on the grounds that Smith Corona is not an interested party within the meaning of sections 732(b)(1) and 771(9)(C) of the Act. See

"Standing" section of this notice for further discussion. On April 12, 1991, pursuant to petitioner's allegations and in accordance with 19 CFR 353.29(c), the Department published in the *Federal Register* (56 FR 14922) an initiation of an anti-circumvention inquiry of the PETs order.

On April 12, 1991, the Department issued an initial request for information to Brother. The Department received Brother's response to this request for information on April 26, 1991. The Department issued an anti-circumvention questionnaire to Brother on May 3, 1991, and received Brother's response on June 3, 1991. The Department requested additional information from Brother in a supplemental questionnaire issued to Brother on June 14, 1991. The response to this supplemental questionnaire was received by the Department on June 24, 1991.

The Department conducted verification of Brother's questionnaire responses in the United States and in Japan during July 1991. On August 28, 1991, Smith Corona submitted comments with respect to the treatment of third country parts and components for purposes of section 781(a) of the Act. Due to time constraints, the Department was unable to consider these comments for purposes of the preliminary determination, but intends to consider them for purposes of the final determination.

**Scope of the Order**

The products covered by the order subject to this anti-circumvention inquiry are PETs from Japan which include typewriters with calculators and certain later-developed portable electronic typewriters including those with text display and expanded memory of the same class or kind as PETs within the scope of the order. This later-developed merchandise is of the same class or kind as a PET if it meets all of the following seven physical criteria: (1) Is easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) is electric, regardless of source of power; (3) is comprised of a single, integrated unit; (4) has a keyboard embedded in the chassis or frame of the machine; (5) has a built-in printer; (6) has a platen (roller) to accommodate paper; and (7) only accommodates its own dedicated or captive software. (See Final Scope Ruling: Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990).)

PETs from Japan are currently classifiable under Harmonized Tariff Schedule (HTS) subheadings 8469.21.00

and 8469.29.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

**Period of Inquiry**

The period of inquiry ("POI") is October 1, 1990 through March 31, 1991.

**Standing**

On April 1, 1991, Brother alleged that Smith Corona lacks standing to file the anti-circumvention petition because: (1) It is no longer a U.S. manufacturer of the merchandise subject to the scope of the original antidumping duty order; (2) it is predominantly an importer of certain later-developed merchandise subsequently included within the scope of the original order (i.e., portable automatic typewriters (PATs); and (3) it is a U.S. assembler of certain products within the scope of the order (i.e., PATs and liquid crystal display portable word processors), a substantial portion of the parts of which are imported mainly from Japan. On April 15, 1991, Smith Corona responded to Brother's allegation, stating that it is both a U.S. producer of the like product, and a seller of that product, other than at retail; and as such, has standing as an interested party under 19 CFR 353.29(b) and 353.2(k) to file the anti-circumvention petition.

The standing challenge in this case involves the allegation that the petitioner is an assembler and not a manufacturer of the like product and; therefore, lacks interested party status to bring the petition. When faced with this type of standing challenge, it is appropriate for the Department to examine factors like those considered by the International Trade Commission (ITC) in its domestic industry determination. When determining whether a firm is a domestic producer, the ITC examines the overall nature of production-related activities in the United States, including: (1) The extent and source of a firm's capital investment; (2) the technical expertise involved in the production activity in the United States; (3) the value added to the product in the United States; (4) employment levels; (5) the quantity and types of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See e.g., Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 at 13-14 (Mar. 1989). No single factor is determinative, nor is the list of criteria exhaustive. *Id.*

In determining whether the petitioner in this inquiry has interested party status, we considered all information on the record of the proceeding which addresses the above criteria. See the September 3, 1991, Memorandum for Francis J. Sailer entitled "Recommendation on Petitioner's Standing". Based on our preliminary analysis of this information, we find that Smith Corona's activities in the United States are sufficient to qualify it as an interested party as defined in 19 CFR 353.2(k); and we, therefore, determine that it has standing as an interested party to file the anti-circumvention petition in the instant case. However, we will continue to examine this issue throughout the course of this proceeding.

#### *Nature of the Anti-Circumvention Proceeding*

Section 781(a) of the Act authorizes the Department to include merchandise within the scope of an existing antidumping duty order if the merchandise sold in the United States is of the same class or kind as merchandise produced in a foreign country that is the subject of an antidumping duty order, the product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and the difference between the value of such product sold in the United States and the value of the imported parts and components produced in the subject foreign country is small.

In reaching a determination on whether to include parts or components within an order, section 781(a)(2) of the Act directs the Department to consider such factors as (1) the pattern of trade, (2) whether the manufacturer or exporter of the parts or components is related to the entity that assembled or completed the merchandise sold in the United States, and (3) whether imports of the parts or components from the country to which the antidumping duty order or finding applies have increased after issuance of that order or finding.

While we have considered each of the three factors stipulated in the statute, we have not limited our analysis to those factors. Our review of the legislative history of section 781(a)(2) of the Act indicates that other factors may properly be considered before rendering an anti-circumvention determination. See S. Rep. No. 71, 100th Cong., 1st Sess. 100 1987. Accordingly, we have considered the nature of the processing performed in the United States, the level of Brother's U.S. investment at its U.S. facility, and the extent of Brother's U.S.

production facilities. See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order (54 FR 50260) (December 5, 1989).

#### *Preliminary Calculation of Difference in Value*

We calculated the difference in value between (a) the PETs completed and sold in the United States and (b) the value of parts and components used in the production of that merchandise which were imported from Japan. We determined that the differences in value ranged from 69 to 80 percent. (Because the precise figures are business proprietary, each of the stated percentages is approximated within a range of plus or minus ten percent.)

#### *Value of Completed Merchandise*

We used the weighted-average POI net selling price of selected models of completed PETs produced by Brother in the United States to represent the value of PETs. We deducted U.S. inland freight to derive the net selling price of the completed PET.

#### *Value of Japanese Components*

For those parts and components sourced from related suppliers in Japan, we used the greater of transfer price or cost of production to represent the value of Japanese components. For the parts and components which were valued at cost of production, we reflected factory overhead expenses to reflect findings at verification. Also, we allowed an offset against interest expense of short-term interest income from operations up to the amount of total interest expense incurred. For those parts and components procured from unrelated suppliers in Japan, we used the weighted-average POI acquisition price to represent the value of Japanese components.

We included in our calculation of Japanese value all movement expenses that the respondent incurred on Japanese parts purchases which were not included in the selling price for the Japanese parts. We also allocated a portion of selling, general and administrative (SG&A) expenses and profit of the U.S. facilities to the value of the Japanese parts based on the ratio of the value of Japanese parts to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly. Based on certain expense reclassifications resulting from findings at verification, we revised the SG&A expenses reported by Brother International Corporation (BIC), Brother's U.S. sales subsidiary, which

were included in the calculation of U.S. SG&A expenses.

#### *Value of Third Country Components*

For those parts and components procured from related suppliers in third countries, we used the greater of transfer price or cost of production to represent the value of third country components. For those parts and components procured from unrelated suppliers in third countries, we used the weighted-average POI acquisition price to represent the value of third country components.

We included in our calculation of third country value all movement expenses that the respondent incurred on third country parts purchases which were not included in the selling price for the third country parts. We also allocated a portion of SG&A expenses and profit of the U.S. facilities to the value of the third country parts based on the ratio of the value of third country parts to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly. Based on certain expense reclassifications resulting from findings at verification, we revised the SG&A expenses reported by BIC, which were included in the calculation of U.S. SG&A expenses.

#### *Value of U.S. Components and U.S. Assembly*

We used the price from Brother's unrelated U.S. suppliers to represent the value of U.S. parts. We included in our calculation of U.S. value all movement expenses that the respondent incurred on U.S. part purchases which were not included in the selling price for U.S. components. U.S. assembly expenses included fabrication and overhead expenses incurred in U.S. operations, as well as SG&A and profit. Furthermore, we allocated SG&A expenses and profit of the U.S. facilities to the value of the U.S. components based on the ratio of the value of U.S. assembly and U.S. components to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly.

Based on certain expense reclassifications resulting from findings at verification, we revised the SG&A expenses reported by BIC, which were included in the calculation of U.S. SG&A expenses.

#### *Factors*

As stated above, in making our determination, we considered the pattern of trade, whether the manufacturer or exporter is related to the entity that sold the completed PET, whether imports of PET parts or

components from Japan have increased, and whether the imports of completed PETs have decreased, after the issuance of the antidumping duty order. In addition, we have considered the nature of the processing performed in the United States, the level of Brother's U.S. investment at its U.S. facility, and the extent of Brother's U.S. production processes.

(1) *Pattern of Trade:* The pattern of trade for the marketing of Japanese PETs was the same as that for PETs produced and assembled in the United States by Brother. For instance, the distribution system for PETs completed in the United States from PET parts and components is the same as the distribution system for completed PETs imported from Japan. That is, in both cases, the completed merchandise is sold to BIC, which in turn sells to the first unrelated customer in the United States. Parts and components are sourced globally by Brother. Brother purchased components from Japanese, third country, and U.S. sources, and then transformed these components into a finished PET. See "Preliminary Calculation of Difference in Value" section of this notice for discussion on valuation of these components.

(2) *Relationship:* Brother Industries, Ltd., the principal Japanese manufacturer and exporter of PET components to Brother Industries (USA), Inc. (BIUSA), Brother's U.S. production facility, is related to BIUSA and BIC, the entities that produced and sold the completed PET in the United States, respectively.

(3) *Increase in Imports:* We verified that shipments of PET components from Japan to the United States had increased and imports of PETs from Japan had decreased since the issuance of the antidumping duty order on May 9, 1980.

(4) *Nature of Processing:* Our analysis of Brother's U.S. production operations has primarily focused upon the total amount of "value" that BIUSA adds in manufacturing PETs. Brother makes considerable component purchases from U.S. and third country suppliers, and adds value through the fabrication and assembly process. In addition to the purchase of raw material, Brother adds value through assembly, engineering, labor, and quality control. For example, the purchase of a circuit board from a U.S. supplier represents more than the purchase of a plastic board, it also represents Brother's fabrication of that plastic into a component designed to function in a completed PET.

Our analysis of Brother's PET manufacturing processes is based on Brother's description of its U.S. production processes, and our own

observations made during a tour of the Brother facility in Bartlett, Tennessee. We observed over 100 different steps in the production process: From parts procurement and preparation, to soldering and welding, to adjustment, inspection, and packing.

(5) *Extent of U.S. Production Facilities and Level of Investment:* Brother's operations have surpassed the simple assembly operations contemplated by the statute. See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order, at 50261; and H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), Reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988), at H2035. Brother has clearly made more than a slight change in its method of production or shipment since the issuance of the antidumping duty order. That is, at the time of the order, only completed PETs were imported by Brother into the United States. Brother had no production facilities in the United States at that time. However, in 1987, Brother transferred its PET production to the United States. Furthermore, Brother stopped importing completed PETs from Japan into the United States in February 1990. We further note that since the establishment of production operations in the United States in 1987, Brother has invested significantly in its U.S. production facilities, both in terms of capital and labor. Brother has made investments in plant and equipment indicative of the magnitude of its U.S. operations. We also note that Brother has a U.S. production workforce that is significant in size which, in conjunction with its substantial capital investments, is a further indication of significant production activity.

#### *Negative Preliminary Determination of Circumvention*

In sum, after consideration of all factors discussed above, we preliminarily determine that no circumvention of the antidumping duty order is occurring within the meaning of section 781(a) of the Act. We preliminarily find that the production levels at Brother's plant are too great to characterize as mere "screwdriver" or simple assembly operations established for the purpose of evading the antidumping duty order. Rather, we preliminarily find that Brother's current U.S. operations, its investment in these facilities, and the expanding nature of its operations represent the substantial establishment of and commitment to major U.S. operations. Furthermore, we preliminarily determine that the

difference between the value of PETs sold in the United States and the value of Japanese components is not small for this industry. We note that our determination of "small" in this case is not necessarily synonymous with the determination of "small" that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make such determinations on a case-by-case basis.

Interested parties may request disclosure within five days of the date of the publication of this notice and may request a hearing within ten days of publication. Any hearing, if requested, will be held on October 4, 1991. Case briefs and/or written comments from interested parties may be submitted not later than September 20, 1991. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than September 27, 1991. The Department will publish the final determination in this anti-circumvention inquiry, including the results of its analysis of any oral or written comments. If, consistent with section 781(e) of the Act, we refer this matter to the ITC, we will issue our final determination within 15 days of receiving advice from the ITC. If referral to the ITC is not necessary, we will issue our final determination by October 25, 1991.

This negative preliminary determination of circumvention is in accordance with section 781(a) of the Act (19 U.S.C. 1677j).

Dated: September 6, 1991.

**Eric I. Garfinkel,**  
*Assistant Secretary for Import Administration.*

[FR Doc. 91-22105 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-D9-M

#### **Applications for Duty-Free Entry of Scientific Instruments**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and

5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90-213R. *Applicant:* Wright State University, Department of Chemistry, 3640 Colonel Glenn Highway, Dayton OH 45435. *Instrument:* Gas Chromatograph Mass Spectrometer System, Model MS 890. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the *Federal Register* of December 17, 1990.

*Docket Number:* 91-118. *Applicant:* Scripps Clinic and Research Foundation, Research Institute of Scripps Clinic, 10666 N. Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Sciex, Canada. *Intended Use:* The instrument will be used in fundamental biological research involving peptides and proteins. Common features of the various research projects are (1) the focus on proteins and peptides, (2) the use of mass spectrometry-mass spectrometry (tandem mass spectrometry) to generate sequence data for the peptides and proteins being studied and (3) the use of the most advanced current protein techniques in conjunction with mass spectrometry. Almost all of the research involves the identification of a post-translational modification and the precise location of that modified residue within the amino acid sequence of the peptide and/or protein. *Application Received by Commissioner of Customs:* August 5, 1991.

*Docket Number:* 91-119. *Applicant:* Oklahoma Medical Center, 940 NE. 13th Street Oklahoma City, OK 73104. *Instrument:* Dual Station Rapid Karyotyping System. *Manufacturer:* Applied Imaging Corporation, United Kingdom. *Intended Use:* The instrument will be used in a specific experiment that relates to the examination of several common human cancers and genetic disorders for the location of recurring sites of chromosome change. When found, these specific markers act to pinpoint important regions for further genetic study. In addition, the instrument will be used for educational purposes in the course Cancer Genetics and Cytogenetics, Cancer Biology, Introduction to Genetic Studies. *Application Received by Commissioner of Customs:* August 8, 1991.

*Docket Number:* 91-120. *Applicant:* Alaska Department of Fish and Game, Division of Commercial Fisheries, 333 Raspberry Road, Anchorage, AK 99518. *Instrument:* Digital Fish Measuring Board. *Manufacturer:* Limnoterra Ltd.,

Canada. *Intended Use:* The instrument will be used for monitoring salmon and herring during studies that include comparing length and weight characteristics of fish caught over time and in different locations. *Application Received by Commissioner of Customs:* August 8, 1991.

*Docket Number:* 91-121. *Applicant:* University of Missouri-Kansas City, 1011 E. 51st Street, Kansas City, MO 64110. *Instrument:* Electron Microscope, Model JEM-1200 EXII/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of a variety of types of cells (including neurons, heart cells, kidney cells), viruses and viral structure, protein macromolecular structures, and protein-nucleic acid protein complexes. The experiments to be conducted will include studies of:

- (1) Muscle thick filament structure in different vertebrate classes;
- (2) The structural framework for the innervation of the intermediate lobe of the pituitary by GABA and/or DA containing neurons;
- (3) The sensitivity to ethanol of single cerebellar neurons;
- (4) The mechanisms involved in expression of acetylcholinesterase and cholinergic innervation of the heart, both in the adult and during development;
- (5) Heme and iron binding proteins and transport;
- (6) The assembly of viruses and nucleoproteins; and
- (7) Ion channels in the basolateral membrane of renal tubules.

*Application Received by Commissioner of Customs:* August 8, 1991.

*Docket Number:* 91-122. *Applicant:* Associated Universities, Incorporated, Brookhaven National Laboratory, Building 555, Upton, NY 11973. *Instrument:* Microvolume Stopped-Flow Spectrophotometer, Model SF.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to carry out fast kinetic studies by the stopped-flow technique of biologically important short lived transients. *Application Received by Commissioner of Customs:* August 8, 1991.

*Docket Numbers:* 91-123 and 91-124. *Applicant:* Consortium for Surface Processing, Stevens Institute of Technology, Administrative Office, Hoboken, NJ 07030. *Instruments:* Electron Microscopes, Models CM20 FEG and CM30 ST. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instruments will be used for the following research projects:

(1) Processing effects on the structure and properties of high-temperature superconductor thin films;

(2) Tribochemical reactions associated with the wear of ceramic coatings;

(3) Thermal stability of nanostructural materials;

(4) Phase transformations and associated property changes in thin-film recording media;

(5) Deformation mechanisms in intermetallic compounds; and

(6) Interface reactions and resultant effects on mechanical properties of ceramic-based composites.

The instruments will also be used to teach graduate students how to analyze materials and to answer materials-related questions which are a concern in their respective research fields.

*Applications Received by Commissioner of Customs:* August 12, 1991.

*Docket Number:* 91-125. *Applicant:* Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Metallorganic Epitaxial Reactor. *Manufacturer:* Thomas Swan and Company, Ltd., United Kingdom. *Intended Use:* The instrument will be used to fabricate devices for optical communication systems and microwave links, such as bipolar and field-effect transistors, lasers and photodiodes. *Application Received by Commissioner of Customs:* August 14, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-22106 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a two-day public meeting on September 18-19, 1991, at the Rhumb Line Motor Lodge, (telephone: 207-967-5457), 1405 Ocean Avenue, Kennebunkport, Maine. The Council will begin its meeting at 10 a.m. on September 18. The meeting will reconvene on September 19 at 9 a.m.

The first day will begin with Council briefings and be followed with the Groundfish Committee report. This will include discussions of Groundfish Plan Development Team activities. After completion of groundfish business, the Scallop Committee will provide an

update on the progress of its Plan Development Team. During the final portion of the afternoon, the staff will make a presentation on the technical terms and methods used in fisheries management.

On the second day, the Council meeting will begin with a Herring Committee Report. There will also be a status report on Amendment #4 to the Lobster FMP. Details of a previous industry meeting held to formulate a consensus position on lobster management will be reviewed. The Council also intends to review comments on the NMFS Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: September 9, 1991.

David S. Crestin,

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

[FR Doc. 91-22039 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-22-M

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council), its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) will hold public meetings on September 22-28, 1991, at the Hilton Hotel, Anchorage, AK. The council's meeting is scheduled to begin on September 23 at 8 a.m. and is anticipated to continue through September 27 and possibly into Saturday, September 28. A Council executive session (not open to the public) is tentatively scheduled for September 25 at noon. The Council's AP will begin its meeting on Sunday, September 22 at 8 a.m.; the Council's SSC will begin its meeting on the same day at 10:30 a.m. The Ad Hoc Bycatch Committee will begin its meeting on Sunday, September 22 at 2 p.m. The Halibut Regulatory Amendment Advisory Group will begin its meeting on Sunday, September 22 at 6:30 p.m. the Council's Finance Committee will begin its meeting on September 26 at 7 a.m. Meetings of other Council committees and workgroups also may be held throughout that week, on short notice.

The Council will consider the following agenda items: (1) Election of officers; (2) reports by the Alaska

Department of Fish and Game, by the National Marine Fisheries Service (NMFS), by the U.S. Coast Guard and a report on current legislation and international fisheries; (3) review proposals submitted by the Alaska Board of Fisheries; (4) a status of stocks report for halibut, a review of allocative industry proposals, and a final decision on halibut limited entry; (5) the initial status of stocks report on groundfish for the Gulf of Alaska and Bering Sea/Aleutian Islands (GOA/BSA); (6) final decision on sablefish limited entry and coordination with halibut management; (7) a status of stocks report on BSA crabs; (8) initial consideration of 1992 groundfish harvests, apportionments and prohibited species apportionments for the GOA and BSA; (9) selection of groundfish amendment proposals for analysis and consideration in the 1991-92 groundfish amendment cycle; (10) consideration of an emergency rule to delay groundfish seasons and synchronize Bering Sea and GOA cod and pollock fisheries; (11) approval of pollock measures for 1992, including separate Western and Central GOA reporting areas and limits on rollover of quarterly allocations; (12) consider an emergency rule authorizing the NMFS Regional Director to require pre-registration in certain fisheries, if appropriate; (13) review and approval of proposed changes to recordkeeping and reporting requirements for 1992; (14) initial review of the 1992 bycatch amendment; (15) review of specifications for the observer program; (16) final consideration of the North Pacific Fisheries Research Plan; (17) discussion of the "donut hole" fisheries and management options, and possible sanctions on operations active in both the economic exclusive zone of the United States and outside its 200 mile zone; (18) preliminary consideration of future management alternatives for groundfish and crab, including a moratorium; (19) consideration of changing the Council's voting procedures on allocative issues; (20) comment on the proposed Marine Mammal Protection Act amendments and analysis and report on sea lion surveys; (21) review of management measures proposed to protect sea lions and if necessary, take emergency action for 1992; and (22) discussion of progress on analysis of quarterly Pacific cod allocations. For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: September 9, 1991.

David S. Crestin,

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

[FR Doc. 91-22040 Filed 9-12-91; 8:45am]

BILLING CODE 3510-22-M

### Marine Mammals; Issuance of Permit; Dr. Gerald L. Kooyman (P16L)

On July 19, 1991, Notice was published in the *Federal Register* (56 FR 33259) that an application had been filed by Dr. Gerald L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, 221 Scholander Hall, La Jolla, California 92093, to obtain five (5) rehabilitated or captive born California sea lions (*Zalophus californianus*) from Sea World to be maintained at Scripps Institute of Oceanography for scientific study and to be released to the wild upon completion of the study.

Notice is hereby given that on September 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit and supporting documentation are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/427-2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: September 6, 1991.

Nancy Foster,

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 91-22023 Filed 9-12-91; 8:45 am]

BILLING CODE 3510-22-M

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Guatemala

September 10, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** September 17, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. 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 347/348 is being increased for carryover.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 8166, published on March 7, 1990; and 55 FR 42870, published on October 24, 1990.

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 Memorandum of Understanding dated November 9, 1989, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 10, 1991.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 19, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 17, 1991, you are directed to amend the October 19, 1990 directive to increase the current limit for Categories 347/348 to 910,041 dozen<sup>1</sup>, as

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 1990.

provided under the terms of the Memorandum of Understanding dated November 9, 1989 between the Governments of the United States and Guatemala. The current Guaranteed Access Level for Categories 347/348 remains at 1,000,000 dozen.

You are directed to deduct 5,914 dozen, for goods exported in 1990, from the charges made to Category 847 for 1991. Also, you are directed to charge, for Category 347, this same amount to the limit established in the February 28, 1990 directive for Categories 347/348 for the period March 1, 1990 through December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-22098 Filed 9-12-91; 8:45 am]

**BILLING CODE 3510-DR-F**

**Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Poland**

September 10, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** September 17, 1991.

**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 the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. 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 Category 433 is being increased for swing and carryforward, reducing the limit for Category 444 to account for the swing being applied.

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 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 10, 1991.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990 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 Poland, and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 17, 1991, you are directed to amend further the December 4, 1990 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Republic of Poland:

Category	Adjusted twelve-month limit <sup>1</sup>
Sublevels in Group II	
433.....	8,718 dozen.
444.....	59,904 numbers.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-22099 Filed 9-12-91; 8:45 am]

**BILLING CODE 3510-DR-F**

**Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore**

September 9, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** September 16, 1991.

**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) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 51756, published on December 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 9, 1991.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 16, 1991, you are directed to amend the directive dated December 11, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Singapore:

Category	Adjusted twelve-month limit <sup>1</sup>
<b>Levels in Group I</b>	
331.....	372,956 dozen pairs.
334.....	65,816 dozen.
335.....	197,977 dozen.
340.....	732,420 dozen.
341.....	184,168 dozen.
342.....	113,334 dozen.
435.....	7,091 dozen.
631.....	425,002 dozen pairs.
634.....	251,276 dozen.
635.....	257,140 dozen.
638.....	838,701 dozen.
640.....	156,145 dozen.
641.....	234,461 dozen.
645/646.....	141,547 dozen.
647.....	495,180 dozen.
<b>Sublevels in Group II</b>	
222.....	352,980 kilograms.
237.....	228,109 dozen.
642.....	232,108 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-22100 Filed 9-12-91; 8:45 am]

**BILLING CODE 3510-DR-F**

**Announcement of a Request for Bilateral Textile Consultations with the Government of Bangladesh on Certain Cotton and Man-Made Fiber Textile Products**

September 9, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, 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 August 29, 1991, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of Bangladesh regarding playsuits in Category 237, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 237, produced or manufactured in Bangladesh and exported during the twelve-month period which began on August 29, 1991 and extends through August 28, 1992, at a level of not less than 172,794 dozen.

A summary market statement concerning Category 237 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 237, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to **Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, Attn: Helen L. LeGrande.**

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 H3104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments 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 agreement 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."

The United States remains committed to finding a solution concerning Category 237. Should such a solution be reached in consultations with the Government of Bangladesh, further notice will be published in the **Federal Register**.

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 55 FR 50756, published on December 10, 1990).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Market Statement—Bangladesh**

**Category 237—Playsuits**

August 1991

*Import Situation and Conclusion*

U.S. imports of playsuits, sunsuits, washsuits and similar apparel, Category 237, from Bangladesh reached 176,130 dozen during the year ending in June 1991, two times the 87,694 dozen imported a year earlier. In the first six months of 1991, Bangladesh shipped 119,761 dozen, a 48 percent increase over the 80,960 dozen shipped during the same period a year earlier. Bangladesh is the fifth largest—the largest uncontrolled supplier—of Category 237 imports to the U.S., accounting for 3.9 percent of total Category 237 imports in the first half of 1991. The sharp and substantial increase of Category 237 imports from Bangladesh is disrupting the U.S. market for playsuits, sunsuits, washsuits and similar apparel.

*U.S. Production and Market Share*

U.S. production of playsuits, sunsuits, washsuits and similar apparel, Category 237, declined to 1,497 thousand dozen in 1990. This represents a decline of 39 percent from the 1989 level and a 42 percent decline from the 1987 level. The domestic manufacturers' share of this market fell from 34 percent in 1987, to 23 percent in 1990, a decline of 11 percentage points.

*U.S. Imports and Import Penetration*

U.S. imports of playsuits, sunsuits, washsuits and similar apparel, Category 237, declined from 4,892 thousand dozen in 1987 to 3,835 thousand dozen in 1989, then surged to 4,909 thousand dozen in 1990, 28 percent above the 1989 level and 0.3 percent above the 1987 level. Category 237 imports continue to increase in 1991, increasing eight percent in the first six months of 1991 over the January-June 1990 level. The ratio of imports to domestic production more than doubled, increasing from 157 percent in 1989 to 328 percent in 1990.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 73 percent of Category 237 imports from Bangladesh entered the U.S. under four HTS numbers: 6110.20.2005—boys' and girls' knit garments imported as parts of playsuits; 6203.42.4055—boys' woven shorts imported as parts of playsuits; 6204.62.4060—girls' shorts imported as parts of playsuits and 6211.42.0025—women's and girls' woven cotton washsuits, sunsuits, one-piece playsuits and similar apparel. These garments

entered the U.S. at duty-paid landed value below U.S. producers' prices for comparable garments.

[FR Doc. 91-22101 Filed 9-12-91; 8:45 am]

**BILLING CODE 3510-DR-F**

**COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED**

**Procurement List; Additions**

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**EFFECTIVE DATE:** October 15, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On July 8, 12, 19, 26 and August 2, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 30905, 31907, 33264, 34189 and 37088) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, military resale commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.
- c. The actions will result in authorizing small entities to produce the commodities, military resale

commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

**Commodities**

*Bracket, Eye, Nonrotary*

3040-01-240-4456

*Gown, Operating, Surgical*

6532-00-083-6536

*Cushion, Chair*

7210-00-205-1173

7210-00-205-1175

7210-00-205-3544

7210-00-205-3545

**Military Resale Item No. and Name**

051 Pencil, Mechanical, Dual Action

052 Eraser, Dual Action

821 Can Opener, Compact

842 Tongs, Scissor

848 Whip, Plastic Handle

984 Cloth, Dust, Treated

**Services**

*Commissary Shelf Stocking and Custodial*  
Fort Ord, California

*Food Service*

U.S. Army Natick Research Development and Engineering Center  
Natick, Massachusetts

*Grounds Maintenance*

FAA Automated Flight Service Station  
Juneau, Alaska

*Janitorial/Custodial*

All office space on Fifth Floor  
The Pentagon  
Washington, DC

*Janitorial/Custodial*

Lock and Dam 19  
Keokuk, Iowa

*Janitorial/Custodial*

Air Traffic Control Tower  
Tacoma Industrial Airport  
1210 26th Avenue, NW  
Gig Harbor, Washington

*Microfilming of IRS Documents*

Cincinnati, Ohio

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**  
*Executive Director.*

[FR Doc. 91-22060 Filed 9-12-91; 8:45 am]

**BILLING CODE 6820-33-M**

**Procurement List; Proposed Additions**

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** October 15, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

**Commodities***Clamp, Loop*

5340-00-165-7671  
5340-01-013-7424  
5340-01-160-0396

*Bag, Protective*

6545-01-222-0684

*Shirt, Woman's*

8410-01-229-9436 thru  
8410-01-229-9503

*Hood, Combat Vehicle Crewmen's*

8415-01-111-1159

*Flag, Signal*

8345-00-227-1405  
8345-00-227-1511

**Services***Mailroom Services*

Department of Health and Human Services  
Food and Drug Administration  
Rockville, Maryland

*Operation of Postal Service Center*

Bolling Air Force Base, Washington, DC

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-22061 Filed 9-12-91; 8:45 am]

**BILLING CODE 6820-33-M**

**Procurement List; Additions and Deletions; Correction**

In notice document 91-18940, appearing on page 37900 in the issue of Friday, August 9, 1991 the deletion for Topper, Woman's is corrected to include the following items:

8410-01-187-9628

8410-01-187-9629

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-22602 Filed 9-12-91; 8:45 am]

**BILLING CODE 6820-33-M**

**DEPARTMENT OF DEFENSE****Office of the Secretary****DOD Advisory Panel on Streamlining and Codifying Acquisition Laws**

**AGENCY:** Office of the Secretary, DOD.  
**ACTION:** Notice of meeting.

**SUMMARY:** Open to the public on September 26, 1991, starting at 9 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA.

The panel has established the following six working groups: Socio-Economic, Contract Formation, Contract Administration, Standards of Conduct, Property Rights, Miscellaneous.

Anyone may submit inputs to the working groups. For further information, contact Stuart Hazlett (703) 355-2667.

Dated: September 9, 1991.

Linda M. Bynum,

*Alternative OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-21963 Filed 9-12-91; 8:45 am]

**BILLING CODE 3810-01-M**

**DEPARTMENT OF ENERGY****Financial Assistance Award; Babcock & Wilcox**

**AGENCY:** U.S. Department of Energy.  
**ACTION:** Notice of noncompetitive grant award.

**SUMMARY:** The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i) (B) and (F), it is making a noncompetitive award to Babcock & Wilcox (B&W) under Grant

Number DE-FG01-91EW40017. The total projected costs are \$65,381,000 (B&W will cost share in this award by contributing 55% of the total projected costs and the DOE share will be 45% or \$30,000,000.00 of the total costs, whichever is less). The purpose of the grant is to provide funding towards the final decontamination and decommissioning of the Nuclear Fuel Facility, located in Apollo, Pennsylvania, which is to be accomplished by January 1993, as required by Public Law 101-511.

The completion of the final decontamination and decommissioning of the Apollo site will provide a significant benefit to the local community in that the existing radiological contamination at the site will be removed and disposed of at an appropriately licensed and controlled facility designed for this purpose.

Babcock & Wilcox is an established and experienced nuclear firm and is well recognized in the area of nuclear decontamination and decommissioning. Babcock & Wilcox, as the site owner and a licensee of the Nuclear Regulatory Commission, has been proceeding with the decontamination and decommissioning of the Apollo facility for nearly 20 years as corporate funding availability would permit.

This organization is the most appropriate party to administer the funds provided by Congress for the cleanup. Use of any other contractor would not be an efficient use of the resources as another contractor would have to coordinate closely with the site owners before attempting any effort at the facility.

The period of performance is from September 1982 through January 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Placement and Administration, Attn: Rosemarie H. Marshall, 1000 Independence Avenue SW., Washington, DC 20585.

Jeffrey Rubenstein,

*Director, Operations Division "A", Office of Placement and Administration.*

[FR Doc. 91-22085 Filed 9-12-91; 8:45 am]

**BILLING CODE 6450-01-M**

**Secretary of Energy Advisory Board Task Force on Energy Research Priorities; Open Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Secretary of Energy Advisory Board Task Force on Energy Research Priorities.

*Date and Time:* September 19, 1991, 8:30 a.m.–5:30 p.m.; September 20, 1991, 8:30 a.m.–4:45 p.m.

*Place:* U.S. Department of Energy, room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585.

*Note:* To obtain badge at front desk it will be necessary to have a picture I.D. (For example, Driver's License, Passport or Company I.D.). *All visitors will be escorted at all times for security reasons.*

*Contact:* Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

*Purpose:* The Secretary of Energy Advisory Board Task Force on Energy Research Priorities has been established to advise the Secretary of Energy on priorities and program balance for the Office of Energy Research of the Department of Energy.

#### Tentative Agenda

*Location:* U.S. Department of Energy, room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585.

*Thursday, September 19, 1991, 8:30 a.m.–5:30 p.m.*

8:30 a.m. Call to Order and Introductions  
Welcoming Remarks  
8:45 a.m. Presentations on Energy Research Programs  
5:30 p.m. Adjourn

*Friday, September 20, 1991, 8:30 a.m.–4:45 p.m.*

8:30 a.m. Discussion of Priorities in Energy Research Programs  
3:45 p.m. Public Comment  
4:45 p.m. Adjourn

*Public Participation:* The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Persons wishing to attend the public meeting should provide their names and social security numbers to (202) 586-7092 by September 17 to arrange for visitor passes to the Forrestal Building.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Tuesday, September 17, 1991, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 50 copies of their statements at the time of their presentations.

*Note:* The notice is being published less than 15 days in advance of the meeting in order to provide an expeditious review of energy research priorities.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the

Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Tuesday, September 17, 1991, to assure that it is considered by Task Force members during the meeting.

*Minutes:* A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: September 10, 1991.

Howard H. Raiken,  
Advisory Committee, Management Officer.  
[FR Doc. 91-22159 Filed 9-12-91; 8:45 am]  
BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket No. CP86-712-001]

#### Northern Gas Co.; Compliance Filing for Rate Election Pursuant to § 284.224(C)(7)

September 6, 1991.

Take notice that on July 29, 1991, and amended August 16, 1991, Northern Gas Company (Northern Gas) made a compliance filing pursuant to its blanket certificate in Docket No. CP86-712 which authorized it to engage in the same, transportation, or assignment of natural gas subject to the Commission's jurisdiction under the Natural Gas Act to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by subparts C, D, and E of part 284 of the Commission's regulations. Northern Gas states that this filing complies with the order in Docket No. CP86-712 which stated that if it decided to perform transportation services utilizing the proposed blanket authorization, it must file pursuant to § 284.224(c)(7) of the regulations for approval of a proposed methodology.

Northern Gas states in its filing that it elects to base its transportation rate upon the methodology used to recover the properly allocated cost of transporting and delivering gas included in its currently effective firm sales rate schedule for city-gate service on file with the Wyoming Public Service Commission pursuant to § 284.123(b)(1)(A) of the Commission's regulations. Northern Gas included a sample calculation of the proposed maximum rate of \$0.893325 per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 20 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. A copy of the filing is on file with the Commission and is available for public inspection.

Lois D. Cashell,  
Secretary.  
[FR Doc. 91-22033 Filed 9-12-91; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. IR-1531-000]

#### Utah Municipal Power Agency; Petition for Waiver

September 6, 1991.

Notice is hereby given that the Utah Municipal Power Agency (UMPA) has filed on August 19, 1991, on behalf of itself and its members<sup>1</sup> pursuant to § 292.403 of the Commission's Regulations, a petition for waiver of certain obligations imposed under §§ 292.303(a) and 292.303(b) of the Commission's Regulations (18 CFR part 292 subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978. The UMPA has duly implemented the Commission's PURPA Regulations by filing a PURPA implementation plan on August 19, 1991 on behalf of itself and its members.

UMPA seeks a waiver of the obligation under 18 CFR 292.303(b) for it to sell energy and capacity of Qualifying Facilities (as defined in 18 CFR part 292) and a waiver of its 6 members' obligation under 18 CFR 292.303(a) to purchase energy and capacity that is made available by Qualifying Facilities.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed within

<sup>1</sup> The members of UMPA are the cities of Mantli, Nephi, Provo, Salem and Spanish Fork and the town of Levan.

30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22034 Filed 9-12-91; 8:45 am]

BILLING CODE 6717-01-M

### Office of Fossil Energy

[FE Docket No. 91-38-NG]

#### Grand Valley Gas Co.; Order Granting Blanket Authorization to Import Canadian Natural Gas

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of an order granting blanket authorization to import Canadian natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Grand Valley Gas Company blanket authorization to import up to 75 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery after the expiration of FE/DOE Opinion and Order 330 on October 31, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 9, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-22087 Filed 9-12-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-54-NG]

#### Vermont Gas Systems, Inc.; Application for Long-Term Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on July 26, 1991, by Vermont Gas Systems, Inc. (Vermont Gas) for authorization to import gas at the currently authorized level of 32,000 Mcf per day through October 31, 2006. Vermont Gas would import the gas for Western Gas Marketing Limited (WGML) as the primary source of supply for its distribution system. The volumes would be delivered to Vermont Gas at the international border near Philipsburg, Quebec, Canada. No new pipeline construction is required for the proposed import of natural gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington DC at the address listed below no later than 4:30 p.m., Eastern time, October 15, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Vermont Gas is a local distribution company incorporated under the laws of the State of Vermont which provides natural gas service to approximately 23,000 residential, commercial and industrial customers. Under DOE/FE Opinion and Order No. 382, issued February 7, 1990, FE Docket No. 89-68-NG, Vermont Gas is currently authorized to import from Canada up to 32,000 Mcf per day of natural gas through October 31, 1992.

Vermont Gas currently imports natural gas from TransCanada PipeLines, Inc. (TransCanada), pursuant

to a gas purchase contract ending October 31, 1992. On June 26, 1991, Vermont Gas entered into a gas purchase contract with WGML, a subsidiary of TransCanada, which replaces and supersedes the Vermont Gas/TransCanada contract, effective November 1, 1991. Under the contract with WGML, Vermont gas would continue to import gas at the rate of 32,000 Mcf per day through October 31, 2006.

The Vermont Gas/WGML contract contemplates that Vermont Gas will obtain underground storage services and that once Vermont Gas has obtained storage, Vermont Gas would reduce its daily contract volume. Vermont Gas also has a one-time contract right to request a further reduction of up to 5,000 Mcf per day in the daily contract volume.

The pricing structure for the imported gas includes a demand charge, a firm commodity and an interruptible commodity charge. The demand charge consists of TransCanada's and NOVA Pipeline's (NOVA) demand charges for firm transportation of the gas from Empress, Alberta, Canada, to the export point near Philipsburg, Quebec, Canada. Under the Vermont Gas/WGML contract, Vermont Gas will phase into paying TransCanada's demand charges, starting with eighty-five percent of such charges in 1991-92, ninety percent in 1992-93, ninety-five percent in 1993-94, and one hundred percent in 1994-95, and thereafter. If Vermont Gas obtains underground storage before 1994-95, then Vermont Gas will pay one-hundred percent of TransCanada's tolls at that time.

Vermont Gas would pay NOVA's demand charges beginning in the 1992-93 contract year unless TransCanada's demand charges for that year are more than five percent higher than TransCanada's 1991-92 demand charges, in which case payment of the NOVA demand charge would be delayed until the 1993-94 contract year.

The firm commodity charge for the imported gas is \$2.25 (U.S.) per MMBtu for the 1991-92 contract year. Thereafter, the firm commodity charge for each contract year will be based on the average price paid at the Alberta border by Eastern Canada local distribution companies (LDC's) for gas purchased from WGML for resale in the LDC's firm markets plus TransCanada's commodity toll for transportation of the gas from Empress, Alberta, to Philipsburg, Quebec.

The interruptible commodity charge for gas purchased for resale to Vermont Gas' interruptible customers is indexed

to the monthly average price of No. 6 (2% sulphur) fuel oil at Albany, New York, and is computed as follows: 1.55 times the average price per barrel of No. 6 (2% sulphur) fuel oil divided by 16.05. The Vermont Gas/WGML contract provides that the calculation of the average price of the fuel oil used in the pricing formula shall be adjusted each year to reflect the weighted average prices of all alternate fuel used in significant amounts by Vermont Gas' interruptible customers.

Further, under the Vermont Gas/WGML contract, either Vermont Gas or WGML may request renegotiation of the commodity charges prior to the 1993-94 contract year and every two years thereafter, and more frequently if the firm's commodity charge is not competitive with alternate fuels available to Vermont gas customers. If unable to agree on a price by negotiation, then either Vermont Gas or WGML may require that the matter be resolved by arbitration.

Vermont Gas is obligated to purchase a minimum of 3.4 Bcf of natural gas each contract year unless Vermont Gas experiences a significant reduction in firm market requirements, in which case Vermont Gas and WGML may negotiate a reduced minimum annual purchase requirement. Vermont Gas may also reduce its daily contract volume with WGML to have the gas supplied by another supplier and, if it does so, then Vermont Gas and WGML would negotiate a reduced minimum purchase requirement.

With respect to excess pipeline capacity which Vermont Gas does not use to transport the imported gas, WGML may use the excess capacity to make gas sales to other customers.

In support of its application, Vermont Gas asserts that the pricing arrangements in the Vermont Gas/WGML contract are comparable to other long-term supply arrangements with local distribution companies and that the gas will remain competitive over the life of the contract because of provisions in the contract for renegotiation and arbitration if necessary to achieve a price that is competitive in Vermont Gas' market. In addition, the price of interruptible gas is indexed to the price of alternative fuels in Vermont Gas' market. According to Vermont Gas, flexibility reflected in the provisions for adjusting contract quantities and minimum take obligations also help assure that the imported gas is responsive to market conditions. Further, Vermont Gas can diversify its supplies by obtaining gas from another supplier or by obtaining underground

storage accompanied by a reduction in contract quantities with WGML.

Vermont Gas states that the gas is needed since Vermont Gas is not interconnected with any U.S. pipeline and, therefore, cannot directly obtain domestic supplies of gas for its gas requirements. Security of supply, according to Vermont Gas, is assured since the gas would come from reserves dedicated by over 700 producers to a gas supply pool maintained by TransCanada and WGML.

The decision on Vermont Gas' application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Vermont Gas' asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

#### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests,

motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vermont Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 9, 1991.

Clifford P. Tomaszewski,  
Acting Deputy Assistant Secretary for Fuels  
Programs, Office of Fossil Energy.

[FR Doc. 91-22088 Filed 9-12-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-42-NG]

**Lockport Energy Associates, L.P.;  
Application for Long-Term  
Authorization to Import Natural Gas  
from Canada**

**AGENCY:** Office of Fossil Energy,  
Department of Energy.

**ACTION:** Notice of application for long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 25, 1991, by Lockport Energy Associates, L.P. (Lockport), for authorization to import up to 12 MMcf per day of natural gas from Canada over a 15-year term to fuel Lockport's combined cycle cogeneration facility in Lockport, New York. The term would begin on the date Lockport notifies its Canadian supplier, ProGas, Inc. (ProGas), that Lockport's cogeneration facility is complete and ready to commence commercial operations. In addition, Lockport requests that it be authorized to import up to 12 MMcf per day of natural gas during a test period of up to six months prior to commencement of commercial operation of the cogeneration facility. Commercial operation of the cogeneration facility is currently scheduled for November 1, 1992. The cogeneration facility will produce electricity for sale to New York State Electric and Gas Corporation (NYSEG) and the Harrison Radiator Division of General Motors Corporation (Harrison), and steam for sale to Harrison. Transportation of the imported gas from the international border near Niagara Falls, Ontario, Canada, to the cogeneration facility would be by existing facilities of Tennessee Gas Pipeline Company (Tennessee) except for completion of certain expansion facilities of Tennessee's Niagara Spur Line which, according to Lockport, Tennessee had planned to construct prior to and independent of Lockport's proposed import.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time October 15, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of

Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Lockport is a Delaware limited partnership with its principal place of business in Lockport, New York. Lockport's general partner is CU Energy Lockport GP, Inc., a Delaware corporation and a wholly owned subsidiary of Commercial Union Energy Corporation. Lockport's cogeneration facility, now under construction, would have an estimated net electrical generation capacity of 168.8 MW and would be fueled primarily by natural gas, seventy percent of which would come from domestic sources (28 MMcf per day) and thirty percent of which would be supplied of ProGas (12 MMcf per day).

Under a gas sales contract between Lockport and ProGas dated February 22, 1991, imported gas would be supplied to Lockport over a fifteen-year period beginning on the date commercial operation of Lockport's cogeneration facility begins plus interruptible deliveries during a six-month test period immediately preceding the start of commercial operation of the cogeneration facility. Under the terms of the Lockport/ProGas contract, Lockport must take a minimum annual quantity of gas equal to eighty percent of the sum of the daily contract quantities for each contract year. Lockport may make up any volume deficiencies for a contract year in the contract years following the year in which the deficiency occurred. Further, if in any contract year, Lockport is unable to purchase the minimum annual contract quantity, then Lockport must purchase gas from ProGas ratably with its average purchases from other suppliers of gas.

The contract price of the gas consists of a monthly demand charge and a commodity charge. The demand charge will be the product of the average daily contract quantity during the month times a monthly demand rate equal to the sum of the demand tolls of TransCanada Pipelines Limited (TransCanada) and NOVA Pipeline (NOVA) plus TransGas,

Inc. costs, if any, capped at the level of the NOVA demand toll, plus a gas reservation charge equal to .011 times the adjusted base price. The adjusted base price, equal to \$1.68 (U.S.) per MMBtu on November 1, 1991, would be increased on each subsequent November 1 by multiplying the then adjusted base price by 1.07.

The commodity charge is equal to the sum of the adjusted base price and the commodity costs of transporting an MMBtu of gas on the interprovincial pipelines, plus the total amount of fuel consumed in transporting the gas to the point of delivery multiplied by the current adjusted base price and divided by the total volume in MMBtus delivered in each month.

Either Lockport or ProGas may seek renegotiation of the commodity charge for the imported gas by giving written notice to the other not less than 120 days nor more than 150 days prior to November 1 of any contract year. Prior to November 1, 1998, any price revision under the Lockport/ProGas contract requires the agreement of both parties. After November 1, 1998, if no mutually agreeable revision of the commodity charge can be reached within sixty days after the request for renegotiation, either Lockport or ProGas may require the matter to be submitted to arbitration solely to determine that the current price payable under the Lockport/ProGas contract is either more or less than the prevailing prices for comparable long-term gas service with similar load factors. If a modification of the commodity charge is determined to be justified, then an adjustment shall be made to accurately reflect gas prices in the markets served for comparable gas supply service to the extent that the adjustment does not: (1) impair Lockport's ability to fully cover the operating cost of the cogeneration facility; (2) impair Lockport's ability to service fully the debt relating to the cogeneration facility; and (3) produce a material on Lockport's net cash flow for the cogeneration facility.

If ProGas fails to deliver at least ninety percent of the daily contract quantity over any contract year, then Lockport has the right to require renegotiation of the daily contract quantity. If renegotiation does not result in a mutually agreeable daily contract quantity within sixty days of Lockport's request for renegotiation, then either Lockport or ProGas may require that the matter be submitted to arbitration to determine whether modification of the daily contract quantity is necessary to make such quantities consistent with

Lockport's requirements and ProGas's ability to deliver the gas to Lockport.

In support of its application, Lockport states that the Lockport/ProGas gas sales contract was negotiated at arm's length and, together with Lockport's domestic gas purchase agreements, it will permit Lockport to sell electricity to NYSEG at fixed rates of escalation and that the price and volume adjustment provisions in the contract provide flexibility for responding to market forces. With respect to security of supply, Lockport states that the total proven reserves in Alberta, Canada, available to meet ProGas's gas supply obligations to all of its customers is estimated to be 60.8 Tcf and that the total gas requirements for the Lockport/ProGas contract is .066 Tcf. According to Lockport, the volumes to be supplied by ProGas to Lockport are volumes previously committed to and released by Texas Eastern Transmission Company (Texas Eastern). Consequently, there will be no incremental impact on ProGas's gas supply commitments. Additional security for the gas supplies is provided by a security supply agreement with ProGas dated February 28, 1991, which agreement requires ProGas to provide biannual reports on its gas reserves to Lockport and to prorate its sales to all customers if ProGas's gas reserves fall below certain prescribed levels.

The decision on Lockport's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Lockport asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

#### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this

proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to

this notice, in accordance with 10 CFR 590.316.

A copy of Lockport's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 9, 1991.

Clifford P. Tomaszewski,

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 91-22096 Filed 9-12-91; 8:45 am]

BILLING CODE 6450-01-M

#### Office of Hearings and Appeals

##### Issuance of Decisions and Orders During the Week of July 22 through July 26, 1991

During the week of July 22 through July 26, 1991, the decision and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

##### Refund Applications

*PPG Industries, Inc., 7/26/91, RF272-428, RD272-428*

The DOE issued a Decision and Order granting refund from crude oil overcharge funds to PPG Industries, Inc. (PPG) based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. PPG is a diversified producer of industrial chemicals, coatings and resin, flat glass, fabricated glass, and fiber glass. PPG was an end-user of the products claimed in its Application and was therefore presumed injured. A consortium of 28 states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to PPG's claim. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, PPG's Application for Refund was granted and the Motion for Discovery was denied. The refund granted to PPG in this Decision is \$258,916.

*State of Tennessee, 7/23/91, RF272-71331*

The DOE issued a Decision and Order granting a refund monies from crude oil overcharge funds to the State of Tennessee. The total refund amount

granted to Tennessee based on purchases of other products was \$13,558. Since the State did not show that it bore the impact of crude oil overcharges included in the cost of asphaltic concrete or liquid asphalt purchased by outside contractors, its request for a refund based on these purchases was denied.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name of firm	Case No.	Received
Atlantic Richfield Co./Allen Coal Corporation <i>et al.</i>	RF304-12220	07/22/91
Atlantic Richfield Co./Defense Fuel Supply Center.	RF304-9172	07/26/91
Atlantic Richfield Co./J.S. Eledge Oil Co., Inc.	RF304-2941	07/22/91
Advance Petroleum Distributing Company, Inc.	RF304-2942	
Atlantic Richfield Co./Mikes Arco <i>et al.</i>	RF304-3654	07/26/91
Atlantic Richfield Co./Tony's Arco.	RF304-12357	07/23/91
Borden Chemical Co. Borden, Inc.	RF272-21133 RF272-54128	07/26/91
Central Lyon Community Sch. Dist. <i>et al.</i>	RF272-82894	07/25/91
Citronelle-Mobile Gathering/G.M. Truck & Bus Group.	RF336-5	07/26/91
Brittany Dyeing & Printing Corp.	RF336-6	
Community High School District 218 <i>et al.</i>	RF272-81202	07/25/91
Dawson-Boyd School District <i>et al.</i>	RF272-83046	07/23/91
Dosch-King Co., Inc.	RC272-126	07/22/91
Farmex Oil & Grain Co-Op.	RA272-41	07/24/91
Floyd County Conservation <i>et al.</i>	RF272-86208	07/23/91
GTE Corporation	RF272-14615	07/28/91
Gulf Oil Corporation/D&J Service <i>et al.</i>	RF300-11525	07/25/91
Gulf Oil Corporation/Flo-Gas Corporation.	RF300-11292	07/23/91
Gulf Oil Corporation/Townshire Gulf.	RF300-13034	07/24/91
C & S Service	RF300-13035	
Kimco Drive In	RF300-13036	
Franklin Gulf	RF300-13037	
Jamestown Soap and Solvent Inc <i>et al.</i>	RF272-86006	07/25/91
Madelia Independent School Dist. #837 <i>et al.</i>	RF272-84227	07/25/91
Morgan County R-II School District <i>et al.</i>	RF272-82003	07/25/91
Napavine School District 14 <i>et al.</i>	RF272-81437	07/25/91

Name of firm	Case No.	Received
Nicholas and Sarah Prisco <i>et al.</i>	RF272-85402	07/25/91
Ouachita Baptist University <i>et al.</i>	RF272-84621	07/25/91
Ouachita Public School Dist. 1 <i>et al.</i>	RF272-82608	07/23/91
Pennsylvania Power & Light Co.	RF272-64900	07/24/91
Plankinton School Dist. #1-1 <i>et al.</i>	RF272-84800	07/23/91
Quantum Chemical Corporation/Southern Oil Service, Inc <i>et al.</i>	RF330-10	07/22/91
Retriever Towing Co., Inc <i>et al.</i>	RF272-84435	07/25/91
S.A.D. #14 <i>et al.</i>	RF272-80812	07/25/91
Saint Francis Hospital <i>et al.</i>	RF272-85622	07/25/91
School District of Juda <i>et al.</i>	RF272-83201	07/25/91
School District of Poynette <i>et al.</i>	RF272-82200	07/25/91
Shell Oil Company/EI Camino-Leland Shell <i>et al.</i>	RF315-121	07/23/91
Sherborn School District <i>et al.</i>	RF272-88438	07/23/91
Southmoreland School District <i>et al.</i>	RF272-86603	07/23/91
St. Charles Community School <i>et al.</i>	RF272-88801	07/25/91
State of Florida Texaco Inc./ADA Texaco <i>et al.</i>	RF272-64986 RF321-3146	07/23/91 07/26/91
Texaco Inc./C & B Oil, Inc. <i>et al.</i>	RF321-8330	07/26/91
Texaco Inc./City of Little Falls <i>et al.</i>	RF321-8257	07/26/91
Texaco Inc./Dixie Materials, Inc. <i>et al.</i>	RF321-7781	07/26/91
Texaco Inc./Joseph F. Reidy & Sons, Inc. <i>et al.</i>	RF321-7124	07/24/91
Texaco Inc./Lazarus Department Stores <i>et al.</i>	RF321-9002	07/23/91
Texaco Inc./Liverpool Central School <i>et al.</i>	RF321-8915	07/26/91
Texaco Inc./Milam County <i>et al.</i>	RF321-9201	07/22/91
Texaco Inc./Town of Greenwich <i>et al.</i>	RF321-9303	07/22/91
Texaco Inc./Walt Busta <i>et al.</i>	RF321-6506	07/25/91
Unified School District #323 <i>et al.</i>	RF272-85843	07/25/91
Worthington School Dist. #518 <i>et al.</i>	RF272-78706	07/23/91
Yreka Union Elementary <i>et al.</i>	RF272-88048	07/23/91

**Dismissals**

The following submissions were dismissed:

Name	Case No.
3-Way Grocery	RF321-6118
A&H Texaco	RF321-5230
A.W. Welch Texaco	RF321-3338
Al's Auto Repair & Texaco	RF321-6903
Al's Texaco	RF321-2958
Anderson's Oil Co.	RF321-2660
Anderson's Oil Co.	RF321-2659

Name	Case No.
Anderson's Texaco	RF321-2658
Armona Texaco	RF321-5243
Back Forty Texaco	RF321-6893
Beacon Texaco	RF321-3935
Bell Tire Texaco	RF321-3938
Bell Tire Texaco	RF321-3937
Ben's Texaco	RF321-6110
Bill Loeffert	RF321-6121
Bo's Texaco	RF321-5234
Bob McEwen's Texaco	RF321-5232
Bobby's Texaco	RF321-3163
Boulevard Texaco	RF321-3192
Brighton Texaco	RF321-3302
Burlington Road Texaco	RF321-3849
Chevy Chase Texaco	RF321-3187
Christie's Texaco	RF321-5253
Chuck's Texaco	RF321-3383
Claiborne County School District	RF272-78783
Clean Machine No. 1	RF321-6891
Cos Cob Texaco	RF321-6905
Cossey's Texaco	RF321-3378
Crystal Hill Texaco	RF321-4271
Daughton Hyder Texaco	RF321-5225
Deep River Texaco	RF321-3940
Dewayne Texaco	RF321-6123
Dudley Avenue Texaco	RF321-4272
Eason Oil Company	LRX-0005
Ed's Texaco	RF321-3988
Eller's Texaco	RF321-3351
Fizer's Texaco	RF321-6904
Floyd Nelson Texaco	RF321-3394
Fluhr's Texaco	RF321-3170
Ford's Shell	RF315-1896
Fralely's Texaco	RF321-3999
Frank Pint's Texaco	RF321-3427
Fulmer's Texaco	RF321-3301
George Daniel's Texaco	RF321-5235
George's Texaco	RF321-4270
Hallman's Texaco	RF321-5231
Hamlett's Texaco	RF321-6907
Hammett Texaco	RF321-6911
Hardee's Shell	RF315-1897
Harold's Texaco	RF321-5227
Harold's Texaco	RF321-5226
Harriman's Texaco	RF321-3353
Harvey Texaco	RF321-6888
Hermitage Texaco	RF321-5212
Hilltop Texaco	RF321-6153
Holman's Texaco	RF321-3346
Hough's Texaco Service	RF321-3139
Hugo Texaco	RF321-6113
J&R Texaco, Inc.	RF321-3151
Jeff's Texaco	RF321-3381
Jim's Texaco	RF321-3996
Jim's Texaco	RF321-5238
John & Bob's Texaco	RF321-3186
John S. Hasson	RF321-3162
John's Texaco	RF321-6918
Jones Oil Co., Inc.	RF321-6119
Kautz Texaco	RF321-3300
Keller Texaco	RF321-3989
Larry McNeas	RF321-3172
Lewis Texaco	RF321-3173
Louis Texaco	RF321-3157
Maumelle Texaco	RF321-4269
McGowne's Texaco	RF321-3390
Meyerland Texaco	RF321-5224
Mike's Texaco	RF321-3325
Monroe Street Texaco	RF321-5256
Moreland & Davis Texaco	RF321-5239
Mullins Texaco	RF321-6133
Murphy's Texaco	RF321-6145
North Side Texaco	RF321-3318
Old Shell Texaco Service Station	RF321-3189
Park Boulevard Texaco	RF321-5217
Park Plaza Texaco	RF321-3171
Plantview Texaco	RF321-6108
Poston's Shell	RF315-1898
Raffetta Texaco	RF321-3987
Ritchies Texaco	RF321-3393
Rockhill Texaco	RF321-5254

Name	Case No.
Ron's Texaco	RF321-3348
S&W Texaco	RF321-3350
S.C. Johnson & Son, Inc.	RD272-70908
Salvato's Texaco	RF321-3379
Sam's Tire Service	RF321-6916
Samay's Texaco Service	RF321-3317
San Bruno Texaco	RF321-6889
Sanders Texaco	RF321-3352
Schlagel Oil Co., Inc.	RF321-9525
Shiver's Shell	RF321-1899
Sixty Fifth Street Texaco	RF321-4268
Smith's Service Station	RF321-3848
South Main Texaco	RF321-6152
Southside Texaco	RF321-5258
Spazano's Texaco	RF321-3388
Stark & Dootin Texaco	RF321-3992
Starlite Texaco	RF321-3928
Tate's Texaco	RF321-3193
Texaco Clean Machine No. 2	RF321-6892
Tom Haliburoa Texaco	RF321-6890
Transcontinental Shell	RF315-1259
Trenholm Plaza Texaco	RF321-3993
Vasut Texaco	RF321-6898
Vaughan's Texaco	RF321-6899
Waseca School District	RF272-78739
Westfield Texaco	RF321-3360
Westwood Texaco	RF321-5241
William Turner's Texaco	RF321-3375
Woods Shell Service	RF315-1312
Wylie's Texaco	RF321-6908
Yara Engineering Corp.	RF321-6861
Yara Engineering Corp.	RF321-6862
Yara Engineering Corp.	RF321-6863
Ysleta Texaco	RF321-5246

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 6, 1991.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*  
 [FR Doc. 91-22089 Filed 9-12-91; 8:45 am]  
 BILLING CODE 6450-01-M

**Issuance of Decisions and Orders During the Week of August 12 through August 16, 1991**

During the week of August 12 through August 16, 1991, the decision and order summarized below was issued with respect to an application for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Refund Application**

*Murphy Oil Corporation/the Klondike #33 et al.* [RF309-1211 et al.]

The DOE issued a Decision and Order granting 29 Applications for Refund in the Murphy Oil Corporation (Murphy) special refund proceeding. The applicants were indirect purchasers of Murphy petroleum products, all of whom were supplied by Marshall Oil Company (Marshall). Marshall, in turn, was a direct purchaser from Murphy. In addition to its purchases from Murphy, Marshall purchased and resold petroleum products from several other oil companies during the refund period. Therefore, the DOE multiplied each applicant's purchase volume of Marshall petroleum products by the percentage of Marshall's purchases comprised of Murphy petroleum products to obtain the volume of Murphy petroleum products purchased by the applicant. The total volume approved in this Decision was 30,925,683 gallons, and the total refund granted was \$28,524 (\$20,498 in principal and \$8,026 in interest).

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./Dick's ARCO et al.	RF304-12308	08/12/91
City of Jefferson City, et al.	RC272-131	08/12/91
City of Springfield	RC272-133	08/15/91
Farmer's Grain & Supply Cooperative.	RF272-51750	08/14/91
Gerken Materials, Inc.	RC272-132	08/15/91
Gulf Oil Corporation/ Fox Gulf Station et al.	RF300-16000	08/16/91
Gulf Oil Corporation/ Gary L. Harrington Gulf et al.	RF300-15467	08/16/91
Kenmare Public School Dist. 28 et al.	RF272-82008	08/15/91
Kent County Votech Sch. Dist. et al.	RF272-83081	08/13/91
Lee Public Schools et al.	RF272-82219	08/13/91
Lena School District et al.	RF272-83000	08/13/91
Lomira School District et al.	RF272-80835	08/13/91
Russell Coal Incorporated.	RF272-52479	08/12/91
Scott-Morgan C.U. School Dist. 2 et al.	RF272-80604	08/13/91
Southeastern C.U. School Dist. et al.	RF272-81430	08/13/91
Texaco Inc./Armada Oil & Gas Co.	RF321-16361	08/13/91
Texaco Inc./Black & Botts Oil Co., Inc.	RF321-9526	08/13/91
Texaco Inc./Michael Mataya et al.	RF321-8430	08/13/91
Anne Mataya	RF321-9014	

Name	Case No.	Date
Texaco Inc./ University of Denver et al.	RF321-9104	08/16/91
Texaco Inc./ Vaughan's Texaco et al.	RF321-5953	08/16/91
Wapato School District et al.	RF272-80400	08/13/91

**Dismissals**

The following submissions were dismissed:

Name	Case No.
Al's Auto Service	RF321-6048
Base Procurement-Mathers AFB	RF304-5105
Bibb County Board of Education	RF321-16097
Koenig Iron Works, Inc.	RF321-6592
Mike M. Marcello, Inc.	RF321-3842
Mike M. Marcello, Inc.	RF321-3844
Oasis Service, Inc.	RF315-288

Copies of the full text of this decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 6, 1991.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*  
 [FR Doc. 91-22090 Filed 9-12-91; 8:45 am]  
 BILLING CODE 6450-01-M

**Office of Nuclear Energy**

**Sales of Stable Isotopes**

**AGENCY:** Office of Nuclear Energy, Isotope Production and Distribution Program, Department of Energy.

**ACTION:** Notice of withdrawal petition and request for public comments.

**SUMMARY:** The Department of Energy (DOE) has been requested by Isotec, Inc. (the Petitioner), a U.S.-based market supplier of stable isotopes, to withdraw from the production and distribution of enriched stable isotopes, as well as the life science isotopes of Carbon, Nitrogen, and Oxygen (the "Products"). (The Products are identified with specificity in appendix A to Petitioner's supplemental filing of February 25, 1991 (the "Supplement").) The Petitioner also asked that, within thirty (30) days of the date the Petition is granted, DOE withdraw from the production and distribution, and from any new sales of

the Products (except for raw material Helium-3) and terminate all supply contracts, that have a term of thirty (30) days or longer.

The withdrawal petition (the "Petition") is based upon the premises that: (1) The products are reasonably available from private-sector suppliers that have adequate production capability to meet demand and which effectively compete in world-wide isotope markets; (2) DOE distribution is without statutory basis, is unnecessary, and places the agency in competition with private-sector suppliers; and (3) given these circumstances, the Atomic Energy Act of 1954, as amended, and the policies of the United States Government and DOE to refrain from competing with the private sector in providing goods and services dictate DOE's withdrawal from markets for the Products.

DOE does not have, at this time, rules or regulations for responding to withdrawal petitions concerning stable isotopes. Therefore, at the Petitioner's request and on a one-time-only basis, disposition of the Petition will be in accordance with the Atomic Energy Commission's (AEC) Statement of Policies and Procedures for the Transfer of Commercial Radioisotope Production and Distribution to Private Industry, March 2, 1965 (the AEC Policy Statement) (Federal Register, March 9, 1965). The Petition is summarized under **SUPPLEMENTARY INFORMATION**, below.

DOE is now requesting public comment on the Petition and is particularly interested in receiving comments on the issues set out under **SUPPLEMENTARY INFORMATION**. The applicable dates and addresses are provided below. Comments received during the period provided will be made part of the public record on the Petition and will be considered by DOE in proposing a response.

**DATES:** Comments are to be submitted to DOE at the address below no later than October 28, 1991.

**ADDRESSES:** Comments should be addressed to Donald E. Erb, Director, Isotope Production and Distribution Program (NE-48), A-430, 19901 Germantown Road, Germantown, Maryland 20585, telephone (301) 353-5161. Requests for additional information may also be sent to this address.

The public record, including a copy of the Petition and other relevant documents, will be available for public examination during the comment period in DOE's Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue,

SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday, except for Federal holidays.

**SUPPLEMENTARY INFORMATION:** By date of July 27, 1990, the Petitioner requested that DOE withdraw from all distribution of stable isotopes to commercial users and other Federal agencies. By Supplement, the scope of the Petition was narrowed to the Products identified in appendix A and to gas isotope mixtures. The Petition, as supplemented, is summarized below.

#### Summary of Petition

The Petitioner asserts as the basis for the Petition DOE's lack of statutory authority to manufacture and market stable isotopes in competition with the private sector and the requirements of longstanding U.S. Government and DOE policies that bar the agency's competition with private firms in the supply of goods and services; and the capability of private sector suppliers to meet market demands for stable isotopes.

##### (1) Statutory Authority and Non-Competition Policies

The Petitioner asserts that DOE has no legal authority to compete with private sector suppliers in the manufacture and marketing of the Products for commercial and other-Federal-agencies uses. The Petitioner states that such "head to head" commercial competition with private entities is contrary to DOE's longstanding radioisotope non-competition policy, as expressed in the AEC Policy Statement, and to the Office of Management and Budget's policy of refraining from competition with private suppliers of goods and services, as expressed in OMB Circular A-76. The Petitioner does not question DOE's legal authority to dispose of stable isotopes as surplus property, in bulk form, to private-sector processors and upgraders for re-sale at retail.

The Petitioner cites as an example of DOE's impermissible activities, its by-the-liter, *i.e.* retail, sales of Helium-3 in commercial-grade concentrations of 99.95% and higher. The Petitioner also is unpersuaded that, in funding the DOE Isotope Production and Distribution Program's revolving account in 1989, Congress intended to sanction, if not to affirmatively authorize, retail-quantity sales of isotopes. Rather, the Petitioner asserts, such a reading of the law would allow "an unwarranted and unauthorized use of government funds to compete with the private sector. The enactment \* \* \* was premised upon the concept of non-competition with the private sector which had been clear

DOE policy dating back to its predecessor, the Atomic Energy Commission, in 1965."

##### (2) Capability of Private Sector Suppliers to Meet Market Demands

The Petitioner asserts that the production, processing, and distribution capability of the private sector is sufficient to satisfy user demands for the Products, and that it and other suppliers located in the United States, Europe, and Japan are dedicated to continuing to supply the Products to the market at prices that are competitive, reasonable, and consistent with the encouragement of research and development and use.

The Petitioner describes itself as having the technical, financial, and managerial resources and the commitment to continue its business, in the absence of DOE in the marketplace. It asserts, in support of the Petition, that:

- Its Products are comparable in specification to DOE's Products and are adequate to meet user demands. (Petitioner describes its plant facilities and processing techniques and provides a copy of its catalog, "Stable Isotopes for Research and Industry.")

- Its production capabilities in conjunction with that of other suppliers are adequate to meet user demands.

- Its pricing is in nearly all cases below or at par with that of its competitors, and that DOE, as a U.S. Government agency, does not fully reflect its costs in the prices it sets for the Products.

- It actively encourages research and development within industry- and public-funded institutions by, for example, working with researchers to develop isotope products with specific chemical or physical properties; collaborating with researchers in designing compounds to meet their particular experimental needs, and providing complementary or at-cost samples of many Products whenever possible in this effort.

- It is able to ship most orders from its inventory within 7-10 days from receipt of order; and that, in the case of those of the Product that are maintained at minimum inventory due to high cost, its production capacity is such that such Products can be delivered within a reasonable time after request.

- DOE's withdrawal would leave competitive markets for the Products and would not adversely affect their availability.

- DOE's failure to cease distribution of the Products and services adversely impacts the Petitioner's business and that of similarly-situated "American commercial stable isotope separators and distributors".

• Given all of the above circumstances, the AEC Policy Statement dictates that DOE remove itself from the commercial markets for the Products.

The Petitioner identifies the suppliers or potential suppliers with which it competes in a world-wide market to include:

For Helium-3, Cambridge Isotope Labs (Cambridge), Spectra Gases (Spectra), the French Atomic Energy Commission (CEA), and the USSR; Ontario Hydro is expected to soon enter the market. The suppliers that do not produce raw material Helium-3 purchase it in bulk quantities from either DOE or the USSR for processing and distribution.

For the noble gas isotopes, the USSR; the CEA has the capability to produce, but does not do so at this time.

For the life science isotopes, the Governments of China and Romania, the CEA, Yeda-Israel and Cambridge.

For gas mixtures, Cambridge and Spectra.

As evidence of DOE's previous adherence to the non-competition policy, the Petitioner cites previous withdrawals from various markets for the Products, beginning in 1981. It asserts, however, that DOE acted in violation of its policy by later re-entering the market without reason for doing so and without notice to the private sector and opportunity for comment. It cites, as illustrative, DOE's re-entry into the commercial market for Helium-3, which DOE had sold prior to 1988 as an unenriched component of a Tritium/Helium mixture in bulk form. It asserts that this re-entry occurred at a time when the Petitioner was separating, enriching, and distributing Helium-3 to users "in a timely manner, economically and consistently."

#### Request for Public Comments

DOE does not have, at this time, rules or regulations for responding to withdrawal petitions concerning stable isotopes. Therefore, at the Petitioner's request and on a one-time-only basis, disposition of the Petition will be in accordance with the Atomic Energy Commission's (AEC) Statement of Policies and Procedures for the Transfer of Commercial Radioisotope Production and Distribution to Private Industry, March 2, 1965 (the AEC Policy Statement) *Federal Register*, March 9, 1965).

In responding to the Petition, DOE will consider whether the criterion in the AEC Policy Statement's withdrawal guidelines has been met: That is, a decision to grant the Petition, in whole or in part, must be based upon a finding

of demonstrable private capability to meet market demands for the Products. Under guidelines, this criterion is defined as encompassing the following factors, recognizing that not all of the factors need to be completely satisfied:

1. The presence of effective competition in the production and distribution of the Products;

2. Assurance that the private producers will not discontinue their business in a manner that would adversely affect the public interest, to the extent that resumption of DOE production would involve a significant delay; and

3. Private prices for the Products are reasonable and consistent with the encouragement of research and development and use.

DOE is particularly interested in building a record for decision that relates historical and current conditions in the markets for the Products to this criterion and its factors. Therefore, in response to this notice, DOE is requesting comments that include evidence of and provide opinions on how the following questions should be answered:

• Are the Products generally available as needed in the U.S. commercial markets? Are they available from more than one private supplier? Are the prices among various private suppliers for similar qualities and quantities comparable? What historically has been the situation with respect to general availability, number of private suppliers, and prices for comparable qualities and quantities in these markets?

• Have private suppliers been continuously active in the domestic commercial markets? Have inadequate supplies due to erratic distribution by some private suppliers previously affected users adversely? If yes, what was the adverse effect?

• What impact has the presence (or potential presence) of DOE as a supplier of the Products in domestic commercial markets had on private-sector suppliers? On users? Have users been adversely affected at any time by DOE's inability or failure to provide suppliers to domestic commercial markets, during previous periods of withdrawal from production and/or distribution of the Products? If yes, what was the adverse effect?

Comments and related materials submitted within the period provided will become part of the public record

and will be considered by DOE in responding to the Petition.

Dated: September 10, 1991, at Washington, DC.

William H. Young,  
Assistant Secretary for Nuclear Energy.  
[FR Doc. 91-22086 Filed 9-12-91; 8:45 am]  
BILLING CODE 6450-01-M

#### Southeastern Power Administration

#### Order Confirming and Approving Power Rates on an Interim Basis

**AGENCY:** Department of Energy, Southeastern Power Administration (Southeastern).

**ACTION:** Notice of order confirming and approving power rates on an interim basis for the Kerr-Philpott System of Projects.

**SUMMARY:** Notice is given of Rate Order No. SEPA-30 of the Assistant Secretary, Conservation and Renewable Energy, Department of Energy, confirming and approving, on an interim basis, four Rate Schedules, KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B, for the Kerr-Philpott System of Projects. The rates were approved on an interim basis through September 30, 1996, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

**DATES:** Approval of rates on an interim basis is effective on October 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, (404) 283-9911,

Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

Rodney L. Adelman, (202) 566-2008,

Director, Washington Liaison Office (WDC), Department of Energy,

Forrestal Building, room 1E-184, 1000 Independence Ave., SW., Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission by Order issued January 23, 1987, in Docket No. EF86-3041 confirmed and approved Wholesale Power Rate Schedules KP-1-C, JHK-2-A, JHK-3-A, and PH-1-A through September 30, 1991. Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B replace KP-1-C, JHK-2-A, JHK-3-A, and PH-1-A, respectively.

Issued in Washington, DC, this 28 day of July, 1991.

**Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

### **Order Confirming and Approving Power Rates on an Interim Basis**

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Amendment No. 2 to Delegation Order No. 0204-108, effective August 23, 1991 (56 FR 41835), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Assistant Secretary, Conservation and Renewable Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation.

#### **Background**

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP-1-C, JHK-2-A, JHK-3-A, and PH-1-A confirmed and approved by the FERC on January 23, 1987, for a period ending September 30, 1991.

#### **Public Notice and Comment**

Opportunities for public review and comments on the proposed revised Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B were announced by notice published in the *Federal Register* on March 5, 1991, and all customers were notified by mail. A Public Information and Comment Forum was held in South Hill, Virginia, on April 11, 1991, and written comments were invited by the Notice through June 5, 1991. No oral or written comments were received.

#### **Discussion**

##### **System Repayment**

Southeastern's current system Power Repayment Study, prepared in June 1991 for the Kerr-Philpott Projects, shows that the rates will not satisfy the cost recovery criteria. A revised repayment study demonstrated that the revenues need to be increased by \$1,422,000 or approximately 13 percent of present revenue levels in order to meet the

repayment criteria. Therefore, Southeastern proposes to replace the present rate schedules with Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B, which are designed to produce revenue adequate to recover on a timely basis all system power costs.

##### **Rate Design**

In Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B these charges are divided between capacity, energy, and wheeling charges. Under these rate schedules, the capacity charge is \$1.86 per kilowatt per month. The energy rate is 7.67 mills per kilowatt-hour. The proposed rates recover 57 percent of the costs from capacity and 43 percent from the energy charge.

The wheeling charges in the rate schedules are those charged Southeastern by Virginia Electric and Power Company, Carolina Power & Light Company, and Appalachian Power Company and are simply passed through directly to affected preference customers. The wheeling charges may be adjusted annually; adjustments will become effective at the time the companies' adjusted charges become effective to Southeastern. The wheeling charges are tied to the costs of providing the necessary transmission and distribution services.

##### **Environmental Impact**

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

##### **Availability of Information**

Information regarding these rates included studies, and other supporting materials are available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of the Washington Lisison Office, Forrestal Building, 1000 Independence Avenue, SW., room 1E-184, Washington, DC 20585.

##### **Submission to the Federal Energy Regulatory Commission**

The rates herein confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final

basis for a period beginning on October 1, 1991, and ending no later than September 30, 1996.

#### **Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1991, attached Wholesale Power Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B. The Rate Schedules shall remain in effect on an interim basis through September 30, 1996, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, DC, this 28th day of August, 1991.

**Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

### **Wholesale Power Rate Schedule PH-1-B**

#### **Availability**

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 100 mile radius of the Philpott Project, purchasing power generated at the Philpott Project in wholesale quantities under appropriate contracts and served through the facilities of the Appalachian Power Company (hereinafter called the Company).

#### **Applicability**

This rate schedule shall be applicable to power and accompanying energy generated at the Philpott Project, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each customer's system consisting of one or more delivery points.

#### **Character of Service**

The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz.

#### **Monthly Rate**

The monthly rate for capacity and energy sold under this rate schedule shall be:

**Demand Charge:** \$1.86 per kilowatt of contract demand.

**Energy Charge:** 7.67 mills per kilowatt-hour.

An additional rate for wheeling service provided under this rate schedule shall be the rate charged

Southeastern Power Administration by the Company and future adjustments to that rate will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Wheeling Charge: \$2.07 per kilowatt of contract demand.

#### *Contract Demand*

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

#### *Energy To Be Furnished by the Government*

The Government will sell to the Customer and the Customer will purchase from the Government a portion of the energy available to the Company area from the project in any billing month determined by multiplying the total energy available less five (5) percent losses by the ratio of the Customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

#### *Billing Month*

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

October 1, 1991.

#### **Wholesale Power Rate Schedule JHK-3-B**

##### *Availability*

This rate schedule shall be available to cooperatives (any one of which is hereinafter called the Customer) within a 165 mile radius of the existing interconnection point between the Virginia Electric and Power Company and the Carolina Power and Light Company (hereinafter called the Company) at the Virginia-North Carolina State line in the vicinity of John H. Kerr Project (hereinafter called the Project), purchasing power from the Project in wholesale quantities under appropriate contracts and served through the facilities of the Company.

##### *Applicability*

This rate schedule shall be applicable to Project power and accompanying energy, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

##### *Character of Service*

Electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at existing or future delivery points on the Company's transmission and distribution system.

##### *Monthly Rate*

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: \$1.86 per kilowatt of contract demand.

Energy Charge: 7.67 mills per kilowatt-hour.

Wheeling Charge: \$1.5933 per kilowatt of contract demand.

The rate is subject to annual adjustment on April 1 and will be computed subject to the formula in appendix A attached to the Government-Company contract.

##### *Contract Demand*

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

##### *Energy To Be Furnished by the Government*

The Government will sell to the customer and the customer will purchase from the Government a portion of the energy available to the Company area from the Projects in any billing month determined by multiplying the total energy available less six (6) percent losses by the ratio of the customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

##### *Billing Month*

End-of-month meter readings for billing under this schedule shall be made on the last regular working day of each month or as near thereto as may be practicable.

October 1, 1991.

#### **Wholesale Power Rate Schedule KP-1-D**

##### *Availability*

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 150 mile radius of the John H. Kerr Project, purchasing power generated at the John H. Kerr and Philpott Projects in wholesale quantities under appropriate contracts and served through the facilities of the Virginia Electric and Power Company (hereinafter called the Company).

##### *Applicability*

This rate schedule shall be applicable to power and accompanying energy generated at the John H. Kerr and Philpott Projects, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each customer's system consisting of one or more delivery points.

##### *Character of Service*

The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz.

##### *Monthly Rate*

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: \$1.86 per kilowatt of contract demand.

Energy Charge: 7.67 mills per kilowatt-hour.

An additional rate for wheeling service provided under this rate schedule shall be the rate charged Southeastern Power Administration by the Company and future adjustments to that rate will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Wheeling Charge: \$1.97 per kilowatt of contract demand.

##### *Contract Demand*

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

##### *Energy to be Furnished by the Government*

The Government will sell to the Customer and the Customer will purchase from the Government a portion of the energy available to the Company area from the projects in any billing month determined by multiplying the total energy available less five (5) percent losses by the ratio of the Customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

##### *Billing Month*

The billing month for power sold under this schedule shall end at 12

midnight on the last day of each calendar month.

October 1, 1991.

### Wholesale Power Rate Schedule JHK-2-B

#### Availability

This rate schedule shall be available to public bodies (any one of which is hereinafter called the Customer) within a 165 mile radius of the existing interconnection point between the Virginia Electric and Power Company and the Carolina Power and Light Company (hereinafter called the Company) at the Virginia-North Carolina State line in the vicinity of John H. Kerr Project (hereinafter called the Project), purchasing power from the Project in wholesale quantities under appropriate contracts and served through the facilities of the Company.

#### Applicability

This rate schedule shall be applicable to Project power and accompanying energy, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

#### Character of Service

Electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at existing or future delivery points on the Company's transmission and distribution system.

#### Monthly Rate.

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: \$1.86 per kilowatt of contract demand.

Energy Charge: 7.67 mills per kilowatt-hour.

Wheeling Charge: \$1.5933 per kilowatt of contract demand.

The rate is subject to annual adjustment on April 1 and will be computed subject to the formula in appendix A attached to the Government-Company contract.

#### Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

#### Energy To Be Furnished by the Government

The Government will sell to the customer and the customer will

purchase from the Government a portion of the energy available to the Company area from the Projects in any billing month determined by multiplying the total energy available less six (6) percent losses by the ratio of the customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

#### Billing Month

End-of-month meter readings for billing under this schedule shall be made on the last regular working day of each month or as near thereto as may be practicable.

October 1, 1991.

[FR Doc. 91-22091 Filed 9-12-91; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3996-1]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed September 02, 1991 Through September 06, 1991 Pursuant to 40 CFR 1506.9.

*EIS No. 910312, Draft EIS, COE, CA, Los Angeles County Drainage Area Flood Control System Improvements, Implementation, Los Angeles County, CA, Due: October 28, 1991, Contact: Ron Ganzfried (213) 894-6088.*

*EIS No. 910313, Draft EIS, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvement, I-95 from the Telegraph Road/Capital Beltway Interchange in Alexandria, VA to the MD-210/Capital Beltway Interchange in Oxon Hill, MD, Funding, section 10 and 404 Permits and CGD Bridge Permit, Fairfax County, VA; Prince George's County, MD, and DC, Due: November 01, 1991, Contact: David C. Gamble (301) 962-2542.*

*EIS No. 910314, Final EIS, BLM, AZ, Safford District Land and Resource Management Plan Implementation, Graham, Greenlee, Cochise, Pinal Pima and Gila Counties, AZ, Due: October 15, 1991, Contact: Cindy Alvarez (602) 428-4040.*

*EIS No. 910315, Final EIS, FHA, MS, ADOPTION—Whites Creek Watershed Protection and Flood Prevention Plan, Funding, Possible 404 Permit, Webster County, MS, Due: October 15, 1991, Contact: Roger Gilbert (601) 965-5460.*

The US Department of Agriculture, Farmers Home Administration has ADOPTED the US Department of Agriculture, Soil Conservation Service's FEIS filed with the Environmental Protection Agency on 9-5-88.

*EIS No. 910316, Final EIS, AFS, CO,*

Hatchet Park Timber Sale, Implementation, Arapaho National Forest, Sulphur Ranger District, Grand County, CO, Due: October 15, 1991, Contact: Richard P. Caissie (303) 887-3331.

*EIS No. 910317, Draft EIS, FHW, NC, US-220 Connecting the Star/Biscoe/Candor Bypass, Improvement, Funding, Right-of-Way, Possible COE Permit, Montgomery and Richmond County, NC, Due: October 28, 1991, Contact: Nicholas L. Graf (919) 856-4346.*

*EIS No. 910318, Draft EIS, FHW, NC, Greensboro Western Urban Loop Transportation Improvement, from Lawndale Drive near Cottage Place to I-85 South near Holden Road, Funding, Right-of-Way Acquisition, and COE section 404 Permit, Guilford County, NC, Due: October 28, 1991, Contact: Nicholas Graf (919) 856-4346.*

*EIS No. 910319, Draft EIS, FHW, FL, Tampa South Crosstown Expressway Extension, I-75 to SR 60 east of the Brandon Area, Improvement, Funding, Right-of-Way and section 404 Permit, Hillsborough, FL, Due: October 28, 1991, Contact: Jennings R. Skinner (904) 681-7223.*

*EIS No. 910320, Draft EIS, UAF, NJ, Boeing Michigan Aeronautical Research Center (BOMARC) Missile Site, Radioactive Contamination Clean-Up Evaluation, McGuire Air Force Base, Plumsted Township, Ocean County, NJ, Due: October 28, 1991, Contact: Sharon Geil (618) 256-5764.*

*EIS No. 910321, Final EIS, UMT, TX, South Oak Cliff Corridors Transit Improvements South Oak Cliff Communities to the Dallas Central Business District, Funding, COE section 404 Permit, Coast Guard Bridge Permit, Special Use Permit, Dallas County, TX, Due: October 15, 1991, Contact: Ken U. Mowll (202) 366-0096.*

### Amended Notices

*EIS No. 910176, Draft EIS, SFW, CA, Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE section 10 and 404 Permits, Central Valley, Sacramento County, CA, Due: October 15, 1991, Contact: Peter Jerome (916) 978-4420. Published FR 06-07-91—Review period extended*

*EIS No. 910219, Draft EIS, BLM, MT, Judith-Valley-Phillips Comprehensive Resource Management Plan, Implementation, Lewistown District, Judith Basin, Fergus, Petroleum, Phillips and Valley Counties, MT, Due: December 15, 1991, Contact: Paul Petty (202) 653-9931. Published FR 07-12-91—Review period extended.*

*EIS No. 910310, Revised Draft EIS, NPS, MN, Voyageurs National Park Wilderness Recommendation, Designation, Updated Information, St. Louis and Koochiching Counties, MN, Due: November 05, 1991, Contact: Ben Clary (218) 283-9821. Published FR 09-06-91—Change In Agency Contact.*

Dated: September 10, 1991.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 91-22108 Filed 9-12-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3996-2]

### Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared August 26, 1991 Through August 30, 1991 pursuant to the environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

#### Draft EISs

*ERP No. D-AFS-J65179-00 Rating LO, Westside Analysis Area, Multiple Use Management Plan, Implementation, Wasatch-Cache National Forest, Summit County, Utah and Uinta County, WY.*

#### Summary

EPA has no objections to the proposed action. ERP No. D-AFS-L67028-AK Rating LO, Kensington Venture Underground Gold Mine Project, Development, Construction and Operation, Operating Plan Approval, NPDES, section 10 and 404 Permits, Tongass National Forest, Sherman Creek, City of Juneau, AK.

#### Summary

EPA has no objections to the preferred alternative (Alternative B) identified in the draft EIS.

*ERP No. D-BLM-J65174-CO Rating EC2, Gunnison Resource Area, Resource*

*Management Plan, Implementation, Montrose District, Hinsdale, Ouray, Gunnison, Saguache, and Montrose Counties, CO.*

#### Summary

EPA believes that some aspects of Alternative D should be further evaluated in the Final EIS for the purpose of better riparian management. In particular, additional aquatic habitat protection and enhancement of biodiversity should be considered with emphasis on Areas of Critical Environmental Concern, especially along streams, expansion of river corridor protection through the provisions of the Wild and Scenic River Act, and further limitations on livestock management within riparian zones.

*ERP No. D-SCS-C36067-NY Rating EC2, Beaver Brook Watershed Flood Control Plan, Funding and Implementation, Herkimer County, NY.*

#### Summary

EPA has environmental concerns about the proposed project because of its potential impacts to wetlands and mitigation associated with the streambank and wetlands. Additional information is required in the final EIS to address these issues.

*ERP No. D1-SCS-J39013-00 Rating 3, Uintah Basin Unit Expansion Plan, Irrigation Improvement, Colorado River Salinity Control Program, Funding, Uintah and Duchesne, UT.*

#### Summary

EPA does not believe that the DEIS adequately assesses potentially significant environmental impacts of the action. Accordingly the DEIS should be significantly revised and made available for public comment in a supplemental or a substantially revised DEIS.

#### Final EISs

*ERP No. F-AFS-J65171-MT—East Fortine Timber Sales and Road Construction Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.*

#### Summary

EPA believes that the modified preferred alternative is environmentally preferable to the preferred alternative in the DEIS and commends Forest Service efforts to address EPA's concerns.

*ERP No. F-AFS-J65173-MT—Gravelly Sagebrush Burning Project, Implementation Beaverhead National Forest, Madison County, MT.*

#### Summary

EPA remains concerned about potential impacts to riparian areas

under the preferred alternative. Long term management plans are needed for the project area.

*ERP No. F-AFS-J65177-MT—Turkey Salvage Timber Sale and Road Construction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT.*

#### Summary

EPA has no objection to the Lewis and Clark National Forest's preferred alternative.

*ERP No. F-CDB-C80011-NY—Rochester City School Districts Carthage School #8 Replacement Project, Construction and Operation New Information, CDB Grant, City of Rochester, Monroe County, NY.*

#### Summary

EPA has no objections to the implementation of the proposed project.

*ERP No. F-FHW-F40307-WI—US 53 Improvements, Trego to Kent Road, Funding and section 404 Permit, Washburn and Douglas Counties, WI.*

#### Summary

EPA continues to have concerns with regard to the overall wetland and upland habitat loss.

*ERP No. F-FHW-L40167-AK—University Avenue Rehabilitation and Widening, College Road to Parks Highway, Funding, Fairbanks, North Star Borough, AK.*

#### Summary

EPA has no objections to the preferred alternative.

*ERP No. FS-FHW-E40729-KY—US 27 and US 68 Improvement, Rogers Road in Lexington to Parkway Drive in Paris, Funding, Bridge Construction Permit, North Fork Elkhorn Creek and Houston Creek Bridge, Fayette and Bourbon Counties, KY.*

#### Summary

EPA has no objection to the implementation of this project.

#### Other

*ERP No. RS-REA-A99188-00—7 CFR part 1703; Rural Development: Loan and Grant Program (56 FR 36014).*

#### Summary

EPA supports the proposed rule's requirement for submittal of general environmental information with loan and grant applications prior to project selection. EPA recommends that the final rule specify that environmental information can be used to decline selection of applications where appropriate.

Dated: September 10, 1991.  
**William D. Dickerson,**  
*Deputy Director, Office of Federal Activities.*  
 [FR Doc. 91-22109 Filed 9-12-91; 9:45 am]  
 BILLING CODE 6560-50-M

[OPP-00308; FRL 3945-9]

**FIFRA Scientific Advisory Panel; Open Meeting - Change in Agenda**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In the Federal Register of Friday, August 23, 1991 (56 FR 41843), notice of the September 18, 1991, meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) was published. Under SUPPLEMENTARY INFORMATION in Agenda item number 2, pertaining to Hexaconazole, is now deleted and all other information remains unchanged.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 821C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-4369 or 2244.

Dated: September 9, 1991.

**Linda J. Fisher,**  
*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 91-22071 Filed 9-12-91; 8:45 am]  
 BILLING CODE 6560-50-F

**FEDERAL MARITIME COMMISSION**

**Maryland Port Administration, et al.; Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

*Agreement No.:* 224-010896-009.

*Title:* Maryland Port Administration/ Moller Steamship Line, Inc. Terminal Lease Agreement.

*Parties:*

Maryland Port Administration (MPA); Moller Steamship Line, Inc. (Maersk).

*Synopsis:* The proposed amendment, filed August 29, 1991, would extend the lease agreement between the parties by an additional thirty days beginning September 1, 1991, pending the final negotiation of a long term lease.

*Agreement No.:* 244-200262-004.

*Title:* Georgia Ports Authority and Sagumex, Marine Terminal Agreement.

*Parties:*

Georgia Ports Authority, Sagumex.

*Synopsis:* The Agreement, filed August 29, 1991, provides a new rate schedule for certain terminal activities between the Port and Sagumex.

*Agreement No.:* 224-200422-001.

*Title:* Virginia International Terminals, Inc./Concorde Shipping, Inc. Terminal Agreement.

*Parties:*

Virginia International Terminals, Inc. (VIT)

Concorde Shipping, Inc. (Concorde).

*Synopsis:* The proposed amendment, filed August 30, 1991, reestablishes the term of the agreement by providing that its three (3) year term commenced on September 26, 1990 (in lieu of October 1, 1990). This date (September 26th) shall determine "The Agreement Year", except the first agreement year shall be extended to December 26, 1991. Each of the second and third agreement years shall expire on September 26, 1992 and September 26, 1993 respectively.

*Agreement No.:* 224-200559.

*Title:* Tampa Port Authority/Apollo Stevedoring Company, Inc. Incentive Wharfage Terminal Agreement.

*Parties:*

Tampa Port Authority (Authority), Apollo Stevedoring Company, Inc. (Apollo).

*Synopsis:* This agreement, filed August 28, 1991, is a wharfage incentive agreement wherein the Authority will assess reduced wharfage rates to Apollo Stevedoring Inc. on shipments of paper waste, subject to a minimum annual volume of 4,000 net tons. The term of the agreement runs through August 19, 1992.

*Agreement No.:* 224-200560.

*Title:* Tampa Port Authority/Apollo Stevedoring Co. Terminal Agreement.

*Parties:*

Tampa Port Authority ("TPA"), Apollo Stevedoring Company, Inc. ("Apollo").

*Synopsis:* The Agreement, filed August 28, 1991, provides that TPA will assess a specified incentive wharfage rate on steel billets and reinforcing bars moved through TPA's facilities by Apollo.

Dated: September 9, 1991.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-22007 Filed 9-12-91; 8:45 am]

BILLING CODE 6730-01-M

**Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Clipper Cruise Line, Inc. and Clipper Adventure Cruises, Inc., Windsor Bldg., 7711 Bonhamme Ave., St. Louis, MO 63105-1965.

Vessel: Society Explorer.

Dated: September 9, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-22009 Filed 9-12-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-31]

**Actions To Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade; Availability of Finding of No Significant Impact**

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 91-31 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the national Environmental Policy Act 1969, 42 U.S.C. 4321 et seq., and that preparation of an environmental impact statement is not required.

In Docket No. 91-31, the Commission initiates an investigation of shipping conditions in the United States/Peoples Republic of China Trade ("PRC Trade") under the Foreign Shipping Practices Act

of 1988, 46 U.S.C. app. 1710a. This investigation seeks to determine whether conditions exist in the PRC Trade which adversely affect the operations of United States carriers and which do not exist for People's Republic of China carriers in the United States.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this Notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573-0001, telephone (202) 523-5725.

By the Commission.  
Joseph C. Polking,  
Secretary.  
[FR Doc. 91-22008 Filed 9-12-91; 8:45 am]  
BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade

Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

#### TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081991 AND 083091

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cox Enterprises, Inc., VP Holdings, Inc., VP Holdings, Inc.	91-1221	08/19/91
Southwest Gas Corporation, ALLTEL Corporation, CP National Corporation	91-1234	08/19/91
Ashland Oil, Inc., Digger Limited, Digger Limited	91-1269	08/19/91
The Stanley Works, Wondura Products, Inc., Wondura Products, Inc.	91-1271	08/20/91
Mylan Laboratories Inc., Dow B. Hickam, Inc., Dow B. Hickam, Inc.	91-1286	08/20/91
Resource Housing of America, Inc., American Medical Holdings, Inc., Doctors Mercy Hospital, Ltd.	91-1294	08/20/91
Wainoco Oil Corporation, Texaco, Inc., Texaco Exploration and Production Inc.	91-1310	08/20/91
Close Brother Group plc, Crossland Savings FSB, Crossland Premium Funding, Inc.	91-1222	08/21/91
Telephone and Data Systems, Inc. Voting Trust, Oregon-5 Cellular Corporation, Oregon-5 Cellular Corporation	91-1266	08/21/91
Merrill Lynch & Co., Inc., Financial Industries Corporation, Family Life Insurance Company	91-1207	08/22/91
Attwoods plc, Jolana Trust, Enviro-Solutions, Inc., Joby Properties, Inc.	91-1259	08/22/91
Mitsubishi Motors Corporation, Mitsubishi Motors Corporation, Diamond-Star Motors Corporation	91-1257	08/23/91
Century Communications Corp., Citizens Utilities Company, Citizens Cellular Company	91-1305	08/23/91
Citizens Utilities Company, Century Communications Corporation, Century Communications Corporation	91-1306	08/23/91
Voting Trust-Hallmark Cards, Incorporated, Voting Trust-Hallmark Cards, Incorporated, Jones Crown Partners	91-1328	08/23/91
Siemens Aktiengesellschaft, A-C Equipment Services Corporation, A-C Equipment Services Corporation	91-1332	08/23/91
American Financial Corporation, McDonough Caperton Insurance Group, Inc., McDonough Caperton Insurance Group, Inc.	91-1337	08/23/91
ALLTEL Corporation, Federal Home Loan Bank of San Francisco, Federal Home Loan Bank of San Francisco	91-1353	08/23/91
Landmark Communications, Inc., Gunter Schaldach QTIP Trust, EZ Buy EZ Sell Recycler Corporation	91-1261	08/26/91
Cox Enterprises, Inc., Gunter Schaldach QTIP Trust, EZ Buy EZ Sell Recycler Corporation	91-1262	08/26/91
Landmark Communications, Inc., G. Schaldach Survivor's Trust, EZ Buy and EZ Sell Recycler Corporation	91-1264	08/26/91
Cox Enterprises, Inc., G. Schaldach Survivor's Trust, EZ Buy and EZ Sell Recycler Corporation	91-1265	08/26/91
Carlisle Companies Incorporated, Earl M. Chapman and Margery C. Chapman, SiLite, Incorporated	91-1267	08/26/91
McDonald & Company Investments, Inc., Gradison & Company Incorporated, Gradison & Company Incorporated	91-1280	08/26/91
Burlington Resources Inc., Union Texas Petroleum Corporation, Union Texas Petroleum Holdings, Inc.	91-1303	08/26/91
Eaton Corporations, Interface Systems, Inc., Nematron Corporation	91-1309	08/26/91
American Express Company, LSS Holdings Corporation, LSS Holdings Corporation	91-1352	08/26/91
Nippon Life Insurance Company, LSS Holdings Corporation, LSS Holdings Corporation	91-1355	08/26/91
Shearson Lehman Hutton Merchant Banking Portfolio P.L.P., LSS Holdings Corporation, LSS Holdings Corporation	91-1356	08/26/91
Koch Industries, Inc., Stichting Administratiekantoor Lauwerecht, SSM Coal North America, Inc.	91-1324	08/28/91
American Financial Corporation, The Penn Central Corporation, The Penn Central Corporation	91-1327	08/28/91
Portland General Corporation, Bonneville Pacific Corporation, Bonneville Pacific Corporation	91-1275	08/29/91
Burmah Castrol plc, Lindsay D. Dryden, III, Dryden Oil Company, Inc.	91-1278	08/29/91
Burmah Castrol plc, Lindsay D. Dryden, Jr., Dryden Oil Company, Inc.	91-1279	08/29/91
Regal Communications Corporation, Synchronal Group Inc., Synchronal Group Inc.	91-1292	08/29/91
Oliver L. Fretter, Fred Schmid Appliance & TV Co., Fred Schmid Appliance & TV Co.	91-1361	08/30/91
Warburg, Pincus Investors, L.P., Homestead Savings, Homestead Land Development Corporation	91-1365	08/30/91
TCW Special Placements Fund II, Certified Holding Corporation, Certified Holding Corporation	91-1366	08/30/91
Giant Food Inc., B.F. Saul Company, B.F. Saul Real Estate Investment Trust	91-1375	08/30/91
State Farm Mutual Automobile Insurance Company, John Sinanis, Parts of America, Inc.	91-1380	08/30/91
State Farm Mutual Automobile Insurance Company, Stylianos Sinanis, Parts of America, Inc.	91-1381	08/30/91
Daughters of Charity National Health System, Inc., Incarnate Word Health Services, Saint Joseph Hospital	91-1386	08/30/91

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Renee A. Horton,  
Contact Representatives, Federal Trade  
Commission, Premerger Notification  
Office, Bureau of Competition, room 303,  
Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-22079 Filed 9-12-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 882-3256]

**Newtron Products Company, Inc., et  
al.; Proposed Consent Agreement With  
Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Ohio company and its principals from making any representations regarding the performance characteristics of any air cleaning product, unless it possesses competent and reliable evidence to substantiate those claims.

**DATES:** Comments must be received on or before November 12, 1991.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Newtron

Products Co., Inc., a corporation, ("Newtron"), and Michael S. Duty and Donald G. Attermeyer, individually and as officers and directors of Newtron, hereinafter referred to as proposed respondents or respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

*It Is Hereby Agreed By* and between Newtron Products Co., Inc. by its duly authorized officers and its attorney, Michael S. Duty and Donald G. Attermeyer, individually and as officers of Newtron and their attorney, and counsel for the Federal Trade Commission that:

1. Newtron is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Newtron's office and principal place of business is located at 3874 Virginia Avenue, P.O. Box 27175, Cincinnati, Ohio 45227-0175.

2. Michael S. Duty is Chief Executive Officer and director and Donald G. Attermeyer is President and director, of Newtron. Mr. Duty and Mr. Attermeyer formulate, direct and control the acts and practices of Newtron. Mr. Duty's and Mr. Attermeyer's address is the same as Newtron's.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice of the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

For the purposes of this Order, the following definitions apply:

1. The terms "air cleaning product" or "product" mean any product, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

2. The terms "indoor air contaminant(s)" or "contaminant(s)" refer to one or more of the following: Fungal (mold) spores, pollen, tobacco smoke, household dust, animal dander.

or any other gaseous or particulate matter found in indoor air.

I

*It is Ordered* That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of the Newtron Electrostatic Air Cleaner (hereinafter, "Air Cleaner") or any substantially similar device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that scientific tests conducted in the homes of allergy sufferers prove or establish that the Air Cleaner or device removes 94% of fungal spores or 100% of pollen from the air people breathe under household living conditions.

II

*It is Further Ordered* That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of the Air Cleaner or any other air cleaning product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

III

*It is Further Ordered* That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of the Air Cleaner or any other air cleaning product, in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, any performance characteristic of any such product unless, at the time of making such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable evidence, which substantiates the representation. To the extent such evidence consists of tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondents possess and rely upon competent and reliable scientific evidence substantiating the representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

IV

*It is Further Ordered* That respondents, their successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any representation covered by this order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which the respondent relied for such representation, including complaints from consumers.

V

*It is Further Ordered* That respondent Newtron shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of

advertising or other sales materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VI

*It is Further Ordered* That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

VII

*It is Further Ordered* That for a period of ten (10) years from the date of service of this order, each of the individual respondents named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged as well as a description of said respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any obligation arising under this order.

VIII

*It is Further Ordered* That respondents shall, within sixty (60) days after service upon it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the requirements of this order.

#### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted a consent agreement to a proposed order from Newtron Products Company, Inc., a corporation, and Michael S. Duty and Donald G. Attermeyer, individually and as officers and directors of said corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days,

the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the proposed order.

The complaint against proposed respondents charges that they engaged in deceptive practices in the advertising and sale of the Newtron Electrostatic Air Cleaner ("Air Cleaner"), an air filter. The challenged practices concerned representations regarding tests of the ability of the Air Cleaner to remove pollen and fungal spores (mold) from the air.

Paragraphs Five through Seven of the complaint concern representations in advertising that the Air Cleaner removes 94% of fungal spores and 100% of pollen from the air people breathe under household living conditions, and that through these ads proposed respondents represented that they possessed a reasonable basis, consisting of competent and reliable scientific evidence, in support of those claims. The Complaint charges that the tests relied upon by proposed respondents were not competent and reliable to substantiate those representations and thus the claim that proposed respondents possessed a reasonable basis for their representation was false.

Paragraphs Eight and Nine of the complaint concern representations in advertising that scientific studies conducted in the homes of allergy sufferers prove that the Air Cleaner removes 94% of fungal spores and 100% of pollen from the air people breathe under household conditions. According to the complaint, the studies in homes of allergy sufferers relied on by respondents do not so prove. Thus proposed respondents' claim that tests prove their representations was false.

The proposed order is designed to prevent recurrence of the violations. Part I of the proposed order would prohibit proposed respondents from representing, contrary to fact, that scientific tests conducted in the houses of allergy sufferers prove that the Air Cleaner or any substantially similar device removes 94% of fungal spores and 100% of pollen from the air people breathe under household conditions. Parts II and III of the order contain fencing-in provisions. Part II of the proposed order would prohibit respondent, in connection with the advertising or sale of any air cleaning product, from misrepresenting the contents or results of any test or study. Part III of the proposed order would prohibit proposed respondents, in connection with the advertising or sale of any air cleaning product, from representing any performance

characteristic of the product, or its ability to perform under any type of conditions, unless it possessed a competent and reliable basis in support of the representation.

The remainder of the proposed order contains standard implementing provisions. Part IV requires proposed respondents to maintain certain records for 3 years; Part V requires notice to relevant employees concerning the existence of the order; Part VI requires notice to the Commission of any corporate change affecting compliance obligations; Part VII requires notice to the Commission of any change in employment of an individual respondent; and Part VIII requires the filing of compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Donald S. Clark,  
Secretary.

[FR Doc. 91-22078 Filed 9-12-91; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. HHS Procurement-Solicitation and Contracts—Existing, No change—0990-0115—Solicitation and contract documents are used in the procurement process. Respondents to solicitations and contract awardees are subject to information collection requirements needed for individual procurements.  
*Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; *Annual Number of Respondents:* 9014; *Frequency of Response:* one time; *Average Burden per Annual Burden:* 2,240,326 hours; *OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained

by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 4, 1991.

James F. Trickett,  
Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91-22063 Filed 9-12-91; 8:45 am]

BILLING CODE 4150-04-M

### Administration on Aging

#### Statement of Organization, Functions, and Delegations of Authority

This notice amends the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services by removing the Administration on Aging (Chapter DG) from Part D, the Office of Human Development Services, and establishing a new Part B, entitled Administration on Aging. In addition, the Administration on Aging is undergoing internal organizational change.

This organizational change will establish within the Administration on Aging an Office of Policy Coordination and Analysis (OPCA), an Office of External Affairs (OEA), and an Office of Field Operations (OFO); rename the Office of Management and Policy as the Office of Administration and Management (OAM); eliminate the existing two Divisions within the Office of Management and Policy—the Division of Policy, Planning and Administration and the Division of Technical Information and Dissemination; eliminate the existing divisions within the Office of Program Development (OPD)—the Division of Research and Demonstrations and the Division of Training and Development; and establish within OPD the following two Divisions: (1) A Division of Research, Demonstration and Training and (2) a Division of Dissemination and Utilization.

This organizational structure is proposed to enable the Administration on Aging to respond more effectively to the demands of their broad ranging program responsibilities.

The changes are as follows:

1. Delete Chapter D, section E., Administration on Aging, in its entirety;
2. Delete Chapter DD, section F., Regional Office on Aging, in its entirety;

3. Delete Chapter DG in its entirety;
4. Establish Part B, entitled Administration on aging, as follows:

*Chapter B*

Administration on Aging

- B.00 Mission
- B.10 Organization
- B.20 Functions

*B.00 Mission.* The Administration on Aging (AoA) is the principal agency designated to carry out the provisions of the Older Americans Act (OAA) of 1965, as amended. Advises the Secretary, Department components and other Federal Departments and Agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare. Administers a program of formula grants to States to establish State and community programs for older persons under title III of the Act (45 CFR part 1321). Administers a program of grants to Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under title VI of the Act (45 CFR part 1328). Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American administered, community-based systems of comprehensive social services for older persons. Approves or disapproves State and Native American plans. Responsible for program management. Administers programs of training, research and demonstration under title IV of the Act.

Serves as lead agency within the Department on all issues concerning aging. Advocates for the needs of older persons in Departmental program planning and policy development. Develops standards, issues, best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services provided to older persons funded by the Department.

*B.10 Organization.* The Administration on Aging is headed by the Commissioner on Aging and consists of:

- Office of the Commissioner
- Office of Policy Coordination and Analysis
- Office of External Affairs
- Office of Administration and Management
- Office of Field Operations
- Office of Program Development
- Division of Research, Demonstration and Training
- Division of Dissemination and Utilization

- Office of State and Community Programs
- Division of Program Management and Analysis
- Division of Community Based Systems Implementation
- Office for American Indian, Alaskan Native and Native Hawaiian Programs.

Regional Offices on Aging

*B.20. Functions.* The functions of the Administration on Aging are described below:

**A. Office of the Commissioner (BA)**

The Office of the Commissioner serves as the focal point for Older Americans Act (OAA) programs through the development, coordination and administration of those programs nationwide. Serves as the effective and visible advocate within the Federal government to assure the rights and entitlements of the elderly. Conducts active public education of officials, citizens, and the aged to assure broad understanding of the needs and capabilities of the aged.

Sets national policies, establishes national priorities, assures policy consistency, and directs plans and programs conducted by the Administration on Aging (AoA). Advises the Secretary, DHHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Deputy Commissioner is the Commissioner's primary associate in carrying out the mission of the agency.

Serves as an advocate for older people with voluntary and private organizations. Collaborates with other Federal agencies to assist older persons by the development of interagency agreements which are then implemented by the appropriate technical divisions. Coordinates joint interests and initiation of projects with other Federal agencies and other levels of government. Provides close liaison with the Federal Council on Aging, and other Federal committees focused on the aging. Works with national aging organizations, professional societies, universities, and academic organizations to identify mutual interests and plan voluntary and funded approaches. Assures affirmative action throughout the Aging Network.

Stimulates and coordinates AoA international activities in research, training, and technical assistance; and coordinates AoA international activities with Departmental units concerned with international affairs. Cooperates with multilateral international agencies, such as the United Nations, in planning and

participating in international conferences and meetings. Arranges for visits of personnel interested in aging from other nations and assists U.S. personnel in arranging visits to other countries.

**B. Office of Policy Coordination and Analysis (BB)**

Analyzes and interprets issues related to AoA program policy; develops and interprets AoA goals, priorities, and strategies; performs statistical analyses related to the aging; manages a program for the collection and analysis of demographic and socio-economic information related to the aging. All functions are performed with appropriate input from the AoA units with subject matter responsibility.

Conducts policy studies on a wide range of issues affecting AoA programs and the elderly; solicits policy and strategy input from a wide spectrum of organizations concerned with the aging. Prepares the AoA long and short range plans; provides interpretation and guidance for implementation of these plans to all AoA units; and reviews all new and changed policy documents for consistency with AoA long range goals and strategies. Coordinates with the Office of the Commissioner and all AoA units, and Departmental staff offices on policy, planning and evaluation issues and development.

Coordinates with the Office of Administration and Management in that Office's translation of the long and short range plans into procedural guidance for AoA units concerning performance appraisal planning, work planning and budget preparation. By means of this system, coordinates the development of implementation strategies and subsidiary plans as well as processes for monitoring progress toward stated objectives.

Develops AoA plans and priorities for evaluation of programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units.

Provides technical assistance to the Central and Regional Offices, State and Area Agencies on Aging, and other organizations on their statistical data needs, uses of data, and methods of collecting the data; maintains a knowledge of data generated by a wide range of organizations; provides liaison with the Federal Task Force on Aging Statistics; in support of planning and

program requirements performs routine and special analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

Assesses the need for, develops strategies and priorities about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people.

#### **C. Office of External Affairs (BX)**

Coordinates all liaison activities with outside groups, other than grantee/contractors and professional organizations. Manages the public education, and legislative development functions.

Develops legislative proposals, drawing on appropriate subject matter input from other AoA units. Develops testimony, background statements, and other policy documents for use by the Commissioner in activities related to legislation. In coordination with OS legislative staff analyzes proposed and enacted legislation related directly or indirectly to the older people, including those directly impacting the Older Americans Act. Through an automated legislative information system tracks bills related to the aging and keeps appropriate AoA units informed of status of legislation within their responsibility. Develops and issues status reports regarding key legislative developments to headquarters and Regional Office staff and the network of State and Area Agencies on Aging.

Develops and distributes publications and audiovisual materials about older people and prepares and issues brochures, fact sheets, news releases, exhibits and films on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population.

Prepares speeches for the Commissioner and other AoA officials representing the Commissioner. Develops and implements a public education strategy for AoA in response to the Commissioner's initiatives and goals. Represents AoA in activities involving print and broadcast media.

Edits and produces the Aging Magazine aimed at professionals and constituents in the field of aging. Develops special information campaigns to inform older people and the general public about issues, problems and benefits important to older people. Fosters the annual Older Americans Month, and plans and coordinates other ceremonies and celebrations related to the elderly. Prepares the AoA Annual Report to the Congress and the President and other reports such as "Developments In Aging".

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging. In emergency situations, refers individuals or families to the appropriate State and/or Area Agency on Aging for assistance in meeting the needs of the older person.

#### **D. Office of Administration and Management (BE)**

Advises the Commissioner in the areas of internal administration and management of AoA. In response to the Federal law, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management through AoA, including such areas as: Budget, finance, grants management, personnel, procurement, material and facilities management, management systems, information resources management and similar administrative facilitation services. Conducts management analysis and systems development activities for AoA. Provides technical assistance and guidance to Central and Regional Office units in the development, implementation and maintenance of administrative systems.

Plans, organizes and conducts surveys and management reviews of administrative processes and functions in AoA units. Serves as the principal AoA staff examining the AoA organization. Studies structural, financial and management problems of particular interest to the Commissioner. Conducts studies and makes recommendations on the integration of automated information system capabilities into AoA administrative and programmatic activities. Acts as liaison with ASMB in coordinating preparation of organizational proposals requiring Secretarial approval and maintains official organization files for AoA. Analyzes, recommends action on, and prepares formal program, administrative and personnel delegations of authority for the Commissioner. Develops and circulates administrative instructions and procedures.

Provides or coordinates all Headquarters management support services, including personnel, contracts and grants, budget formulation and execution, financial management, document and assignment control system, administrative services, and information resources management.

Prepares budget presentations for use at the Departmental, Office of Management and Budget, and Congressional levels. Formulates budget in accordance with Departmental

guidelines and instructions. Exercises funds control for all formula grant, discretionary grant and contract, and salary and expense accounts. Processes AoA fiscal documents required to make and manage grants and contracts and tracks financial status of all AoA program and salary and expense funds. Based on Departmental formula and discretionary grants management policies and procedures, controls administrative accounting, reprogramming of formula grant funds, and discretionary grants management and processing under the OAA. Is responsible for consultant services review as prescribed by the General Administrative Manual chapter 8-15.

Provides administrative support for the Central and Regional Office Merit pay and employee appraisal systems in accordance with Department policy, and assists the Commissioner and other AoA units in implementing these systems. Provides administrative support for the Central and Regional Office merit pay pool, and coordinates the granting of incentive awards.

Analyzes organization and functions in AoA, recommends changes for more effective mission accomplishment, and develops staffing plans. Develops space utilization and communication plans, supervises timekeeping and payroll functions and maintains general liaison with personnel, management analysis and administrative services offices at the Departmental levels. Plans and manages the internal AoA staff development activity. Assures equal employment opportunity within the Central Office of AoA. Serves as a central contact for responding to requests for administrative services. Translates the long and short range plans, and other policy and strategy directives, into guidance for AoA units concerning performance appraisal planning, budget preparation, and other resource management systems. By means of this system, coordinates the development of program strategies and subsidiary plans with all resource and personnel management processes and ensures the necessary initiatives in training, position descriptions, performance plans, equipment and space, software development, etc. Works with the Office of Policy Coordination and Analysis in the formulation, review and reporting of operational objectives.

Develops and oversees administrative management policy and guidelines for AoA Headquarters and Regional Offices, including ensuring compliance with Departmental regulations, IG and GAO directives, and ethical and

financial integrity standards, particularly including the Federal Managers' Financial Integrity Act (FMFIA). Analyzes all policy, planning and legislative documents and determines their impact on personnel and resources management; issues instructions to all AoA managers concerning their impact on administrative management. Serves as the communications center for the Agency, ensuring that issues requiring the attention of the Commissioner, Deputy Commissioner or AoA Executive Staff are developed on a timely and coordinated basis. Monitors the response of other AoA units in developing necessary documents for the Commissioner's review, and provides assistance to staff on the content and style of special assignments. Operates the agency-wide correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and reviews documents for consistency with the Commissioner's and the Secretary's assignments, previous decisions on related matters, and editorial standards. Refers unprecedented policy questions to the Office of Policy Coordination and Analysis. Provides liaison with the Executive Secretariats in the Office of the Secretary and in other Departmental units on AoA program and policy matters as well as special administrative matters.

Is responsible for reviewing requests for information under the Freedom of Information Act and arranging for appropriate responses to the requests.

Manages the Information Resources Management system for AoA and develops plans, standards and procedures related to it. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Represents AoA on IRM and outside ADP groups.

#### **E. Office of Field Operations (BF)**

Responsible for overseeing the activities of the ten Regional Offices of AoA in the execution of their responsibilities. Operational contacts between AoA Central and Regional Offices are through the Office of Field Operations.

Issues substantive operating procedures to guide Regional staff of AoA in the conduct of their responsibilities; establishes standards for PMRS and EPMS plans in the Regional Offices; regularly assesses the

performance of AoA Regional Office staff against the established standards. In consultation with the Division of Administrative Services, AoA, and the Office for Civil Rights, OS, provides guidance to AoA Regional staff on a variety of management issues relating to such areas as civil rights, minority contracting, age discrimination and regulations about the handicapped.

Maintains information on the professional development and technical capacity of Regional staff, and identifies training needs and recommends training courses to assure an AoA Regional staff capacity for responding to emerging program and management demands.

Provides day-to-day guidance on all program and administrative management activities for which the 10 AoA Regional Offices are responsible. Determines Regional staff training needs. Determines support and resource levels of Regional AoA staff.

Coordinates with senior executives in other DHHS and other Departmental agencies to assure execution of the Regional AoA mission. Coordinates with other AoA headquarters Office Heads to ensure that clear and consistent guidance is given to the Regional Offices, and that Regional questions and problems are addressed expeditiously and effectively. In event of conflicting demands on Regional staff, decides priorities and coordinates, as necessary, with other senior AoA and Departmental executives.

#### **F. Office of Program Development (BP)**

Conducts activities for the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, and training activities. Elicits new knowledge and techniques to improve the circumstances of older Americans.

Promotes coordination of research, demonstration, and training activities. Prepares the planning documents for, and coordinates the development of, the annual discretionary funds program announcement. Oversees the grant and contract activities designed to carry out research, demonstration, and training activities, and develops AoA policies and criteria for monitoring grants and contracts supported through OPD. Assesses results of these activities to develop utilization strategies.

Implements strategies for improving the quality of facilities, programs, and services for the nation's older population. Maintains information on programs in other Federal agencies and

national voluntary agencies which have potential for relating to these strategies. Collects and disseminates information related to problems of the aged and aging.

*F.1. Division of Research, Demonstration and Training (BP1).* Administers the programs of research, demonstration and training authorized under title IV of the OAA, including proposing strategies, developing concept papers and carrying out all implementation activity for the program. Provides technical input for Congressional and budget presentations related to the research and demonstration program. Evaluates research, demonstration and training grant and contract proposals, recommends approval/disapproval, monitors progress, gives technical guidance to and evaluates the performance of grantees and contractors. Through the Office of Field Operations, provides technical direction to the Regional Office in their guidance and monitoring of sub-national research and demonstration grantees and contractors. Analyzes and interprets project results and recommends technical applications. Promotes coordination of research and demonstrations with other national, regional and local programs related to aging.

Within overall AoA strategy and long range plans, conducts continuing studies and periodic reviews of manpower needs and resources in the field of aging. Plans and assesses AoA's activities to assure trained staff for programs serving older Americans. Develops and monitors a national plan for increasing these resources, and prepares reports thereon for the Administration on Aging, the Federal Council on Aging, the Office of the Secretary, DHHS, the President and the Congress.

Administers a program through grants and contracts for developing curricula and providing training related to preparation for professional, teaching, research, and paraprofessional careers in the field of aging. Makes grants for planning, developing, and operating multidisciplinary centers of gerontology designed to serve the purposes set forth under title IV of the OAA, including the monitoring of such grants on a continuing basis.

Develops standards, optional models, and "best practice" suggestions on services to the elderly for use by the Regional Offices, and State and Area Agencies on Aging. Develops technical assistance material and in-service training curricula concerning these

standards, models, and best practice suggestions.

Provides technical input on research, demonstration and training programs to the AoA planning and policy development activities, legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities which concern health and social services; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long term care services.

*F.2. Division of Dissemination and Utilization (BP2).* Manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Develops and coordinates initiatives with other Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging.

Reviews all products from AoA, the OAA network, and other sources of information on aging to identify new findings which will be useful to older people and professionals operating in the field of aging, concentrating particularly on research, demonstration and evaluation findings. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users. Provides input to the annual AoA Report to the President and Congress. Plans and manages special dissemination projects.

Assesses results of these activities to develop utilization strategies. Promotes information dissemination in professional fields. Develops and manages AoA information clearinghouse to assure dissemination of information such as best practice models, to exchange program experience with the network of State and Area Agencies on Aging, and to coordinate information dissemination requirements with other national organizations in the field of aging.

#### **G. Office of State and Community Programs (BC)**

Serves as the focal point within AoA for the operation and assessment of the programs authorized under titles II and III of the OAA.

In response to title II mandates, oversees development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns.

Implements title III in the field through provision to Regional Office staff of guidance and information concerning AoA programs, and interpretation of

regulations and policy implementing title III of the OAA. Fosters, oversees, assists, and assesses the development of State-administered community based systems of social services to the elderly as authorized under title III of the OAA.

Provides specialized input on title II and III programs to long range planning, operational plans and the budget process. Responsible for the implementation of regulations and policy on title III of the OAA. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve the title III service programs funded under the OAA.

Provides guidance to AoA Regional staff on the processing, approval, or recommendation for disapproval of State Plans under the OAA.

Is responsible for collection, analysis and distribution of program performance data on State and Area Agency implementation of OAA programs. Implements the formula for distribution of title III funds to the States and controls accounting and reprogramming of funds under that title.

*G.1. Division of Program Management and Analysis (BC1).* Provides guidance and technical assistance to AoA Regional staff in the effective implementation of programs under title III of the OAA.

Develops regulations for use by State and Area Agencies on Aging and local service providers responsible for programs under title III of the Older Americans Act. Coordinates clearance of regulations within AoA and with other appropriate staff offices in the Department and OMB.

Provides assistance relative to Merit System Standards and their implementation by State agencies. Provides timely and accurate responses to requests for policy interpretation and technical assistance from State agencies.

Develops and executes the Ombudsman provisions of the OAA throughout the Aging Network.

Develops and operates a management information system focused on the effectiveness and efficiency with which services are delivered. Coordinates and conducts operational studies, program analyses, and evaluations on special issues of concern to the Commissioner, Regional Offices, and State and Area Agencies on Aging. Prepares reports on program operations under title III for the Commissioner, other AoA offices, Office of the Secretary, the Congress and the public.

For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of 45

CFR part 74 to AoA staff. Based on formula grants management policies and procedures approved by the Department, controls administrative accounting and reprogramming of formula grant funds under the OAA.

Responds to audit issues raised by Department and General Accounting Office audit reviews and assures the proper analysis and resolution of audit findings by Regional Offices for final action by the Commissioner.

Develops title III performance profiles of State and Area Agencies on Aging. Through the analysis of State Plans, evaluation findings, audit reports, and progress reports, prepares early warnings of program and management issues.

*G.2. Division of Community Based Systems Implementation (BC2).* Implements the provisions of title II of the Older Americans Act for overseeing the creation of a more responsive service system at the community level to meet the social and human service needs of the elderly. Develops special initiatives at the national level for building strong intergovernmental and private sector partnerships to address age related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

Develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age related needs and issues.

Directs and assesses the development of State administered, community based systems of opportunities, social services and long-term care for the elderly. Initiates and encourages expansion of the capacities of community based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community based social services systems for the elderly.

Directs, guides and monitors the improvement and expansion of community based information and referral systems, and other developments in accessibility, for social services to the elderly.

Through extensive formal and informal contacts with a variety of agencies and organizations, identifies and disseminates through the State and Area Agency network, concepts, systems and devices to improve care for the elderly.

Promotes and coordinates information and education campaigns at the local

level to improve the quality of life of the elderly, e.g., health promotion activities. Assists local agencies in other specialized social service areas by means of technically expert staff in the Division.

Assists State and Area Agencies and local service delivery agencies to analyze future program trends and needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs at given intervals in the future.

Acts as a national representative and advocate of the State and Area Agency network with other Departmental agencies, private industry and the general public.

**H. Office of American Indian, Alaskan Native, and Native Hawaiian Programs (BN)**

Serves as the focal point within AoA for the operation and assessment of the programs authorized under title VI of the Older Americans Act; is responsible for program and policy direction to the Regional Offices in the execution of their title VI responsibilities; and interprets regulations and policy implementing title VI of the OAA.

Evaluates the adequacy of outreach under titles III and VI for older Native Americans and recommends to the Commissioner necessary action to improve service delivery, outreach, and coordination between services under titles III and VI and particular problems faced by older Indians and Native Hawaiians. Provides in the Annual Report a description of the results of such evaluation and recommendations.

Serves as the effective and visible advocate in behalf of older Native Americans within the Department and with other departments and agencies of the Federal Government regarding all Federal policies affecting older Native Americans.

Coordinates activities among other Federal departments and agencies to assure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination.

Administers and evaluates the grants provided under the OAA to Indian tribes, and public agencies and nonprofit private organizations serving Native Hawaiians. Recommends to the Commissioner policies and priorities with respect to the development and operation of programs and activities conducted under the Act relating to older Native Americans.

Collects and disseminates information related to problems experienced by older Native Americans. Develops the Native American input to the Office of Program Development for inclusion in AoA's research plan. This input places special emphasis on the gathering of statistics on the status of older Native Americans. Develops input for grantees under title VI to the technical assistance and training programs managed by the Division of Research, Demonstration and Training. Develops input to the Office of Administration and Management on the budget for Native American activities.

Recommends to the Commissioner decisions on proposed contracting by title VI grantees with profit-making organizations to carry out provisions of the Act.

Chairs the Interagency Task Force on Older Indians, which represents departments and agencies of the Federal Government with an interest in the welfare of older Indians. The Task Force makes recommendations to the Commissioner, at six month intervals, to facilitate the coordination and improvement of services to older Indians. These recommendations are included in the Annual Report to Congress.

**I. Regional Office on Aging (BD1-X5)**

Regional Offices on Aging are headed by a Regional Program Director (RPD) who is responsible to the Commissioner on Aging through the Director, Office of Field Operations.

The Regional Offices on Aging serve as the focal point for Older Americans Act (OAA) programs through the development, coordination and administration of those programs within the HHS region. Represent the Commissioner on Aging within the region, and provide information for, and contribute to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish regional program goals and objectives.

Serve as the effective and visible advocate for the elderly within the Federal Government to assure the rights and entitlements of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the Nation; conduct active public education of officials and citizens and the aged to

assure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering programs provided through title III of the OAA, discretionary grantees administering title IV projects, and Native American tribes administering projects under title VI. Review OAA State Plans on Aging and approve acceptable plans or recommend disapproval to the Commissioner on Aging, as appropriate. Recommend approval or disapproval of title IV applications to the Commissioner. Approve or disapprove refunding of title IV grantees. Recommend approval or disapproval of title VI projects to the Commissioner.

Advise the Commissioner of problems and progress of programs through the Director, Office of Field Operations; recommend to the Commissioner changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Region and recommend to the Commissioner or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional and State levels to enhance resources and assistance available to the elderly. Conduct public education strategy on the needs and capabilities of the elderly. Coordinate with the DHHS Regional Director as needed on matters of an administrative or crosscutting nature.

Dated: August 30, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-22064 Filed 9-12-91; 8:45 am]

BILLING CODE 4130-01-M

**Administration for Children and Families**

**Agency Information Collection Under OMB Review**

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Administration for Native Americans' (ANA) Regulation for Administration for Native Americans.

**ADDRESSES:** Copies of the information collection request may be obtained from

Larry Guerrero, Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

#### Information on Document

**Title:** The Native American Programs Act of 1987 added a new section 803A entitled "Loan Fund: Demonstration Project." This section authorizes the Secretary to make a grant to either an agency of the State of Hawaii or a community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians. The grantee must establish and administer a revolving loan fund (RLF) on behalf of Native Hawaiian organizations, businesses, and individual Native Hawaiians for the purpose of promoting economic development in the State of Hawaii.

The reporting requirements in the final rule are found in §§ 1336.63(b), 1336.66, and 1336.69 (b), (c), and (d).

In §§ 1336.63(b) and 1336.66, ANA requires prior approval of the grantee's organizational and administrative structure and loan procedures, processes, and criteria in order to assure proper and efficient management and administration of the RLF. To assist potential grantees, ANA will make available to them a package of administrative materials including model loan procedures and practices developed and used by other federal RLFs.

In § 1336.69 (b) and (d), ANA requires quarterly program and fiscal reports from the grantee. These reports are mandated by 45 CFR Part 74.

In § 1336.69(c), a semi-annual analysis of the status of the RLF is required. ANA expects the grantee organization as part of its ongoing fiscal accounting data to have this information as a matter of good business practice.

**Annual Number of Respondents:** 1.

**Annual Frequency:** 11.

**Average Burden Hours Per Response:** 46.36.

(1 Report—480 hrs; 10 Reports—30 hrs.)

**Total Burden Hours:** 510.

Dated: August 29, 1991.

**Donna N. Givens,**

*Deputy Assistant Secretary for Children and Families.*

[FR Doc. 91-22057 Filed 9-12-91; 8:45 am]

BILLING CODE 4130-01-M

#### National Institutes of Health

##### National Cancer Institute; Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on September 22, 23, and 24, 1991. The full Board will meet in Conference Room 6, 6th floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and roster of the Board members, upon request.

**Name of Committee:** National Cancer Advisory Board.

**Executive Secretary:** Mrs. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892; (301) 496-5147.

**Date of Meeting:** September 23 and 24, 1991.

**Place of Meeting:** Building 31C, Conference Room 6.

**Open:** September 23—8:30 a.m. to approximately 12:00 noon.

**Agenda:** Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Policy and Scientific Presentations.

**Closed:** September 23—3 p.m. to recess.

**Agenda:** For review and discussion of individual grant applications.

**Open:** September 24—9 a.m. to adjournment.

**Agenda:** Policy and Scientific Presentations, Subcommittee Reports; and New Business.

**Name of Committee:** Subcommittee on Cancer Centers.

**Executive Secretary:** Dr. Brian Kimes, Executive Plaza North, room 3000, Bethesda, MD 20892; (301) 496-8537.

**Date of Meeting:** September 22, 1991.

**Place of Meeting:** Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

**Open:** 8 p.m. to recess.

**Agenda:** To discuss the review of ongoing activities and potential new policy initiatives of the Cancer Centers Program.

**Name of Committee:** Subcommittee on Planning and Budget.

**Executive Secretary:** Ms. Judith Whalen, Building 31, room 11A23, Bethesda, MD 20892; (301) 496-5515.

**Date of Meeting:** September 23, 1991.

**Place of Meeting:** Building 31C, Conference Room 8.

**Open:** 12:30 p.m. until 2 p.m.

**Agenda:** For discussion of the 1992 Appropriation, NCAB Biannual Report and the NIH Strategic Plan.

**Name of Committee:** Subcommittee on Women's Health and Cancer.

**Executive Secretary:** Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496-5534.

**Date of Meeting:** September 23, 1991.

**Place of Meeting:** Building 31C, Conference Room 7.

**Open:** 2 p.m. until 3 p.m.

**Agenda:** To discuss NCI supported research on barriers to cancer prevention, early detection, and treatment affecting women, especially minority and low income women; and the subcommittee's role and future activities.

**Name of Committee:** AIDS Subcommittee.

**Executive Secretary:** Dr. Judith Karp, Building 31, room 11A27, Bethesda, MD 20892; (301) 496-3505.

**Date of Meeting:** September 23, 1991.

**Place of Meeting:** Building 31C, Conference Room 7.

**Open:** Immediately following the recess of the NCAB.

**Agenda:** Update on Vaccines.

**Name of Committee:** Subcommittee on Environmental Carcinogenesis.

**Executive Secretary:** Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496-6618.

**Date of Meeting:** September 23, 1991.

**Place of Meeting:** Building 31C, Conference Room 8.

**Open:** 6 p.m. to recess.

**Agenda:** Discussion of Breast Implants and Heterocyclic amines.

**Name of Committee:** Subcommittee on Information and Cancer Control for Year 2000.

**Executive Secretary:** Mr. Paul Van Nevel, Building 31A, room 10A31, Bethesda, MD 20892; (301) 496-6631.

**Date of Meeting:** September 24, 1991.

**Place of Meeting:** Building 31C, Conference Room 8.

**Open:** 7:30 a.m. until 9 a.m.

**Agenda:** Concept Review for the Office of Director Contracts and discussion of Future Committee Activities.

*Name of Committee:* Subcommittee on Activities and Agenda (Working Group).  
*Executive Secretary:* Dr. Paulette Gray, Westwood Building, room 850, Bethesda, MD 20892; (301) 496-7173.

*Date of Meeting:* September 24, 1991.

*Place of Meeting:* Building 31A, room 10A08.

*Open:* 12 noon until 1 p.m.

*Agenda:* Discussions will address the Board's format, agenda items and activities of the NCAB.

(Catalog of Federal Domestic Assistance Program Numbers; 93.393, Cancer Cause and prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 29, 1991.

Jeanne N. Ketley,

*Acting Committee Management Officer, NIH.*

[FR Doc. 91-22204 Filed 9-12-91; 8:45 am]

BILLING CODE 4140-01-M

### National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 22, 23, and 24, 1991, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on September 22, from 8 p.m. to approximately 9 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on September 22, 1991, from 9 p.m. to 10 p.m., on September 23, from approximately 8 a.m. until 6 p.m. and on September 24 from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National

Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496-7381, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 29, 1991.

Jeanne N. Ketley,

*Acting Committee Management Officer, NIH.*

[FR Doc. 91-22205 Filed 9-12-91; 8:45 am]

BILLING CODE 4140-01-M

### Social Security Administration

#### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on August 30, 1991.

(Call Reports Clearance Office on (301) 965-4149 for copies of package)

Application For Supplemental Security Income—0960-0050—The information collected on the form SSA-8000 is used by the Social Security Administration to determine eligibility and the amount of benefits payable in claims for Supplemental Security Income (SSI). The affected public is comprised of applicants for SSI.

*Number of Respondents:* 1,435,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 34 minutes.

*Estimated Annual Burden:* 813,167.

*OMB Desk Officer:* Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

Federal Assistance—0960-0184—The information collected on the form SSA-96 is used by the Social Security Administration (SSA) to evaluate proposed Federal grants to eligible applicants. The affected public is comprised of for profit and nonprofit organizations and State or local

governments and educational institutions who have applied for grants.

*Number of Respondents:* 150.

*Frequency of Response:* 1.

*Average Burden Per Response:* 14 hours.

*Estimated Annual Burden:* 2,100.

*OMB Desk Officer:* Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

Blood Donor Locator Service—0960-0000—This final regulation F-20-401.600 grants the Social Security Administration (SSA) the regulatory authority to establish and conduct a Blood Donor Locator Service (BDLS). The data collected by the BDLS will be used by SSA to notify the States or authorized blood donation facilities that certain donors may be infected with the Human Immunodeficiency Virus (HIV) and should see medical treatment. The affected public consists of States or authorized blood donation facilities who have voluntarily entered into an agreement with SSA.

*Number of Respondents:* 50.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 62 1/2

*OMB Desk Officer:* Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch,  
New Executive Office Building, room  
3208, Washington, DC 20503.

Dated: September 6, 1991.

Ron Compston,

*Social Security Administration, Reports Clearance Officer.*

[FR Doc. 91-21947 Filed 9-12-91; 8:45 am]

BILLING CODE 4190-11-M

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Secretary

[Docket No. D-91-961; FR-3104]

**Delegation of Authority for the Section 8 Moderate Rehabilitation Rental Certificate, and Rental Voucher Programs to the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The Secretary of Housing and Urban Development is transferring responsibility for the operation of the Section 8 Moderate Rehabilitation, Rental Certificate, and Rental Voucher Programs under the United States Housing Act of 1937, as amended, to the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing. Responsibility for the operation of these programs formerly had been delegated by the Secretary to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing. This revision reflects a realignment of programmatic responsibility.

**EFFECTIVE DATE:** September 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dominic Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., room 4140, Washington, DC 20410, (202) 708-1015 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This notice delegates to the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing the power and authority of the Secretary of Housing and Urban Development respecting the Section 8 Moderate Rehabilitation, Rental Certificate and Rental Voucher programs and functions, under the United States Housing Act of 1937, as amended, including the authority to redelegate to other employees of the Department. The Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing may issue rules or regulations to carry out these programs and waive such rules or regulations to the extent authorized by statute or in the rules or regulations. The Assistant Secretary and the General Deputy Assistant Secretary may not redelegate the authority to issue rules. The Assistant Secretary also may not redelegate the authority to waive regulations (see Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the *Federal Register* on April 22, 1991 at 56 FR 16337).

This delegation revokes and supersedes all previously published delegations of authority to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing for the Section 8 Moderate Rehabilitation, Rental Certificate and Rental Voucher Programs, under the United States Housing Act of 1937, as amended, to the extent they include delegations of authority to the Assistant Secretary for Housing-Federal Housing Commissioner

and the General Deputy Assistant Secretary for Housing for the aforementioned programs, including the consolidated delegation of authority for housing dated May 22, 1989 (54 FR 22033), the delegation for the Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals dated October 26, 1987 (52 FR 40000) and the redelegation of authority to waive Section 8 and Traditional Public Housing Conflict of Interest Provisions dated August 14, 1980 (45 FR 54143).

#### Section A. Delegation of Authority

The Secretary of Housing and Urban Development hereby delegates to the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing all powers and authorities with respect to the Section 8 Moderate Rehabilitation, Rental Certificate and Rental Voucher Programs, under the United States Housing Act of 1937. These powers and authorities include but are not limited to the authority to approve the undertaking of any annual contribution or any agreement or contract for any annual contribution. The authority granted under this delegation may be redelegated except as specified under section D below.

#### Section B. Authority Revoked and Superseded

The Secretary of Housing and Urban Development revokes all prior delegations of authority to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing for the Section 8 Moderate Rehabilitation, Rental Certificate, and Rental Voucher Programs, under the United States Housing Act of 1937, as amended, to the extent they include delegations of authority to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing for the aforementioned programs, including the consolidated delegation of authority for housing dated May 22, 1989 (54 FR 22033), the delegation for the Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals dated October 26, 1987 (52 FR 40000) and the redelegation of authority to waive Section 8 and Traditional Public Housing Conflict of Interest Provisions dated August 14, 1980 (45 FR 54143).

#### Section C. Authority Excepted

The following authorities are excepted from this delegation of authority from the Secretary of Housing and Urban

Development to the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing:

1. The authority to issue notes or obligations for purchase by the Secretary of the Treasury.
2. The authority to sue and be sued.

#### Section D. Authority Which May Not be Redelegated

The Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing may not redelegate the authority to issue rules. The Assistant Secretary also may not redelegate the authority to waive regulations (see Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the *Federal Register* on April 22, 1991 at 56 FR 16337).

**Authority:** Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

**Dated:** September 5, 1991.

**Jack Kemp,**

*Secretary of Housing and Urban Development.*

[FR Doc. 91-22082 Filed 9-12-91; 8:45 am]

**BILLING CODE 4210-32-M**

#### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-43]

#### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has

reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to FHHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agency at the following address: U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAT-MIIR, Washington, DC 20332-5000; (202) 767-6235. (This is not a toll-free number.)

Dated: September 6, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

#### TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/13/91

##### Suitable/Available Properties

###### Buildings (by State)

###### California

Hawes Site (KHGM)  
March AFB  
Hinkley Co: San Bernardino CA 92402-  
Landholding Agency: Air Force  
Property Number: 189010084  
Status: Unutilized  
Comment: 9290 sq. ft., 2 story concrete; most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldgs. 604, 605, 612, 611, 613-618  
Point Arena Air Force Station  
Mendocino County, CA 95468-5000  
Landholding Agency: Air Force  
Property Number: 189010237-189010248  
Status: Unutilized  
Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

###### Guam

Anderson VOR  
In the municipality of Dededo  
Dededo Co: Guam GU 96912-  
Location: Access is through Route 1 and Route 3, Marine Drive.  
Landholding Agency: Air Force  
Property Number: 189010267  
Status: Unutilized  
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex

In the municipality Dededo  
Dedeco Co: Guam GU 96912-  
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.  
Landholding Agency: Air Force  
Property Number: 189010268  
Status: Unutilized  
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

###### Annex No. 4

Anderson Family Housing  
Municipality of Dededo  
Dededo Co: Guam GU 96912-  
Location: Access is through Route 1, Marine Drive.  
Landholding Agency: Air Force  
Property Number: 189010545  
Status: Underutilized  
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

###### Harmon VORsite (Portion) (A)KZJ

Municipality of Dededo  
Dededo Co: Guam GU 96912-  
Location: Approx. 12 miles southwest of Anderson AFB proper.  
Landholding Agency: Air Force  
Property Number: 189120234  
Status: Unutilized  
Comment: 550 sq. ft. bldg, needs rehab on 82 acres.

###### Idaho

Bldg. 121  
Mountain Home Air Force Base  
Main Avenue  
Elmore County, ID 83648-  
Landholding Agency: Air Force  
Property Number: 189030007  
Status: Excess  
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

###### Louisiana

Barksdale Radio Beacon Annex  
Curtis Co: Bossier LA 71111-  
Location: 7 miles south of Bossier City on highway 71 south; left 1 1/4 miles on highway C1552.  
Landholding Agency: Air Force  
Property Number: 189010269  
Status: Unutilized  
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

###### Maine

Bldgs. 1-16  
Family Housing Annex, Loring Air Force Base  
U.S. Route #1  
Caswell Co: Aroostook ME 04750-  
Landholding Agency: Air Force  
Property Numbers: 189010590-189010605  
Status: Excess  
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

*Michigan*

**Bldg. 1**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010006  
Status: Excess  
Comment: 6642 sq. ft.; 1 story concrete block; possible asbestos; most recent use—library/arts/crafts & storage.

**Bldg. 2**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010007  
Status: Excess  
Comment: 1546 sq. ft.; 1 story concrete bldg; possible asbestos; most recent use—sales store.

**Bldg. 3**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010008  
Status: Excess  
Comment: 7650 sq. ft.; 1 story concrete; possible asbestos; most recent use—maintenance shop and commissary.

**Bldg. 4**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010009  
Status: Excess  
Comment: 120 sq. ft.; 1 story concrete; most recent use—storage.

**Bldg. 5**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010010  
Status: Excess  
Comment: 3139 sq. ft.; 1 story concrete & wood; possible asbestos; most recent use—NCO Club.

**Bldg. 6, 15-17**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010021, 189010028-189010030

Status: Excess  
Comment: 2855 sq. ft. each, 2 story concrete/block/wood, possible asbestos, most recent use—dorms.

**Bldg. 7**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010023  
Status: Excess  
Comment: 144 sq. ft.; 1 story block-3 sections, most recent use—storage.

**Bldg. 10**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010024  
Status: Excess  
Comment: 1000 sq. ft., 1 story concrete, would need furnace, most recent use—automotive/hobby shop.

**Bldg. 11**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010025  
Status: Excess  
Comment: 1547 sq. ft., 1 story concrete, no windows, tunnel type entrance, most recent use—troop shelter.

**Bldg. 12**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010026  
Status: Excess  
Comment: 3630 sq. ft., 5 story tower with freight elevator.

**Bldg. 13**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010027  
Status: Excess  
Comment: 1364 sq. ft., 1 story concrete, most recent use—storage.

**Bldg. 18**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010031

Status: Excess  
Comment: 2802 sq. ft., 1 story concrete, most recent use—vehicle maintenance shop.

**Bldg. 19**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010032  
Status: Excess  
Comment: 2304 sq. ft., 1 story concrete, most recent use—heat plant.

**Bldg. 20**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010033  
Status: Excess  
Comment: 3547 sq. ft., 1 story concrete, most recent use—dining hall.

**Bldg. 23**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010034  
Status: Excess  
Comment: 576 sq. ft., 1 story concrete, most recent use—water supply building.

**Bldg. 24**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010035  
Status: Excess  
Comment: 87 sq. ft., 1 story concrete, most recent use—water pump station.

**Bldg. 25**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010036  
Status: Excess  
Comment: 114 sq. ft., 1 story concrete, most recent use—water pump station.

**Bldg. 26**  
Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010037  
Status: Excess

Comment: 3221 sq. ft., 2 story wood/concrete, most recent use—combination officers quarters and medical/dental clinic.

## Bldg. 28

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010038  
Status: Excess  
Comment: 2004 sq. ft., 1 story concrete, most recent use—bowling alley.

## Bldg. 29

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010039  
Status: Excess  
Comment: 3907 sq. ft., 1 story concrete/metal/steel, designed to be a power plant.

## Bldg. 30

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010040  
Status: Excess  
Comment: 2178 sq. ft., 2 story concrete, open at bottom, top floor no roof, radar tower.

## Bldg. 31

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010041  
Status: Excess  
Comment: 114 sq. ft., 1 story concrete, most recent use—water pump station.

## Bldg. 32

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010042  
Status: Excess  
Comment: 2,466 sq. ft., 1 story concrete block, most recent use—office.

## Bldg. 33

Port Austin AFS  
754th RADS (TAC)  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010043  
Status: Excess  
Comment: 1,621 sq. ft., 1 story concrete, most recent use—supply warehouse.

## Bldg. 34

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010086  
Status: Excess  
Comment: 1972 sq. ft., 1 story concrete.

## Bldgs. 35, 40-43

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Numbers: 189010088, 189010095-189010096, 189010098, 189010100  
Status: Excess  
Comment: 1052 sq. ft. each, 1 story frame/concrete.

## Bldgs. 36-39

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Numbers: 189010091-189010094  
Status: Excess  
Comment: 845 sq. ft. each, 1 story frame/concrete.

## Bldgs. 139-143, 135-138

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010097, 189010099, 189010101-189010103, 189010127-189010130  
Status: Excess  
Comment: 56 sq. ft. each; 1 story prefab wood; potential use for storage; no utilities.

## Bldgs. 144

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010104  
Status: Excess  
Comment: 45 sq. ft. each; 1 story prefab wood; potential use for storage; no utilities.

## Telephone Co. Facility

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010106  
Status: Excess  
Comment: 440 sq. ft.; 1 story; possible asbestos.

## Recreation/Gym Bldg.

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010107

## Status: Excess

Comment: 5899 sq. ft.; 1 story plus mezzanine.

## Bldg. 44

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010108  
Status: Excess  
Comment: 108 sq. ft., 1 story concrete, most recent use—sewage pump station, potential for storage, no utilities.

## Bldg. 46

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010110  
Status: Excess  
Comment: 2924 sq. ft., 1 story circular structure, limited utilities.

## Bldg. 48

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010113  
Status: Excess  
Comment: 120 sq. ft., 1 story wood/concrete, potential utilities.

## Bldg. 50

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010115  
Status: Excess  
Comment: 1922 sq. ft., 1 story concrete block/most recent use—communications transmitter/receiver building.

## Bldg. 51-54

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Numbers: 189010118, 189010120, 189010122-189010123  
Status: Excess  
Comment: 672 sq. ft. each, 1 story frame/cement, most recent use—garages, limited utilities.

## Bldg. 55

Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195

Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010124  
Status: Excess  
Comment: 336 sq. ft., 1 story frame/cement, limited utilities.

## Bldg. 75

Port Austin AFS

Port Austin Township Co: Huron MI 48467-8195  
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
 Landholding Agency: Air Force  
 Property Number: 189010125  
 Status: Excess  
 Comment: 384 sq ft., 1 story frame, most recent use-fire hose storage potential use for storage.

Bldg. 103  
 Port Austin AFS  
 Port Austin Township Co: Huron MI 48467-8195  
 Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
 Landholding Agency: Air Force  
 Property Number: 189010126  
 Status: Excess  
 Comment: 192 sq ft., 1 story wood, most recent use-waste oil.

Bldg. 21  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010776  
 Status: Excess  
 Comment: 2148 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010777  
 Status: Excess  
 Comment: 1548 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010779  
 Status: Excess  
 Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010780  
 Status: Excess  
 Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010781  
 Status: Excess  
 Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010782  
 Status: Excess

Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010783  
 Status: Excess  
 Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010784  
 Status: Excess  
 Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010785  
 Status: Excess  
 Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010786  
 Status: Excess  
 Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010787  
 Status: Excess  
 Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010788  
 Status: Excess  
 Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010789  
 Status: Excess  
 Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010790  
 Status: Excess  
 Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most

recent use—Fire Department vehicle parking building.

Bldgs. 51-62  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Numbers: 189010791-189010802  
 Status: Excess  
 Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63-67  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Numbers: 189010803-189010807  
 Status: Excess  
 Comment: 1306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010808  
 Status: Excess  
 Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010809  
 Status: Excess  
 Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72-89  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Numbers: 189010811-189010828  
 Status: Excess  
 Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010829  
 Status: Excess  
 Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010830  
 Status: Excess  
 Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010833  
 Status: Excess  
 Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16  
 Calumet Air Force Station

Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010834  
Status: Excess  
Comment: 3000 sq. ft.; 1 floor concrete block;  
most recent use—commissary facility.

## Bldgs. 9-13

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Numbers: 189010835-189010839  
Status: Excess  
Comment: 1056 sq. ft. each; 1 floor wood  
frame residences.

## Bldg. 5-8

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Numbers: 189010840-189010843  
Status: Excess  
Comment: 864 sq. ft. each; 1 floor wood frame  
residences; possible asbestos.

## Bldg. 4

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010844  
Status: Excess  
Comment: 2340 sq. ft.; 1 floor concrete block;  
most recent use—heating facility.

## Bldg. 3

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010845  
Status: Excess  
Comment: 5314 sq. ft.; 1 floor concrete block;  
possible asbestos; most recent use—  
maintenance shop and office.

## Bldg. 1

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010846  
Status: Excess  
Comment: 4528 sq. ft.; 1 floor concrete block;  
possible asbestos; most recent use—office.

## Bldgs. 216-224, 211-214

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Numbers: 189010847-189010855,  
189010858-189010861  
Status: Excess  
Comment: 780 sq. ft. each; 1 story wood frame  
housing garages.

## Bldg. 215

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010856  
Status: Excess  
Comment: 390 sq. ft.; 1 story wood frame  
housing garage.

## Bldg. 158

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010857  
Status: Excess  
Comment: 3603 sq. ft.; 1 story concrete/steel;  
possible asbestos; most recent use—  
electrical power station.

## Bldg. 15

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010864  
Status: Excess  
Comment: 538 sq. ft.; 1 floor; concrete/wood  
structure; potential utilities; most recent  
use—gymnasium facility.

## Bldg. 23

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010865  
Status: Excess  
Comment: 44 sq. ft.; 1 story; metal frame;  
prior use—storage of fire hoses.

## Bldg. 24

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010866  
Status: Excess  
Comment: 44 sq. ft.; 1 story; metal frame;  
prior use—storage of fire hoses.

## Bldgs. 31-35

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Numbers: 189010867-189010871  
Status: Excess  
Comment: 38 sq. ft. each; 1 story; metal frame;  
prior use—storage of fire hoses.

## Bldgs. 36-37, 39, 201-2007

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Numbers: 189010872-189010874,  
189010879-189010885  
Status: Excess  
Comment: 25 sq. ft. each; 1 floor metal frame;  
prior use—storage of fire hoses.

## Bldg. 153

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010886  
Status: Excess  
Comment: 4314 sq. ft.; 2 story concrete block  
facility; (radar tower bldg.) potential use—  
storage.

## Bldg. 154

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010887  
Status: Excess  
Comment: 8960 sq. ft.; 4 story concrete block  
facility; (radar tower bldg.) potential use—  
storage.

## Bldg. 157

Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010888  
Status: Excess  
Comment: 3744 sq. ft.; 1 story concrete/steel  
facility; (radar tower bldg.); potential use—  
storage.

*North Dakota*

Bldg. 101  
Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Location: Located on North Dakota State  
Highway 5, four miles west of Fortuna and

approximately 60 miles north of Williston  
via U.S. Highway 85.

Landholding Agency: Air Force  
Property Number: 189110095  
Status: Excess  
Comment: 768 sq. ft.; 2 bedroom single family  
housing unit; needs rehab; off-site use only.

## Bldgs. 102-106

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Number: 189110096-189110100  
Status: Excess  
Comment: 988 sq. ft. each; 3 bedroom single  
family housing units; needs rehab; off-site  
use only.

## Bldgs. 107, 110-111

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Numbers: 189110101-189110103  
Status: Excess  
Comment: 768 sq. ft. each; 2 bedroom single  
family housing unit; needs rehab; off-site  
use only.

## Bldgs. 112-116, 123-129

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Numbers: 189110104-189110108,  
189110115-189110121  
Status: Excess  
Comment: 1510 sq. ft. each; 3 bedroom single  
family housing units with attached garages;  
needs rehab; off-site use only.

## Bldgs. 117, 119-122

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Numbers: 189110109, 189110111-  
189110114  
Status: Excess  
Comment: 1595 sq. ft. each; 3 bedroom single  
family housing units with attached garages;  
needs rehab; off-site use only.

## Bldg. 118

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Number: 189110110  
Status: Excess  
Comment: 2295 sq. ft.; 4 bedroom single  
family housing unit; needs rehab; off-site  
use only.

## Bldg. 141

Fortuna Air Force Station  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Number: 189110122  
Status: Excess  
Comment: 364 sq. ft.; 1 stall vehicle garage,  
needs rehab; off-site use only.

## Bldgs. 142-145

Fortuna Air Force Base  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force  
Property Numbers: 189110123-189110126  
Status: Excess  
Comment: 624 sq. ft. each; 2 stall vehicle  
garages; needs rehab; off-site use only.

## Bldgs. 201-218

Fortuna Air Force Base  
Fortuna Co: Divide ND 58844-  
Landholding Agency: Air Force

Property Numbers: 189110127-189110144  
 Status: Excess  
 Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221-229  
 Fortuna Air Force Base  
 Fortuna Co: Divide ND 58844-  
 Landholding Agency: Air Force  
 Property Numbers: 189110145-189110153  
 Status: Excess  
 Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

#### Nevada

Bldgs. 300-302  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Numbers: 189120001-189120003  
 Status: Unutilized  
 Comment: 1573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 303-306  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Numbers: 189120004-189120007  
 Status: Unutilized  
 Comment: 2750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 307-310, 318, 320-322  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Numbers: 189120008-189120011, 189120019, 189120021-189120023  
 Status: Unutilized  
 Comment: 2170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 311-317, 319, 324-326  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Numbers: 189120012-189120018, 189120020, 189120025-189120027  
 Status: Unutilized  
 Comment: 2424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120024  
 Status: Unutilized  
 Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331-341, 343, 345-346, 348-353  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Numbers: 189120028-189120047  
 Status: Unutilized

Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120048  
 Status: Unutilized  
 Comment: 2464 sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120049  
 Status: Unutilized  
 Comment: 2570 sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120050  
 Status: Unutilized  
 Comment: 2376 sq. ft., one story, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120051  
 Status: Unutilized  
 Comment: 2605 sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 3027, 3029-3040  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120052, 189120054-189120065  
 Status: Unutilized

Comment: 120 sq. ft. each, one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028  
 Nellis Air Force Base  
 Indian Springs AF Aux. Field  
 Indian Springs Co: Clark NV 89018-  
 Landholding Agency: Air Force  
 Property Number: 189120053  
 Status: Unutilized  
 Comment: 60 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

#### Texas

Bldg. 605  
 Brooks Air Force Base  
 San Antonio Co: Bexar TX 78235-  
 Landholding Agency: Air Force  
 Property Number: 189110090  
 Status: Unutilized

Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.

Bldg. 696  
 Brooks Air Force Base  
 San Antonio Co: Bexar TX 78235-  
 Landholding Agency: Air Force  
 Property Number: 189110091  
 Status: Unutilized  
 Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.

Bldg. 697  
 Brooks Air Force Base  
 San Antonio Co: Bexar TX 78235-  
 Landholding Agency: Air Force  
 Property Number: 189110092  
 Status: Unutilized  
 Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.

Bldg. 698  
 Brooks Air Force Base  
 San Antonio Co: Bexar TX 78235-  
 Landholding Agency: Air Force  
 Property Number: 189110093  
 Status: Unutilized  
 Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.

Bldg. 699  
 Brooks Air Force Base  
 San Antonio Co: Bexar TX 78235-  
 Landholding Agency: Air Force  
 Property Number: 189110094  
 Status: Unutilized  
 Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

#### Land (by State)

##### California

60 ARG/DE  
 Travis ILS Outer Marker Annex  
 Rio-Dixon Road  
 Travis AFB Co: Solano CA 94535-5496  
 Location: State Highway 113  
 Landholding Agency: Air Force  
 Property Number: 189010189  
 Status: Excess  
 Comment: .13 acres; most recent use—location for instrument landing systems equipment.

##### Colorado

NTMU—Partial Area  
 Lowry Air Force Base  
 Denver Co: Denver CO 80230-5000  
 Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary.  
 Landholding Agency: Air Force  
 Property Number: 189010254  
 Status: Excess  
 Comment: Approximately 20 acres; sloping parts in area.

##### Guam

Annex 1  
 Andersen Communication  
 Dededo Co: Guam GU 96912-  
 Location: In the municipality of Dededo.  
 Landholding Agency: Air Force  
 Property Number: 189010427  
 Status: Underutilized

Comment: 862 acres; subject to utilities easements.

**Annex 2, (Partial)**

Andersen Petroleum Storage  
Dededo Co: Guam GU 96912-  
Location: In the municipality of Dededo.  
Landholding Agency: Air Force  
Property Number: 189010428  
Status: Underutilized  
Comment: 35 acres; subject to utilities easements.

**Michigan**

Tract A-100E  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010109  
Status: Excess  
Comment: .5 acres; used as entrance road for Port Austin AFS; easement and right of way rights need to be negotiated.

Tract A-100  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010111  
Status: Excess  
Comment: 30.80 acres; existing easements for utilities, etc.

Tract A-101  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010112  
Status: Excess  
Comment: 10.0 acres; existing easements for utilities, etc.

Tract A-101E  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010114  
Status: Excess  
Comment: 1.0 acres; 1320 ft long and 33.5 wide; easement and right of way rights need to be negotiated.

Tract A-102E  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010116  
Status: Excess  
Comment: 1.21 acres; 50 ft wide and 1050 ft in length; portion used as drainage easement.

Tract A-108-1E  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Landholding Agency: Air Force  
Property Number: 189010117  
Status: Excess  
Comment: 4.0 acres; portion used as drainage easement.

Tract A-108-2E  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010119  
Status: Excess  
Comment: 4.55 acres; portion used as drainage ditch.

Tract A-103  
Port Austin AFS  
Port Austin Township Co: Huron MI 48467-8195  
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.  
Landholding Agency: Air Force  
Property Number: 189010121  
Status: Excess  
Comment: 5.30 acres.

Calumet Air Force Station  
Section 1, T57N, R31W  
Houghton Township  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010862  
Status: Excess  
Comment: 34 acres; potential utilities.

Calumet Air Force Station  
Section 31, T58N, R30W  
Houghton Township  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010863  
Status: Excess  
Comment: 3.78 acres; potential utilities.

**Suitable/Unavailable Properties**

*Buildings (by State)*

*California*

Bldg. 540  
Vandenberg Air Force Base  
Off Coast Road  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.  
Landholding Agency: Air Force  
Property Number: 189010561  
Status: Unutilized  
Comment: 384 sq. ft.; 1 story concrete/sheet metal; needs rehab; most recent use—locomotive maintenance/supply building; potential use—storage.

*Florida*

Bldgs. 166, 168, 170, 172, 174, 176  
Patrick Air Force Base  
North Highway A1A  
Cocoa Beach Co: Brevard FL 32925-  
Landholding Agency: Air Force  
Property Number: 189110154-189110159  
Status: Unutilized  
Comment: 2100 sq. ft.; 1 story concrete block residence; needs major repair; presence of asbestos.

*Georgia*

Bldg. 1675

Robins Air Force Base  
1600 area No. Davis Drive  
Warner Robins Co: Houston GA 31098-  
Landholding Agency: Air Force  
Property Number: 189010215  
Status: Excess  
Comment: 20110 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements.

*Illinois*

Bldg. 1380  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010232  
Status: Unutilized  
Comment: 350 sq. ft.; one story wood frame; no utilities; structural deficiencies; used for training exercises (chemicals and explosives).

Bldg. 106  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010255  
Status: Unutilized  
Comment: 2360 sq. ft.; 2 story wood; possible asbestos; most recent use—jail.

Bldg. 123  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010256  
Status: Unutilized  
Comment: 1500 sq. ft.; 1 story wood; potential utilities.

Bldg. 125  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010257  
Status: Unutilized  
Comment: 16846 sq. ft.; 1 story wood frame; possible asbestos; no utilities.

Bldg. 383  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010258  
Status: Unutilized  
Comment: 1945 sq. ft.; 1 story masonry/glass frame; most recent use—bank; friable asbestos on ceiling tiles in two rooms.

Bldg. 1220  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010259  
Status: Unutilized  
Comment: 589 sq. ft.; 1 story concrete block; water pump house for swimming pool; potential utilities.

Bldg. 1221  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010260  
Status: Unutilized  
Comment: 2893 sq. ft.; 1 story concrete; bath house for swimming pool limited utilities; possible asbestos.

**Massachusetts**

5 Bldgs.  
Otis Air National Guard—Family Housing  
Cape Cod  
Co: Barnstable MA 02542-5000  
Landholding Agency: Air Force  
Property Number: 189010611-189010613,  
189010647, 189010648  
Status: Unutilized  
Comment: 8856 sq. ft. to 10423 sq. ft. each;  
wood/concrete frame; 6-unit family  
housing; lacks functional sewage disposal  
system; possible asbestos; needs rehab;  
potential utilities.

91 Bldgs.  
Otis Air National Guard—Family Housing  
Cape Cod  
Co: Barnstable MA 02542-5001  
Landholding Agency: Air Force  
Property Number: 189010614-189010631,  
189010649-189010721  
Status: Unutilized  
Comment: 5904 sq. ft. to 9216 sq. ft. each;  
wood/concrete frame; 4-unit family  
housing; lacks functional sewage disposal  
system; possible asbestos; needs rehab;  
potential utilities.

15 Bldgs.  
Otis Air National Guard—Family Housing  
Cape Cod  
Co: Barnstable MA 02542-5001  
Landholding Agency: Air Force  
Property Number: 189010632-189010639,  
189010640, 189010646  
Status: Unutilized  
Comment: 2952 sq. ft. to 3474 sq. ft. each;  
wood/concrete frame; 2-unit family  
housing; lacks functional sewage disposal  
system; possible asbestos; needs rehab;  
potential utilities.

**Michigan**

Bldg. 20  
Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010775  
Status: Excess  
Comment: 13404 sq. ft.; 1 floor; concrete  
block; potential utilities; possible asbestos;  
most recent use—warehouse/supply  
facility.

Bldg. 28  
Calumet Air Force Station  
Calumet Co: Keweenaw MI 49913-  
Landholding Agency: Air Force  
Property Number: 189010778  
Status: Excess  
Comment: 1000 sq. ft.; 1 floor; possible  
asbestos; potential utilities; most recent  
use—maintenance facility.

**Missouri**

Jefferson Barracks ANG Base  
Missouri National Guard  
1 Grant Road  
St. Louis Co: St. Louis MO 63125-4118  
Landholding Agency: Air Force  
Property Number: 189010081  
Status: Underutilized  
Comment: 20 acres; portion near flammable  
materials; portion on archaeological site;  
special fencing required.

**New Mexico**

Bldg. 13 1806 ABW/DE

Kirtland AFB  
Wyoming Avenue  
Landholding Agency: Air Force  
Property Number: 189010072  
Status: Unutilized  
Comment: 520 sq. ft., 1 story portable building,  
off-site use only.

**South Dakota**

54 Bldgs.—Renel Heights  
Ellsworth AFB Co: Pennington SD 57706-  
Location: Across from main gate turn off.  
Landholding Agency: Air Force  
Property Number: 189010343-189010355,  
189010386-189010426  
Status: Unutilized  
Comment: 852 sq. ft. to 1652 sq. ft. each; 1  
story concrete masonry block residences;  
secured area with alternate access;  
unstable foundation; utilities disconnected;  
possible asbestos.

124 Bldgs.—Skyway  
Ellsworth AFB Co: Pennington SD 57706-  
Location: Between gate turn off and school  
gate.  
Landholding Agency: Air Force  
Property Number: 189010356-189010384,  
189010760-189010774, 189030008-189030015,  
189040003-189040026, 189110033-189110080  
Status: Unutilized  
Comment: 481 sq. ft. to 1256 sq. ft. each; 1 and  
2 story wood frame residences; structurally  
deteriorated; possible asbestos; secured  
area with alternate access; potential  
utilities.

Bldgs. 1108, 1109, 1113, 1114  
Ellsworth Air Force Base  
Central Drive  
Ellsworth AFB Co: Pennington SD 57706-  
Landholding Agency: Air Force  
Property Number: 189010439-189010442  
Status: Unutilized  
Comment: 10303 sq. ft.; 2 story wood frame  
with basement; possible asbestos; secure  
facility with alternate access; potential  
utilities.

**Texas**

Bldg. 487  
Laughlin Air Force Base  
Val Verde Co. Co: Val Verde TX 78843-5000  
Location: Six miles on Highway 90 east of Del  
Rio, Texas.  
Landholding Agency: Air Force  
Property Number: 189010179  
Status: Underutilized  
Comment: 10500 sq. ft.; wood frame; needs  
rehab; seasonal use by scouts and CAP.

Facility 237—Carswell AFB  
301 Roaring Springs Road  
Fort Worth Co: Tarrant TX 76127-  
Landholding Agency: Air Force  
Property Number: 189120235  
Status: Unutilized  
Comment: 1285 sq. ft., wood shingles, one  
story, most recent use—residential, needs  
rehab.

**Land (by State)****California**

Norton Com. Facility Annex  
Norton AFB  
Sixth and Central Streets  
Highland Co: San Bernardino CA 92409-5045  
Landholding Agency: Air Force

Property Number: 189010194  
Status: Excess  
Comment: 30.3 acres; most recent use—  
recreational area; portion subject to  
easements.  
Camp Kohler Annex  
McClellan AFB  
Sacramento Co: Sacramento CA 95652-5000  
Landholding Agency: Air Force  
Property Number: 189010045  
Status: Unutilized  
Comment: 35.30 acres + .11 acres easement;  
30+ acres undeveloped; potential utilities;  
secured area; alternate access.

**Florida**

Eglin AFB  
S½, SW¼, Sect. 18, T2S R25W  
Mary Esther Co: Okaloosa FL 32569-  
Location: North Side of US Highway 98.  
Landholding Agency: Air Force  
Property Number: 189010133  
Status: Excess  
Comment: 59 acres, Parcel 3; Flat, cleared  
land; previous use—buffer safety zone;  
county has license to construct sewage  
treatment facility on land.

Eglin AFB  
Mossy Head Co: Walton FL 32533-  
Location: NW quadrant of Florida Highway  
285 and I-10. Bounded on the North by  
Louisville RR near Mossy Head, Florida.  
Landholding Agency: Air Force  
Property Number: 189010134  
Status: Excess  
Comment: 50 acres, Parcel 9; previous buffer  
safety zone; potential utilities.

Elgin AFB  
Mossy Head Co: Walton FL 32533-  
Location: NE quadrant of Florida Highway  
285, I-10 intersection. Bounded on the  
North by Louisville and Nashville RR near  
Mossy Head, Florida.

Landholding Agency: Air Force  
Property Number: 189010135  
Status: Excess  
Comment: 285 acres; Parcel 10; previous  
buffer zone; potential utilities.

Elgin AFB  
Mossy Head Co: Walton FL 32533-  
Location: Approximately 1 mile east of  
Florida Highway 285 and US Highway 90  
on north side.

Landholding Agency: Air Force  
Property Number: 189010136  
Status: Excess  
Comment: 47 acres; Parcel 11; previous buffer  
zone; potential utilities.

**Unsuitable Properties****Buildings (by State)****Alaska**

Bldgs. 203, 113  
Tin City Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-  
5000  
Landholding Agency: Air Force  
Property Number: 189010298-189010297  
Status: Unutilized  
Reason: Secured area, isolated area, not  
accessible by road, contamination  
Bldgs. 185, 150, 130

Sparrevohn Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010298-189010300  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldg. 306  
King Salmon Airport  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010301  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldg. 1401  
Galena Airport  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010302  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldgs. 11-230, 21-116, 34-616, 43-010, 63-320, 63-325  
Elmendorf Air Force Base  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010303-189010308  
Status: Unutilized  
Reason: Secured area, contamination  
Bldg. 103, 110, 112-115, 118, 1001, 1018, 1025, 1055  
Ft. Yukon Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010309-189010319  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldgs. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056  
Cape Lisburne Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010320-189010329  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldgs. 103-105, 110, 114, 202, 204-205, 1001, 1015  
Kotzebue Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010330-189010339  
Status: Unutilized  
Reason: Secured area, isolated area, not accessible by road, contamination  
Bldg. 50  
Cold Bay Air Force Station  
21 CSG/DEER

Elmendorf AFB Co: Anchorage AK 99506-5000  
Landholding Agency: Air Force  
Property Number: 189010433  
Status: Unutilized  
Reason: Other, isolated area, not accessible by road  
Comment: Isolated and remote, Arctic environment

#### Alabama

Bldgs. 913, 927, 935, 936  
Maxwell AFB  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189010002-189010005  
Status: Unutilized  
Reason: Secured area  
Bldg. 809, 861, 1011, 1022, 1042, 1052, 1060-1061  
Gunter AFB  
Montgomery Co: Montgomery AL 36114-  
Landholding Agency: Air Force  
Property Number: 189010011-189010013, 189010015-189010016, 189010019-189010020, 189010022  
Status: Underutilized  
Reason: Secured area  
Bldgs. 1435-1436, 1440-1441  
Maxwell Air Force Base  
Mimosa Road  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189030220-189030223  
Status: Unutilized  
Reason: Floodway, secured area  
Bldgs. 830, 421, 426  
Gunter Air Force Base  
Montgomery Co: Montgomery AL 36114-5000  
Landholding Agency: Air Force  
Property Number: 189040853-189040855  
Status: Underutilized  
Reason: Secured area  
Petrol OPS Bldg.  
Maxwell Air Force Base  
1101 Chanute Street  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189110165  
Status: Unutilized  
Reason: Secured area  
Law Center  
Maxwell Air Force Base  
519 10th Street  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189110166  
Status: Unutilized  
Reason: Secured area  
Bldg. 1011  
Maxwell Air Force Base  
Dannelly Street  
Montgomery Co: Montgomery AL 36112-5000  
Landholding Agency: Air Force  
Property Number: 189110167  
Status: Unutilized  
Reason: Secured area  
HQ Specified Bldg  
Maxwell AFB  
677 Third Street  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189120231  
Status: Unutilized  
Reason: Secured area

Base Personnel Office  
Maxwell AFB  
853 Second Street  
Montgomery Co: Montgomery AL 36112-  
Landholding Agency: Air Force  
Property Number: 189120232  
Status: Unutilized  
Reason: Secured area

#### Arizona

Dormitory Building 632  
Williams Air Force Base  
Corner of 4th and D Street  
Williams AFB Co: Maricopa AZ 85240-5000  
Landholding Agency: Air Force  
Property Number: 189040856  
Status: Unutilized  
Reason: Secured area

#### California

Bldg. 4052  
March AFB  
Ice House in West March  
Riverside Co: Riverside CA 92518-  
Landholding Agency: Air Force  
Property Number: 189010082  
Status: Unutilized  
Reason: Within airport runway clear zone  
Bldg. 392 60 ABG/DE  
Travis Air Force Base  
Hospital Drive  
Travis AFB Co: Solano CA 94535-5496  
Landholding Agency: Air Force  
Property Number: 189010187  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldg. 1182 60 ABG/DE  
Travis Air Force Base  
Perimeter Road  
Travis AFB Co: Solano CA 94535-5496  
Landholding Agency: Air Force  
Property Number: 189010188  
Status: Unutilized  
Reason: Within airport runway clear zone, secured area  
Bldg. 152, 159 60 ABG/DE  
Travis Air Force Base  
Broadway Street  
Travis AFB Co: Solano CA 94535-5496  
Landholding Agency: Air Force  
Property Number: 189010190-189010191  
Status: Unutilized  
Reason: Within 200 ft. of flammable or explosive material, secured area  
Bldg. 384 60 ABG/DE  
Travis Air Force Base  
Hospital Drive  
Travis AFB Co: Solano CA 94535-5496  
Landholding Agency: Air Force  
Property Number: 189010192  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldgs. 707, 502, 23 63 ABG/DE  
Norton Air Force Base  
Norton Co: San Bernardino CA 92409-5045  
Landholding Agency: Air Force  
Property Number: 189010193, 189010196-189010197  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldg. 575 63 ABG/DE

Norton Air Force Base  
Norton Co: San Bernardino CA 92409-5045  
Landholding Agency: Air Force  
Property Number: 189010195  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
Bldgs. 100-101, 116, 202  
Pint Arena Air Force Station  
Mendocino County, CA 95468-5000  
Landholding Agency: Air Force  
Property Numbers: 189010233-189010236  
Status: Unutilized  
Reason: Secured area  
Bldgs. 201-204  
Vandenberg Air Force Base  
Point Arguello  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.  
Landholding Agency: Air Force  
Property Numbers: 189010546-189010549  
Status: Unutilized  
Reason: Secured area  
Bldgs. 1001-1010, 1015, 1022-1024  
Vandenberg Air Force Base  
Off Tangair Road  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Landholding Agency: Air Force  
Property Numbers: 189010550-189010563  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldgs. 8008-8010  
Vandenberg Air Force Base  
Off California on Lompoc Avenue  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Landholding Agency: Air Force  
Property Number: 189010564-189010566  
Status: Unutilized  
Reason: Secured area  
Bldgs. 1100-1101, 1103-1107  
Vandenberg Air Force Base  
Off Terra Road  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Landholding Agency: Air Force  
Property Numbers: 189010567-189010574  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldgs. 13423-13424, 13511-13512  
Vandenberg Air Force Base  
K Street off Kansas  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Landholding Agency: Air Force  
Property Numbers: 1890105-189010578  
Status: Unutilized  
Reason: Secured area  
Bldgs. 1110, 1108  
Vandenberg Air Force Base  
Off Terra Road  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Landholding Agency: Air Force  
Property Numbers: 189010579-189010580  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material, secured area  
Bldg. 23102

Vandenberg Air Force Base  
Vandenberg AFB Co: Santa Barbara CA 93437-  
Location: Highway 1 and Highway 246; Coast Road, Pt. Sal Rd; Miguelito Cyn.  
Landholding Agency: Air Force  
Property Number: 189110082  
Status: Unutilized  
Reason: Secured area  
*Colorado*  
Bldg. 24  
Buckley Air Nat'l Guard Base  
Aurora Co: Arapahoe IO 80011-9599  
Location: Demolished 7 Dec. 90  
Landholding Agency: Air Force  
Property Number: 189010249  
Status: Unutilized  
Reason: Secured area  
Bldg. 291  
Lowry Air Force Base  
Denver Co: Denver CO 80230-5000  
Location: South of 6th Avenue and east of Rosemary Court  
Landholding Agency: Air Force  
Property Number: 189010250  
Status: Excess  
Reason: Secured area  
*Delaware*  
Bldg. 1310  
Dover Air Force Base  
436 ABC/DE  
Dover AFB Co: Kent DE 19902-5516  
Landholding Agency: Air Force  
Property Number: 189010727  
Status: Unutilized  
Reason: Secured area  
Bldg. 1900  
436 CSG Dover AFB  
Dover Co: Kent DE 19902-5516  
Landholding Agency: Air Force  
Property Number: 189120230  
Status: Unutilized  
Reason: Within airport runway clear zone, secured area  
*Florida*  
Bldg. 42  
Eglin Air Force Base  
Eglin AFB Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Number: 189110001  
Status: Unutilized  
Reason: Secured area  
Bldgs. 6058-6059  
Eglin Air Force Base  
AF Aux Field 6  
Eglin AFB Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Numbers: 189110002-189110003  
Status: Unutilized  
Reason: Secured area  
Bldg. 8200  
Eglin Air Force Base  
Site A-2, Okaloosa Island  
Eglin AFB Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Number: 189110004  
Status: Unutilized  
Reason: Floodway  
Bldgs. 8501, 8505-8507  
Eglin Air Force Base  
Site A-5  
Eglin AFB Co: Okaloosa FL 32542-5000

Landholding Agency: Air Force  
Property Numbers: 189110005-189110008  
Status: Unutilized  
Reason: Floodway, secured area  
Bldg. 8973  
Eglin Air Force Base  
Site D100-B (Clausen)  
Eglin AFB Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Number: 189110009  
Status: Unutilized  
Reason: Floodway, secured area  
Bldg. 9600  
Eglin Air Force Base  
Site B-71  
Eglin AFB Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Number: 189110010  
Status: Unutilized  
Reason: Secured area  
Bldg. 576  
Patrick Air Force Base  
6th Street and South Patrick Drive  
Cocoa Beach Co: Brevard FL 32925-  
Landholding Agency: Air Force  
Property Number: 189110160  
Status: Unutilized  
Reason: Floodway  
Bldg. 1635  
Patrick Air Force Base  
River Picnic Area/Skeet Range  
Cocoa Beach Co: Brevard FL 32925-  
Landholding Agency: Air Force  
Property Number: 189110161  
Status: Unutilized  
Reason: Secured area  
*Idaho*  
Bldgs. 1012, 923  
Mountain Home Air Force Base  
7th Avenue  
Elmore County, ID 83648-  
Landholding Agency: Air Force  
Property Numbers: 189030004-189030005  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
Bldg. 604  
Mountain Home Air Force Base  
Pine Street  
(See County) Co: Elmore ID 83648-  
Landholding Agency: Air Force  
Property Number: 189030006  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
Bldg. 229  
Mt. Home Air Force Base  
1st Avenue and A Street  
Mt. Home AFB Co: Elmore ID 83648-  
Landholding Agency: Air Force  
Property Number: 189040857  
Status: Unutilized  
Reason: With 2000 ft. of flammable or explosive material, within airport runway clear zone  
*Illinois*  
Bldg. 550  
Chanute Air Force Base  
Rantoul Co: Champaign IL 61868-  
Landholding Agency: Air Force  
Property Number: 189010227  
Status: Unutilized

Reason: Other environmental  
 Comment: Water treatment sewage building  
 Bldgs. 551-552  
 Chanute Air Force Base  
 Rantoul Co: Champaign IL 61868-  
 Landholding Agency: Air Force  
 Property Numbers: 189010228-189010229  
 Status: Unutilized  
 Reason: Other environmental  
 Comment: Waste treatment plant  
 Bldg. 558  
 Chanute Air Force Base  
 Rantoul Co: Champaign IL 61868-  
 Landholding Agency: Air Force  
 Property Number: 189010230  
 Status: Unutilized  
 Reason: Other environmental  
 Comment: Sewage treatment building with  
 pumps  
 Bldg. 964  
 Chanute Air Force Base  
 Rantoul Co: Champaign IL 61868-  
 Landholding Agency: Air Force  
 Property Number: 189010231  
 Status: Unutilized  
 Reason: Other environmental  
 Comment: Waste treatment pump station  
 Bldg. 3191  
 Scott Air Force Base  
 East Drive 375/ABC/DE  
 Scott AFB Co: St. Clair IL 62225-5001  
 Landholding Agency: Air Force  
 Property Number: 189010247  
 Status: Unutilized  
 Reason: Within airport runway clear zone,  
 secured area  
 Bldgs. 3670, 503, 351, 869  
 Scott Air Force Base  
 Scott AFB Co: St. Clair IL 62225-5001  
 Landholding Agency: Air Force  
 Property Numbers: 189010248, 189010725,  
 189110086-189110087  
 Status: Unutilized  
 Reasons: Secured area

*Indiana*

Bldgs. 520, 309, 301  
 Grissom Air Force Base  
 Grissom Co: Miami IN 46971  
 Landholding Agency: Air Force  
 Property Numbers: 189010183-189010184,  
 189010186  
 Status: Unutilized  
 Reason: Secured area  
 Bldgs. 219, 307  
 Grissom Air Force Base  
 Grissom Co: Miami IN 46971-5000  
 Landholding Agency: Air Force  
 Property Numbers: 189110084-189110085  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or  
 explosive material, secured area

*Massachusetts*

Bldgs. 1900, 1604, 1833  
 Westover Air Force Base  
 Chicopee Co: Hampden MA 01022-  
 Landholding Agency: Air Force  
 Property Numbers: 189010438, 189040001-  
 189040002  
 Status: Unutilized  
 Reason: Secured area

*Maryland*

Bldgs. 4-5

Brandywine Storage Annex  
 Andrews AFB Co: Prince Georges MD 20613-  
 Landholding Agency: Air Force  
 Property Numbers: 189010261, 189010264  
 Status: Unutilized  
 Reason: Secured area

*Maine*

Bldgs. 5200, 6200, 6100  
 Loring Air Force Base  
 Limestone Co: Aroostook ME 04750-  
 Landholding Agency: Air Force  
 Property Numbers: 189010541-189010543  
 Status: Unutilized  
 Reason: Secured area

*Michigan*

Bldg. 145  
 Port Austin AFS  
 Port Austin Township Co: Huron MI 48467-  
 8195  
 Location: Two miles south of Lake Huron on  
 the northern tip of the Saginaw Peninsula  
 Landholding Agency: Air Force  
 Property Number: 189010105  
 Status: Excess  
 Reason: Other  
 Comment: Extensive deterioration  
 Bldgs. 560, 5658, 580, 856, 1005, 1012, 1041,  
 1412, 1434, 1688, 1689, 5670  
 Selfridge Air National Guard Base  
 Selfridge Co: Macomb MI 48045-  
 Landholding Agency: Air Force  
 Property Numbers: 189010522-189010533  
 Status: Unutilized  
 Reason: Secured area

Bldg. 71  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010810  
 Status: Excess  
 Reason: Other  
 Comment: Sewage treatment and disposal  
 facility

Bldgs. 99, 100  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Numbers: 189010831-189010832  
 Status: Excess  
 Reason: Other  
 Comment: Water wells  
 Bldgs. 118, 120, 168  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Numbers: 189010875-189010876,  
 189010878  
 Status: Excess  
 Reason: Other  
 Comment: Gasoline stations

Bldg. 166  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010877  
 Status: Excess  
 Reason: Other  
 Comment: Pump lift station  
 Bldg. 69  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010889

Status: Excess  
 Reason: Other  
 Comment: Sewer pump facility  
 Bldg. 2  
 Calumet Air Force Station  
 Calumet Co: Keweenaw MI 49913-  
 Landholding Agency: Air Force  
 Property Number: 189010890  
 Status: Excess  
 Reason: Other  
 Comment: Water pump station

*Minnesota*

Bldg. 46  
 NAVAIRESSEN  
 6201 32nd Avenue South  
 Minneapolis Co: Hennepin MN 55450-  
 Landholding Agency: Air Force  
 Property Number: 189010085  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or  
 explosive material, secured area  
 Bldgs. 616, 622  
 Minnesota Air Nat'l Guard  
 HQ 133rd Tactical Airlift Wing (MAC)  
 Minneapolis Co: Hennepin MN 55111-  
 Landholding Agency: Air Force  
 Property Numbers: 189010087, 189010089  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or  
 explosive material

*Missouri*

Bldgs. 42, 45-47, 61  
 Jefferson Barracks ANG Base  
 1 Grant Road, Missouri National Guard  
 St. Louis Co: St. Louis MO 63125-  
 Landholding Agency: Air Force  
 Property Numbers: 189010726, 189010728-  
 189010731  
 Status: Unutilized  
 Reason: Secured area

*Montana*

Bldg. 140  
 Malmstrom AFB  
 Between Goddard Avenue & 2nd Street  
 Malmstrom Co: Cascade MT 59402-  
 Landholding Agency: Air Force  
 Property Number: 189010076  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or  
 explosive material, within airport runway  
 clear zone, secured area, other  
 environmental

Bldg. 280  
 Malmstrom AFB  
 Flightline & Avenue G  
 Malmstrom Co: Cascade MT 59402-  
 Landholding Agency: Air Force  
 Property Number: 189010077  
 Status: Underutilized  
 Reason: Within 2000 ft. of flammable or  
 explosive material, within airport runway  
 clear zone, secured area, other  
 environmental

Bldg. 621  
 Malmstrom AFB  
 1st Street & Avenue I  
 Malmstrom Co: Cascade MT 59402-  
 Landholding Agency: Air Force  
 Property Number: 189010078  
 Status: Unutilized  
 Reason: Other environmental, secured area  
 Comment: Friable asbestos

Bldgs. 1500, 1502  
Malmstrom AFB  
Perimeter Road  
Malmstrom Co: Cascade MT 59402-  
Landholding Agency: Air Force  
Property Numbers: 189010079-189010080  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, secured area, other  
environmental

Bldgs. 627, 677  
Malmstrom Air Force Base  
Great Falls Co: Cascade MT 59402-  
Landholding Agency: Air Force  
Property Numbers: 189010722-189010723  
Status: Unutilized  
Reason: Secured area, other environmental

Bldg. 1991  
Malmstrom Air Force Base  
Between Avenue G and H  
Malmstrom Co: Cascade MT 59405-  
Landholding Agency: Air Force  
Property Number: 189010057  
Status: Underutilized  
Reason: Secured area, other environmental

#### North Carolina

Bldg. 187  
Pope Air Force Base  
317 CSG/DE Reilly Road  
Pope AFB Co: Cumberland NC 28308-5045  
Landholding Agency: Air Force  
Property Number: 189010262  
Status: Unutilized  
Reason: Secured area  
Bldg. 4230—Youth Center  
Cannon Ave.  
Goldsboro Co: Wayne NC 27531-5005  
Landholding Agency: Air Force  
Property Number: 189120233  
Status: Underutilized  
Reason: Secured area

#### North Dakota

Bldg. 422  
Minot Air Force Base  
Minot Co: Ward ND 58705-  
Landholding Agency: Air Force  
Property Number: 189010724  
Status: Underutilized  
Reason: Secured area

#### New Mexico

Bldgs. 20330  
Kirtland Air Force Base  
1606 ABW/DEEVR  
Kirtland AFB Co: Bernalillo NM 87117-5496  
Landholding Agency: Air Force  
Property Number: 189110083  
Status: Unutilized  
Reason: Secured area

#### New York

Bldgs. 518, 524, 626 (Pin: RVKQ)  
Niagara Falls International Airport  
914th Tactical Airlift Group  
Niagara Falls Co: Niagara NY 14304-5000  
Landholding Agency: Air Force  
Property Numbers: 189010073-189010075  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, secured area

#### Ohio

Facility 30092, 30205

Wright-Patterson Air Force Base  
Greene County, OH 45433-5000  
Landholding Agency: Air Force  
Property Numbers: 189010286, 189010434  
Status: Unutilized  
Reason: Secured area  
910 TAG  
Base Sewage Treatment Plant  
Vienna Co: Trumbull OH 44473-5000  
Location: West of the 910 TAG Base on Ridge  
Road, Youngstown, Municipal Airport  
Landholding Agency: Air Force  
Property Number: 189110081  
Status: Excess  
Reason: Other  
Comment: Sewage treatment plant

#### Oklahoma

Bldg. 604  
Vance Air Force Base  
Enid Co: Garfield OK 73705-5000  
Landholding Agency: Air Force  
Property Number: 189010204  
Status: Unutilized  
Reason: Secured area, within 2000 ft. of  
flammable or explosive material

#### Pennsylvania

Bldgs. 329, 334  
911th Tactical Airlift Group (AFRES)  
Greater Pittsburg IAP  
Coraopolis Co: Allegheny PA 15101-  
Landholding Agency: Air Force  
Property Numbers: 189110088-189110089  
Status: Unutilized  
Reason: Secured area

#### Puerto Rico

Bldg. 10  
Punta Salinas Radar Site  
Toa Baja Co.: Toa Baja PR 00759-  
Landholding Agency: Air force  
Property Number: 189010544  
Status: Underutilized  
Reason: Secured area

#### South Dakota

176 Bldgs., Renel Heights  
Ellsworth Air Force Base  
Ellsworth AFB Co.: Pennington SD 57706-  
Location: Across from main gate turn off  
Landholding Agency: Air Force  
Property Numbers: 189010443-189010521,  
189010732-189010759, 189030016-189030032,  
189040027-189040055, 189040058,  
189110011-189110032  
Status: Unutilized  
Reason: Other  
Comment: Earth movement/shifting, cracked  
exterior and interior walls with separations  
several inches wide; earth shift severed  
sewer lines.

101 Bldgs., Skyway  
Ellsworth Air Force Base  
Ellsworth Co: Pennington SD 57706-  
Landholding Agency: Air Force  
Property Numbers: 189120066-189120166  
Status: Unutilized  
Reason: Other  
Comment: Extensive deterioration.  
63 Bldgs., Renel Heights  
Ellsworth Air Force Base  
Ellsworth Co: Pennington SD 57706-  
Landholding Agency: Air Force  
Property Numbers: 189120167-189120229  
Status: Unutilized

Reason: Other  
Comment: Extensive deterioration

#### Texas

Bldg. 400  
Laughlin Air Force Base  
Val Verde Co. Co: Val Verde TX 78843-5000  
Location: Six miles on highway 90 east of Del  
Rio, Texas  
Landholding Agency: Air Force  
Property Number: 189010173  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, within airport runway  
clear zone.

Bldg. 645  
Reese Air Force Base  
Lubbock Co.: Lubbock TX 79489-  
Location: West of Lubbock  
Landholding Agency: Air Force  
Property Number: 189010210  
Status: Excess  
Reason: Secured area  
173 Bldgs.  
Carswell Air Force Base  
Fort Worth Co: Tarrant TX 76114-  
Landholding Agency: Air Force  
Property Numbers: 189030043-189030053,  
189030055-189030142, 189030144-189030173,  
1890300175-1890300218  
Status: Unutilized  
Reason: Other  
Comment: Extensive deterioration

Utah  
22 Bldgs.  
Hill Air Force Base  
Davis County, UT 84056-  
Landholding Agency: Air force  
Property Numbers: 189010274-189010295  
Status: Unutilized  
Reason: Secured area

Bldgs. 788-790  
Hill Air Force Base  
Davis County, UT 84056-  
Landholding Agency: Air Force  
Property Numbers: 189040858-189040860  
Status: Unutilized  
Reason: Within airport runway clear zone,  
secured area

#### Washington

Bldgs. 640-643, 645-647  
Fairchild AFB  
Fairchild Co: Spokane WA 99011-  
Landholding Agency: Air Force  
Property Numbers: 189010139-189010145  
Status: Unutilized  
Reason: Secured area  
Bldgs. 1415, 1429, 1464-1466  
Fairchild AFB  
Fairchild Co: Spokane WA 99011-  
Landholding Agency: Air Force  
Property Numbers: 189010146-189010150  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, secured area  
Bldgs. 3503-3507, 3510, 3514, 3518, 3521  
Fairchild AFB  
Fairchild Co: Spokane WA 99011-  
Landholding Agency: Air Force  
Property Numbers: 189010151-189010159  
Status: Unutilized  
Reason: Secured area

*Wyoming*

Bldgs. 31, 34, 37, 284, 385, 803  
F.E. Warren Air Force Base  
Cheyenne Co: Laramie WY 82005-  
Landholding Agency: Air Force  
Property Numbers: 189010198-189010203  
Status: Unutilized  
Reason: Secured area

*Land (by State)**Alaska*

Campion Air Force Station  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-  
5000  
Landholding Agency: Air Force  
Property Number: 189010430  
Status: Unutilized  
Reason: Other, Isolated area, Not accessible  
by road  
Comment: Isolated and remote area, Arctic  
environment

Lake Louise Recreation  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-  
5000  
Landholding Agency: Air Force  
Property Number: 189010431  
Status: Unutilized  
Reason: Other, isolated area, not accessible  
by road  
Comment: Isolated and remote area, Arctic  
coast

Nikolski Radio Relay Site  
21 CSG/DEER  
Elmendorf AFB Co: Anchorage AK 99506-  
5000  
Landholding Agency: Air Force  
Property Number: 189010432  
Status: Unutilized  
Reason: Other, isolated area, not accessible  
by road  
Comment: Isolated and remote area, Arctic  
coast

*Florida*

Elgin AFB  
W ½ of SW ¼, Sect. 31, T1S, R27W  
Holley Co: Santa Rosa FL 32566-  
Location: 3 ½ miles NW of Holley, Florida on  
No. shore of East  
Landholding Agency: Air Force  
Property Number: 189010131  
Status: Excess  
Reason: Floodway

Elgin AFB  
W ½ of NW of Sect. 38, T1S, R27W  
Holley Co: Santa Rosa FL 32566-  
Landholding Agency: Air Force  
Property Number: 189010132  
Status: Excess  
Reason: Within airport runway clear zone

*Land*

MacDill Air Force Base  
6601 S. Manhattan Avenue  
Tampa Co: Hillsborough FL 33608-  
Landholding Agency: Air Force  
Property Number: 189030003  
Status: Excess  
Reason: Floodway

*Maryland*

Land  
Brandywine Storage Annex  
1776 ABW/DE Brandywine Road, Route 381

Andrews AFB Co: Prince Georges MD 20613-  
Landholding Agency: Air Force  
Property Number: 189010263  
Status: Unutilized  
Reason: Secured area

*Virginia*

Parcel 1 (Byrd Field)  
Richmond IAP  
5680 Beulah Road  
Richmond Co: Henrico VA 23150-  
Landholding Agency: Air Force  
Property Number: 189010435  
Status: Unutilized  
Reason: Floodway  
Parcel 3 (Byrd Field)  
Richmond IAP  
5680 Beulah Road  
Richmond Co: Henrico VA 23150-  
Landholding Agency: Air Force  
Property Number: 189010436  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material

Parcel 2 (Byrd Field)  
Richmond IAP  
5680 Beulah Road  
Richmond Co: Henrico VA 23150-  
Landholding Agency: Air Force  
Property Number: 189010437  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material secured area

ANG Site  
Camp Pendleton  
Virginia Air National Guard  
Virginia Beach Co: (See County) VA 23451-  
Landholding Agency: Air Force  
Property Number: 189010589  
Status: Unutilized  
Reason: Secured area

*Washington*

Fairchild AFB  
SE corner of base  
Fairchild AFB Co: Spokane WA 99011-  
Landholding Agency: Air Force  
Property Number: 189010137  
Status: Unutilized  
Reason: Secured area

Fairchild AFB  
Fairchild AFB Co: Spokane WA 99011-  
Location: NW corner of base  
Landholding Agency: Air Force  
Property Number: 189010138  
Status: Unutilized  
Reason: Secured area

**Summary of All Properties**

Total number of Properties = 1455  
Total Suitable = 659  
Suitable Buildings = 639  
Suitable Land = 20  
Total Unsuitable = 796  
Unsuitable Buildings = 783  
Unsuitable Land = 13  
Properties Resubmitted = 1455

[FR Doc. 91-21858 Filed 9-12-91; 8:45 am]

BILLING CODE 4210-29-M

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[CA-910-4212-17]

**Applicability of State and County Health, Building, Sanitation, and Fire Codes to Bureau of Land Management Administered Lands in the State of California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** To protect persons, property, public lands and resources by prohibiting violations of State and County health, building, electrical, fire, sanitation, and sanitation codes on Bureau administered lands in the State of California.

**SUMMARY:** Uniform building codes are established to provide the minimum requirements and standards for the protection of the public health, safety and welfare. Code requirements are established and defined in the latest edition of the Uniform Building Codes, Uniform Plumbing Code, Uniform Mechanical Code, the National Electrical Code, and State of California Public Resources Code 4291 (Fire Safety Law).

There are structures (portable, mobile and/or permanently affixed to the ground) currently in existence and/or being built or placed on Bureau administered lands in California in noncompliance with Uniform or National Codes.

These substandard structures constitute a hazard to the occupants of such structures, to public land users and to the protection of the public lands and resources.

**Rule**

This rule supplements the rules located in 43 CFR 8365.1 as authorized by 43 CFR 8365.1-6. On all public lands administered by the Bureau of Land Management in the State of California, no person shall maintain, construct, place, occupy or use any structure, tent, shed, cabin, hut, trailer, motorhome, or dwelling of any kind in violation of any State or County Health, Building, Sanitation and Fire Code. This rule will apply to any structure on public lands existing on or after the effective date of this rule and will be enforceable by appropriate Federal authorities including BLM officials with delegated law enforcement authority, as well as appropriate state and local authorities.

**SUPPLEMENTARY INFORMATION:**

Authority to create this supplementary rule is contained in 43 CFR 8365.1-6.

Any violations of the prohibitions of this supplemental rule shall be punished by a fine of not more than \$1,000 or imprisonment of not more than 12 months as noted in 43 CFR 8365.0-7.

**DATES:** This rule will be in effect October 15, 1991 and is permanent until canceled, amended or replaced.

**FOR FURTHER INFORMATION:** Contact Jake Brierley at (916) 978-4722 or at the BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825. The rule will be available at all BLM offices in the State of California, addresses and telephone numbers are available from the Public Affairs office, above address and (916) 978-4746.

Ed Hastey,

State Director.

[FR Doc. 91-22015 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-40-M

[AZ-020-01-4212-13; AZA-26169]

### Realty Action Exchange of Public Land Pinal County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange.

**SUMMARY:** The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands are being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Pinal County, Arizona

T. 8 S., R. 11 E.,

Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35;

T. 9 S., R. 11 E.,

Secs. 1, 5, 6, 7, 8, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35;

T. 10 S., R. 11 E.,

Secs. 4, 5, 6, 7, 9, 10, 11, 13, 14, 20, 21, 28, 29, 33, 34.

comprising approximately 37,380 acres.

Final determination on disposal will await completion of an environmental analysis. The proposed exchange is consistent with the Bureau's land use planning objectives. Lands being proposed for exchange will be conveyed from the United States will be subject to the following reservations, terms and conditions:

1. All Valid Existing Rights.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 4, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-22013 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-4212-13; CACA 27854]

### California Desert District, Realty Action, Exchange of Public and Private Lands in San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action CACA 27854, exchange of public and private lands.

**SUMMARY:** The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 5 N., R. 7 W.

Sec. 13, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 34, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

T. 6 N., R. 7 W.

Sec. 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;

Sec. 9, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

The selected public lands aggregate 117.50 acres.

In exchange for all or a portion of these lands, Anne E. Dahl in the capacity of executrix of the estate of Rex Monroe, has offered the following non-Federal lands in San Bernardino County:

San Bernardino Meridian, California

T. 7 N., R. 3 W.

Sec. 1, NE $\frac{1}{4}$ W $\frac{1}{2}$  lot 2 of NE $\frac{1}{4}$ , E $\frac{1}{2}$  lot 1 of NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

T. 8 N., R. 3 W.

Sec. 36, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Excepting therefrom all coal, oil, gas, and other material deposits as reserved to the State of California in patent recorded April 16, 1957 in Book 4207, Page 569, Official Records, County of San Bernardino.

The offered non-Federal lands aggregate 189.905 acres, more or less.

The purpose of this exchange is to acquire non-Federal lands within the Stoddard Valley Off-Highway Vehicle (OHV) Area, as a step in consolidating public lands into a more manageable unit. Acquisition of the offered parcels is specified in the draft management plan for the Stoddard Valley OHV Area as prescribed in the California Desert Conservation Area Plan, as amended.

Disposal of the isolated and fragmented public land parcels is consistent with the land tenure adjustment objectives of the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by completing the exchange.

The public lands to be conveyed will be subject to the following terms and conditions: A. Reservation to the United States: A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

There will be no mineral reservation to the United States. All minerals will be conveyed in the exchange patent(s). The mineral estate to be conveyed has no known value.

B. Third Party Rights: Public land to be conveyed will be subject to a right-of-way not to exceed 33 feet in width to be located along the north, south, east and west boundaries of said land for roadway and public utility purposes, as to each public land parcel patented within sections 13 and 34, T. 5 N., R. 7 W., SBM.

Lands to be conveyed to the United States will be subject to the following:

1. A reservation to the people for the absolute right to fish thereupon, as provided by section 25 of Article I of the Constitution of the State of California, recorded April 16 1957 in Book 4207.

Page 569, Official Records (affects parcels in section 36 only).

2. Easements for roadway and public utility purposes, recorded in Book 8614, Page 449, 459 and 461, Official Records.

3. An easement for road purposes, recorded in Book 1269, Page 271, Official Records.

On June 6, 1991 all of the selected public lands in this exchange were segregated from appropriation under the public land laws and the mining laws, but not exchange disposal and the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109; pp. 26137-26139). The segregative effect will terminate on June 5, 1993, upon issuance of a conveyance document(s), or upon publication in the *Federal Register* of a termination of the segregation, whichever occurs first.

The exchange will be on an equal value basis. Then exchange will be equalized by acreage adjustment, by cash payment from Anne E. Dahl in an amount not to exceed 25 percent of the value of the selected public lands to be patented, or by waiver of any excess value owed by the United States.

Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256-3591 and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507-0714.

For a period of forty-five (45) days from the date of publication of this notice in the *Federal Register* interested parties may submit comments to the District Manager, California Desert District at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 3, 1991.

Gerald E. Hillier,  
District Manager.

[FR Doc. 91-22012 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-40-M

## U.S. Fish and Wildlife Service

### Extension of Comment Period for Public Review of the Draft Environmental Impact Statement (DEIS) for the Proposed Stone Lakes National Wildlife Refuge

**AGENCY:** U.S. Department of the Interior, U.S. Fish and Wildlife Service.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice advises the public that the comment period for public

review and comment of the draft Environmental Impact Statement on the feasibility of establishing a National Wildlife Refuge on or near Stone Lakes in south Sacramento County, is extended to October 15, 1991.

**DATES:** Written comments should be received on October 15, 1991.

**ADDRESS WRITTEN COMMENTS TO:** Peter J. Jerome, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825-0509; Telephone: (916) 978-4420. Copies of the Executive Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies. Copies of the full DEIS are available for review at several locations within the Sacramento metropolitan area including most local public libraries.

Dated: September 6, 1991.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-22000 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-55-M

## INTERNATIONAL TRADE COMMISSION

(Investigations Nos. 731-TA-530 and 531 (Preliminary))

### High-Tenacity Rayon Filament Yarn from Germany and the Netherlands

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of preliminary antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-530 and 531 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and the Netherlands of high-tenacity rayon filament yarn,<sup>1</sup> provided for in

<sup>1</sup> For purposes of these investigations, high-tenacity rayon filament yarn is defined as multifilament single yarn of viscose rayon with twist of 5 turns or more per meter, having a denier of 1,100 or greater and a tenacity greater than 35 centinewtons per tex.

subheading 5403.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 21, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** September 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Woodings (202-205-3192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

## SUPPLEMENTARY INFORMATION:

### Background

These investigations are being instituted in response to a petition filed on September 6, 1991, by North American Rayon Corp., Elizabethton, TN.

### Participation in the Investigations and Public Service List

Persons (other than the petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven

(7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

#### Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 27, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202-205-3192) not later than September 25, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

#### Written submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 2, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.8, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 10, 1991.

By order of the Commission.

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 91-22127 Filed 9-12-91; 8:45 am]  
BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

### Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

September 10, 1991.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) MFA Incorporated.

(2) 615 Locust Street, Columbia, MO 65201.

(3) 615 Locust Street, Columbia, MO 65201.

(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201.

**Sidney L. Strickland, Jr.,**  
Secretary.

[FR Doc. 91-22075 Filed 9-12-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 395X)]

### CSX Transportation, Inc.— Abandonment Exemption—in Floyd County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 4-mile line of railroad between milepost 0.0, at Clear Creek Junction, and milepost 4.0, at Ligon, Floyd County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic

on the line can be rerouted over other lines; and (3) 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 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 October 13, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 23, 1991.<sup>3</sup> Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by October 3, 1991, 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: Karen Anne Koster, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

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

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an 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*, 5 I.C.C. 2d 377 (1989). 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.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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 September 18, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. 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: September 5, 1991.

By the Commission, David M. Koonschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-21976 Filed 9-12-91; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**BACKGROUND:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills, telephone (202) 523-5095. Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

#### Revision

Bureau of Labor Statistics.  
Occupational Safety and Health  
Statistics Prenotification Package  
1220-0029.

Recordkeeping.  
Businesses or other for profit, farms, non-profit institutions, small businesses or organizations.  
170,000 Recordkeepers; 30,833 hours, .18 hours per recordkeeper; 1 form.

A sample of employers normally exempt from keeping occupational injury/illness records will be notified that they were selected for inclusion in BLS Annual Survey of Occupational Injuries and Illnesses and must keep records for the upcoming calendar year.

Signed at Washington, DC this 10th day of September, 1991.

Kenneth A. Mills,  
Departmental Clearance Officer.

[FR Doc. 91-22093 Filed 9-12-91; 8:45 am]

BILLING CODE 4510-24-M

## Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

#### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

#### Volume I

Delaware, DE91-2 (Feb. 22, 1991). p. 95, pp. 98-100b.

New York:

NY91-7 (Feb. 22, 1991)..... p. 837, pp. 838-856.

NY91-11 (Feb. 22, 1991).... p. 865, p. 866.

#### Volume II

Indiana:

IN91-2 (Feb. 22, 1991)..... p. 259, pp. 261, 263, 265, pp. 275-278.

IN91-4 (Feb. 22, 1991)..... p. 291, pp. 300-304a.

Nebraska:

NE91-1 (Feb. 22, 1991)..... p. 745, pp. 746-747.

NE91-2 (Feb. 22, 1991)..... p. 749, pp. 750-751.

NE91-3 (Feb. 22, 1991)..... p. 753, pp. 754-756.

NE91-5 (Feb. 22, 1991)..... p. 759, p. 760.

NE91-9 (Feb. 22, 1991)..... p. 767, p. 768.

NE91-10 (Feb. 22, 1991).... p. 769, p. 770.

NE91-11 (Feb. 22, 1991)..... p. 771, pp. 772-773.

#### Volume III

Colorado, CO91-1 (Feb. 22, 1991). p. 151, pp. 152-158b.

Hawaii, HI91-1 (Feb. 22, 1991). p. 197, pp. 198-206b.

Montana, MT91-1 (Feb. 22, 1991). p. 231, pp. 233, 235-248.

#### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th Day of September 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-21861 Filed 9-12-91; 8:45 am]

BILLING CODE 4510-27-M

#### NATIONAL SCIENCE FOUNDATION

#### DOE/NSF Nuclear Science Advisory Committee; Renewal

The Assistant Director for Mathematical and Physical Sciences has certified that renewal of the DOE/NSF Nuclear Science Advisory Committee and transfer from the Department of Energy to the National Science Foundation is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this committee will expire on September 23, 1993.

*Name of Committee:* DOE/NSF Nuclear Science Advisory Committee (NSAC).

*Purpose:* NSAC provide advice on a continuing basis to both the Department of Energy and the National Science Foundation on priorities for basic nuclear science research in the United States.

*NSF Contact Person:* Dr. John W. Lightbody, Program Director, Intermediate Energy Nuclear Physics, National Science Foundation, room 341, 1800 G Street, NW., Washington, DC 20550 (202) 357-7992.

Dated: September 9, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-22024 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

#### Teacher Preparation and Enhancement; Program Announcement and Guide

Directorate for Education and Human Resources Program Announcement and Guide-NSF 91-105.

This Printed Material Contains the Essence of the Announcement of this Program, and is not a Full Copy of the Actual Brochure.

The Brochure is currently being printed. An Electronic Copy may be requested by sending a message to "stis@nsf" (Bitnet) or "stis@nsf.gov" (Internet).

Single copies may be ordered from: Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550.

#### Program Guidelines

##### Division of Teacher Preparation and Enhancement

Teachers are central to education. They serve as models, motivators, and mentors, the catalysts of the learning process. Education in mathematics science, and technology can be strengthened only if teachers, and those associated with teachers, are adequately prepared, highly motivated, and appropriately recognized and rewarded.

The most successful projects submitted to the Division of Teacher Preparation and Enhancement supports programs shall:

- Combine the best in subject matter content and instructional strategies
- Involve collaborations of teachers, administrators, mathematicians, and

scientists as every stage of project design and implementation

- Address components necessary to effect changes at the school level
- Address the needs of groups who are underrepresented in science and mathematics, namely women, minorities and disabled persons
- Specify an effective evaluation plan, which clearly states goals, objectives, and the milestones to measure their success
- Describe and implement effective follow-up activities which link collaborating entities on a continuing basis through the school years
- Effectively disseminate their successful components
- Address all levels of the educational systems and their articulation, particularly at elementary and middle schools
- Infuse technology into the teaching, learning, and doing of mathematics and science.

### Teacher Preparation Program

#### General Guidelines

The Teacher Preparation Program has as its primary obligation the development of innovative, successful, and productive programs for the preparation of science and mathematics teachers for grades kindergarten through twelve. Thus the program seeks to achieve the following goals:

- Generate exemplary teacher preparation degree granting programs that can be replicated widely throughout the nation
- Attract and retain talented individuals at all levels for science and mathematics teaching, with special emphasis on women, minorities and disabled persons
- Increase the number of individuals qualified to educate future teachers
- Produce and evaluate materials for the pre-service preparation of teachers
- Disseminate those models and practices which are most successful in producing effective and knowledgeable teachers.

#### Special Activities

The following sections list the activities that are specifically targeted for support by the Teacher Preparation Program. In most cases, the proposal will involve a combination of these activities. However, the originator of other concepts that could help in attaining program goals are encouraged to discuss ideas with an NSF Program Officer.

#### Teacher Preparation Degree Programs

Support will be available for the development of new or restructured

teacher preparation programs that go beyond routine curricular revisions and will serve as exemplars for other colleges and universities. Proposers should be aware of new directions and reform in the preparation of mathematics and science teachers, be cognizant of and build upon knowledge generated by previous NSF Teacher Preparation projects. Teachers prepared by these new programs should have a strong foundation in mathematics and science content; in the use of many and varied instructional strategies; in the use of advanced technologies; in understanding new forms of assessment and testing of students; and in the research base for the teaching and learning of mathematics and science.

Successful projects will address the following essential activities:

- Exemplary discipline courses, content-specific pedagogy and methods courses, and high quality field and professional experiences will form the foundation of the program. These components will be coordinated and integrated into an effective whole.
- Faculty from the mathematics, sciences, and education departments will cooperate in designing, developing, and overseeing the teacher preparation program.
- Linkages will be created among university faculty, school personnel, and others who impact teacher preparation.
- Attention will be given to the recruitment and retention of high quality teachers of mathematics and science, especially women, minorities and disabled persons.

Proposals may also include many of the following components:

- Preparation of mathematics and/or science specialists and resource persons at all levels.
- Strengthening the pedagogical knowledge and teaching skills of the university faculty who teach courses to prospective teachers, so that these courses model excellent teaching.
- Support of the professional development of new science and mathematics teachers during the first one to three years of teaching.
- Preparation and support of graduate students in mathematics and science education.
- Establishment of channels for university faculty and pre-college teachers to exchange ideas, to work in each others' environments, to explore research findings, and to implement the best practices of teaching and learning.
- Recruitment and preparation of mathematics and science teachers to serve in areas of special needs, such as inner city schools, rural schools,

disadvantaged communities, and multicultural settings.

- Research on the process of learning to teach science and mathematics effectively.
- Exploration of alternative means of certification such as post-baccalaureate programs for individuals with degrees in science, mathematics, or engineering, or programs for professional scientists, engineers, or mathematicians interested in making mid-career shifts into the teaching profession.
- Building of coalitions of educational institutions within a region or state to work toward wide scale reform in mathematics and science teacher preparation.
- Establishment of policy-making structures within the university to engage faculty from the sciences, mathematics and education departments to oversee teacher preparation activities.
- Establishment of teacher preparation centers which will develop and implement programs serving as exemplars for other colleges and universities.

#### Materials for Teacher Preparation

These projects will develop new materials or update existing material designed specifically for teacher preparation activities.

The intent and focus of projects to develop materials for teacher preparation should be on improving the subject matter competence and pedagogical expertise of students preparing to be teachers of mathematics and science. Of particular interest are materials which:

- Bridge content and pedagogy in mathematics and science
- Integrate mathematics and/or science with each other and other subject areas
- Model the use of hands-on experiences, inquiry learning, and problem solving activities
- Are built upon current research knowledge in teaching and learning mathematics and science and reflect careful evaluation and research during development
- Promote effective teaching strategies for improving the success of all students, with special concern for women, minorities and disabled persons who are underrepresented in mathematics and science
- Utilize the power of technologies in preparing teachers
- Educate preservice teachers in assessment and evaluation techniques appropriate to and aligned with new

goals in school mathematics and science education

- Show the relationships between school mathematics and science and the advanced science and mathematics studied at the university.

#### Mathematics and Science Educators

A long-range concern of NSF is the need to prepare the mathematics and science education leaders of the future, and proposals are encouraged which address this need. These projects should involve graduate-level programs which will prepare mathematics or science educators for university or school related careers.

Proposals must describe how the project will prepare future leaders who:

- Are strong in their knowledge of mathematics, science and technology
- Understand the pedagogy of their disciplines, including how students of different age levels learn mathematics and science
- Will be engaged in research on an ongoing basis as a part of better understanding teaching and learning
- Have had experiences that encourage these leaders to see themselves as scientists and mathematicians who can and will continue to study their discipline and its uses and applications in the world in which we live
- Can encourage the increased participation of women, minorities and disabled persons in science and mathematics
- Can assist teachers and others in improving mathematics and science teaching and learning in schools, colleges, and universities.

Support may be requested for:

- Development of innovative programs which build on a strong base already in place and which reflect current directions in mathematics and science education reform
- Development of graduate courses and programs for preparing mathematics and science education leaders
- Scholarships and fellowships for graduate students selected for leadership in mathematics and science education
- Post-doctoral and visiting faculty positions in mathematics and science education.

#### Conferences

Support is available for conferences and workshops that address the broad principles of teacher preparation, that assist in disseminating the results of teacher preparation projects that have already been carried out, and that may assist in determining the needs and

future directions of teacher preparation programs.

Requests for such conferences should be made at least a year in advance of the proposed conference date. Proceedings for such conferences are often of value to others. Consequently, money may be requested for the publication of proceedings.

A proposal for a conference should include:

- A statement of the need, the intended outcomes, and the expected national impact of the conference
- A description of the conference program and appropriate bibliographic references
- Names and qualifications of key personnel involved in organizing the conference
- An approximate number of participants and their description
- Plans for involving women, minorities and disabled persons
- Information about the location and probable date(s) of the meeting and the method of announcement or invitation.

Grants will usually not exceed \$75,000. Support from other agencies or contributors should be identified. Indirect costs rates are subject to negotiation. Budgets for conferences may include participant support for transportation, subsistence and other conference-related costs.

#### Planning Grants

Grants are available to support the development of high quality proposals for the teacher preparation activities.

Planning grants are to serve three purposes:

- To encourage proposal development from universities that are attempting to modify their total education program
- To encourage proposal development from those colleges and universities that have been unsuccessful in receiving NSF grants
- To support groups of universities or other educational institutions or agencies which are attempting to coordinate large scale, complex, systemic reforms of teacher preparation

These proposals should:

- Explain the need for the planning grant and clearly identify the critical elements of the planning activity
- Identify planning activities requiring support and develop an associated budget
- Result in a restructuring of teacher preparation activities either through local efforts or through a proposal being submitted to the Teacher Preparation Program

Grants will not exceed \$50,000. Participant support and indirect costs

are excluded as allowable costs on planning grants.

#### Teacher Enhancement Program

##### General Guidelines

This program seeks to improve, broaden, and deepen the mathematical, scientific, pedagogical, and technological knowledge of teachers and others associated with education and to enhance their opportunities to teach all students effectively.

Teacher Enhancement proposals should include several or all of the following general program objectives:

- Provide new and additional education in both content and instructional strategies
- Produce materials for the continuing professional development of teachers, and in-service workshops, thereby, accelerating the rate of change
- Involve participants in educational research and development activities, so as to encourage and connect the application of research findings to the improvement of classroom instruction, to review and try new instructional materials, to accelerate the utilization of improved materials
- Engage the intellectual capital of business and industry
- Prepare well-qualified teachers to serve as mathematics and science specialists at the school, district, and state level
- Ensure that minority, female and disabled students have access to high quality mathematics and science programs
- Conduct in-service activities using the same instructional strategies that the teachers will apply to the education of their students.

##### Special Activities

Most of the projects submitted to the Teacher Enhancement Program will fall within one of the activities listed below and should be so identified. This is not to preclude combinations of the activities or activities not described. Although the Foundation encourages the development of projects which are outside of these frameworks, it is advisable that proposers check with the program staff prior to the submission of proposals which differ, so that they will be properly reviewed. This will ensure that they are eligible within the broad guidelines of the program.

The Foundation is committed to making major and significant changes within school districts in the teaching and learning of mathematics and science and will devote major resources

to the type of projects identified below as Leadership Institutes.

It is essential that all segments of the community dedicate their creative abilities to improving the way mathematics and science are taught to our students.

#### Leadership Institutes

At the state, regional or local level, these Leadership Institutes will build coalitions of teachers, administrators, mathematicians, scientists, mathematics and science educators, leaders of museums and science centers representatives of industry and business, community and religious leaders, and parents who are will informed about the status of mathematics, science, and technology. These partners must be committed to cooperate in instituting changes of such magnitude that a difference in the educational system will be made.

These projects are based on the premise that the education of leader/master teachers by university, college, or museum faculty will be followed by a responsibility to teach their peers. The assumption is that these institutes will be of adequate length, at least 4-6 weeks for each of two years, with the full follow-up support of the project faculty.

The Leadership activities must be preceded and accompanied by the commitment of states and school districts to create a rich and meaningful mathematics and science in-service activity for all of its teachers. These activities will be implemented with the appropriate support, time and energy needed to reach the mathematics and science goals established for the schools.

In addition to the general program objectives, the Institutes will include descriptions of plans:

- To identify and educate a large cadre of Leadership Teachers and/or Leadership Teams (university and college faculty, museum personnel, private sector representatives, teachers, administrators, parents) to become expert in improving the teaching of mathematics and science in the schools
- To involve teachers and the other partners in all aspects of the planning and implementation necessary to determine the goals, objectives and structure for programs in science and mathematics
- To assist schools in the design of the mathematics and science curriculum necessary to achieve the delivery of the highest quality mathematics and science
- To assist schools in improving the competency of teachers by presenting, in depth, the mathematics and science

necessary to deepen teachers' understanding and to achieve the goals established for the students

- To work with the teachers to develop the widest repertoire of instructional strategies necessary to make mathematics and science interesting and relevant to the students e.g., the preparation of demonstration lessons, workshops, and materials; videotaping or rehearsing these before participants and project staff; role modeling and discussing effective leadership and peer coaching
- To encourage communities to provide ongoing support through appropriate materials, adequate facilities, and the support of the administrators, supervisors, guidance personnel, paraprofessionals, school boards, families, and business and industry
- To develop institutes concerned with mathematics and science on a system-wide basis rather than on the presentations of limited and highly specialized mathematics and science institutes of limited scope
- To include all supporting elements to insure implementation of long-range change, including release time supported by the schools as well as commitment for classroom materials for the implementation of change
- Encourage the use of local funds to support ongoing, sustained in-service activities for the colleague teachers in the schools (these colleague teachers must be given a meaningful experience, e.g. the equivalent of 30-40 contact hours under the tutelage of the leader/master teachers)
- Encourage the participation of minorities, women and disabled persons in all aspects of the project.

#### Teacher Institutes

These institutes will select participants with demonstrated needs and expressed commitment to pursue intensive study of subject matter and pedagogical content. These institutes will select participants regionally or nation-wide for discipline-focused academic year and/or multiple summer institute activities leading to advanced degrees, to qualifications for teaching a new discipline or to utilize new approaches and new content in their current discipline.

Proposals for this activity will:

- Develop institutes concerned with limited and more specialized mathematics and/or science
- Prepare those well-prepared teachers who elect to participate in these projects to assume mentoring roles with their less well-prepared peers

- Select teachers from a national, regional, state, or local level in sufficiently large numbers to effect change

- Recruit and encourage the participation of minorities, women and disabled persons

- Focus on content that is over and above that which is normally taught in a traditional curriculum

- Allow participants to work toward advanced degrees in mathematics or science. These Master's programs should be substantially different from the programs that may exist in the institution.

#### Mathematics and Science Educators

Teachers are the essential link between the curriculum and the student. In a similar way, scientists, mathematicians, science and mathematics educators and supervisors at the state and local level can provide essential links among content, research in teaching and learning, curriculum, and the teacher. The latest advances in content knowledge as well as research on teaching and learning must be translated into fundamental classroom practices and the curricula of tomorrow. Teachers must be assured that their educators have a comprehensive background both in science and mathematics content and in the current research in teaching and learning.

These proposals will:

- Select participants with demonstrated needs, expressed commitment to pursue intensive study of subject matter content, research in teaching and learning, and effective teaching practice (Significant prior involvement in teacher education, or plans for future involvement, should be part of the selection criteria.)
- Recruit and encourage the participation of women, minorities & disabled persons
- Engage these professionals in studying content, pedagogical practice, and/or research on teaching and learning for a sufficiently long period to ensure attainment of the stated goals
- Facilitate professional partnerships by encouraging cooperation among College of Arts and Science faculty, College of Education faculty, school system and state personnel and teachers.

#### Planning Grants

Grants in this category will be used to support the development of high quality proposals for Teacher Enhancement Inservice activities. Planning grants will be awarded to groups which have not been adequately represented in science

or mathematics education activities or which are attempting to coordinate the activities of large and complicated systems, develop large scale leadership activities and/or have been unsuccessful in previous submissions. Eligible institutions include, but are not limited to, historically minority institutions, state departments of education and school districts, in particular those which have not had strong science and mathematics programs and/or those which do not have many graduates choosing careers in science, mathematics or technology.

These proposals will:

- Explain the need for a planning grant and clearly identify the critical elements of the planning activity
- Identify planning activities requiring support and develop a detailed budget
- Lead to a proposal that will be submitted to the Teacher Enhancement Program within two years of the awarding of the planning grant
- Involve representatives from all groups that might ultimately collaborate on the proposal

Grants will usually not exceed \$50,000. Participant support and indirect cost are excluded as allowable costs in planning grants.

#### Professional Development Materials

Projects in this category will develop new materials or update existing materials designed specifically for teacher inservice activities. Projects that develop instructional materials for students or for teachers' use with students should be addressed to the Division for Materials Development, Research, and Informal Science Education, rather than the Teacher Enhancement Program.

These proposals will create or revise materials which improve subject matter competence and pedagogical expertise of teachers of mathematics and science. The materials will:

- Promote deeper scientific and mathematical understanding
- Emphasize connections between and within science and mathematics
- Model the use of hands-on experiences, inquiry learning, and problem-solving activities
- Reflect current research knowledge in teaching and learning and precollege curriculum materials
- Promote effective teaching strategies for improving the success of students from groups underrepresented in mathematics and science, namely, women, minorities and disabled persons
- Build on effective teacher preparation materials
- Employ a variety of instructional media

- Assist teachers in becoming researchers in their own classrooms

#### Conferences

Conference grants will bring experienced professionals together to discuss recent research and practices concerning teacher enhancement and to introduce others to these ideas and practices. Proceedings of such conferences are of value to the participants and the field.

Request for support of a conference should include:

- The formation of coalitions of individuals and institutions prepared to change the educational system in selected areas
- A statement of the need, the intended outcomes, and the expected national impact of the conference
- A list of the topics, a description of the program, and appropriate references
- Names and qualifications of key personnel involved in organizing the conference
- A description of the intended participants
- Information on the location and probable date(s) of the meeting and the method of announcement or invitation

Grants will usually not exceed \$75,000. Support from the other agencies or other contributors should be identified. The budget may include participant support for transportation, subsistence, production of proceedings and other conference-related costs.

#### Dissemination

These grants will facilitate the institutionalization of very successful Teacher Enhancement projects, their materials and/or procedures. Grants in this category will disseminate and help implement (1) effective inservice models for teacher enhancement and/or (2) materials developed for teacher enhancement.

##### (1) Dissemination of Model Inservice Projects

Effective proposals will:

- Provide evaluation data about the model project being disseminated, particularly its impact on the classroom and on teacher development
- Discuss how the model, its activities, procedures, and philosophical constructs are transportable, are likely to meet the needs of new target audiences at new sites, and what refinements, extensions, and changes are being made
- Build upon projects which have institutionalized the changes defined by the model projects
- Describe the collaborative procedures which will facilitate dissemination

- Describe the nature of the developmental work at the new site

Travel by the Principal Investigator of the "model" project to new sites, or the participation of potential new Principal Investigators at the site of the original project are both acceptable means of dissemination. Prospective PIs should be aware of the distinction between this type of dissemination and the type achieved through publication.

##### (2) Dissemination of Teacher Enhancement Professional Development Materials

Proposals submitted in this activity will:

- Submit the results of field testing and evaluation of the materials which will indicate that these materials are of sufficiently high quality to be of national use
- Submit the materials for review
- Show a significant amount of cost-sharing for publication
- Describe the means of dissemination

#### Science and Mathematics Education Networks

##### General Guidelines

The Science and Mathematics Education Networks Program has as its primary function the support of groups organized at state or national level to share information, resources, and/or talent in service of a general or specific educational objective.

Objectives of this program are:

- The fostering of new kinds of collaborations to improve science and mathematics education
- The effective dissemination of instructional materials, assessment information, and research findings
- The dissemination of exemplary models of pre-service and in-service activities
- The support of several reform initiatives designed to produce basic change in the system of education
- The setting of new and/or improved directions in mathematics, science, and technology education
- The building of consensus concerning the establishment of standards for instruction and curriculum in mathematics, science, and technology
- The improvement of education through major systemic changes in large school systems, such as those of major cities or organized metropolitan districts

##### Special Activities

Most of the projects submitted to the Science and Mathematics Network Program will fall within one of the activities listed below and should be so

identified. This is not to preclude combinations of these activities or other activities not described.

The Foundation also encourages the development of projects which are outside of these frameworks. It is advisable that proposers check with the program staff prior to the submission of such proposals, so that they will be properly reviewed.

Proposals which have a *primary* emphasis in one of the other EHR programs should submit to that program even though networking is one of the elements. Proposals whose primary emphasis is on networking should be submitted to the Network Program, although they will also be reviewed by any other appropriate program. There is a viable in-house process for handling proposals which clearly cross our program boundaries.

#### Major Reform Initiatives

These are large projects where the networking activities include consensus building, coordination and collaboration, and the exchange of ideas related to the implementation of national education reform movements. They are designed to produce basic changes in the system of education by addressing such fundamental concerns as the curriculum, the calendar, assessments of performance and achievement, organizational structure, and teacher preparation and development.

Effective Major Reform Initiatives projects will:

- Involve teachers at every stage of project design and implementation.
- Include participants from every group which is influenced by the reform movement, including disabled persons, minorities and women.
- Clearly state goals and objectives in measurable terms.
- Address the needs of groups which are underrepresented in science and mathematics.
- Specify an effective evaluation plan which includes assessment of student progress.
- Include a plan for continuation of the initiative after NSF funding expires.
- Include a timetable for project activities.

#### Leadership Networks

These projects focus on the networking activities among leaders within the various groups which can bring about significant changes in science and mathematics education. Leadership networks normally target relatively narrow areas of educational change and often include workshops which utilize the "training of trainers"

model to effectively broaden the scope of the network.

Effective Leadership Networks projects will:

- Clearly define the goals and objectives of the network in measurable terms.
- Identify the participants and their leadership qualifications, or list criteria by which participants will be selected.
- Utilize existing network structures where possible, especially when electronic networking is planned.
- Include some element of leadership training for the participants which focuses on the use of leadership to accomplish the goals of the network.
- Include participants from groups underrepresented in science and mathematics, namely, minorities, disabled persons and women.
- Include a plan for the continuation of the network following the NSF funding period.

#### Dissemination Networks

These projects use networking activities to improve the dissemination of exemplary models, instructional materials, assessment information, and research findings—especially the output of the successful projects supported by NSF. Such networks must be large in scope in order to ensure dissemination to a national audience, the "training of trainers" model may be very useful for this purpose.

Effective Dissemination Networks proposals will:

- Provide evaluation data about the model project being disseminated, particularly its impact on the classroom.
- Discuss how the model, its activities, procedures, and philosophical constructs are transportable, are likely to meet the needs of new target audiences at new sites, and what refinements, extensions, and changes are being made.
- Build upon projects which have institutionalized the changes defined by the model projects.
- Describe the collaborative procedures which will facilitate dissemination.
- Describe the nature of the developmental work at the new site.

#### Targeted Networks

Science and mathematics education networks which focus on neither leadership nor dissemination exemplify Targeted Networks projects provided they lead to significant changes in the educational process. These projects target specific groups within the education family or specific topics within the educational process and utilize networking techniques to bring

about changes. For example, elementary science teachers could be a target group; elementary science a target topic.

Effective Targeted Networks projects will:

- Define the target group or topic clearly in terms of the goals and objectives of the project.
- Include a significant number of representatives from the target group or topic as participants in the network.
- Include participants from groups underrepresented in science and mathematics, namely, women, minorities and disabled persons.
- Include a plan for the continuation of the network following the NSF funding period.

#### Conferences

Conference grants are intended to enable the beginning of new networks or to provide continuing activities or established networks. A major difference between conference proposals under this program and other programs is that Networks conferences must include post-conference activities which enhance the goals of the conference and the network.

Request for support of a Networks conference should include:

- The formation of coalitions of individuals and institutions prepared to change the educational system in selected areas.
- A statement of the need, the intended outcomes, and the expected national impact of the conference.
- A list of topics, a description of the program, and appropriate references.
- Names and qualifications of key personnel, involved in organizing the conference.
- A description of the intended participants.
- Information on the location and probable date(s) of the meeting and method of announcement or invitation.
- Details of the post-conference networking activities.

Grants will usually not exceed \$75,000. Support from other agencies or other contributors should be identified. The budget may include participant support for transportation, subsistence and other conference-related costs.

#### Proposal Preparation

##### Introduction

This announcement provides the basic information needed to plan and develop a formal proposal. Proposers may wish to initiate discussions with the program staff before preparing a proposal. Preliminary proposals are encouraged but not required and may be submitted

at least 4–5 months prior to the target date to ensure a timely response (See appendix for a check list as to what to include).

Since hands-on, laboratory-based, experiential programs are strongly encouraged, it is essential that proposals provide evidence of knowledge of safety issues and the proper handling and disposal of materials.

#### *Supplementary Material*

Proposers should consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 90–77), for additional guidance. GRESE is available from the Forms and Publication Unit, National Science Foundation 1800 G Street, NW., Washington, DC 20550. Proposers should use the forms contained in GRESE, unless otherwise specified. Copies may be requested via voice mail: phone 202/357–7861.

More comprehensive information is contained in the NSF Grant Policy Manual, (NSF 88–47) available from the Superintendent of Documents, Government Printing Division, Washington, DC 20402.

#### **Proposal Submission**

##### *Who May Submit*

Organizations with a scientific or educational mission are eligible to submit proposals. Among these are: Colleges and universities; school systems, professional societies; science museums and zoological parks; aquaria and field stations; research laboratories; private laboratories; private foundations; private industry; and other public and private organizations, whether for profit. Proposers are strongly encouraged to develop consortia of these various institutions.

NSF does not normally support projects submitted by other Federal agencies or Federally Funded Research and Development Centers. Preliminary inquiry should be made to the program before a formal proposal is submitted.

Fields which are eligible for funding through NSF research directorates are also eligible for funding under this program. See appendix 4 for listing of disciplines.

##### *When to Submit*

The Teacher Preparation and Enhancement Programs have established two target Dates for the submission of proposals. These two target dates allow for review by our panels, which meet twice a year. (Please note, this is a change in the Target Dates for the Teacher Preparation Program.)

The following two Target Dates have been established for Teacher Enhancement and Teacher Preparation Programs:

- August 1: For projects which are planned to begin during the following summer. Formal proposals sent by regular mail and postmarked prior to July 24 will be accepted and considered regardless of arrival date. Proposals sent by an expedited delivery service, including that of the U.S. Postal Service, must be delivered to the NSF by the close of business on August 1.

- February 1: For projects which are planned to begin during the following academic year, providing they do not require much lead time. (A January start time is more realistic.) Submission of summer programs at this time will allow greater opportunity for planning after the announcement of the award. Formal proposals sent by regular mail and postmarked prior to January 24 will be accepted and considered regardless of arrival date. Proposals sent by an expedited delivery service, including that of the U.S. Postal Service, must be delivered to the NSF by the close of business on February 1.

If any of the dates fall on a weekend, the preceding Friday will be considered the appropriate date.

Applicants should allow at least six months for review and processing. Proposals received after one of the target dates will be reviewed during the next cycle. In such cases, more than six months may elapse between submission and decision.

Proposals for the Science and Mathematics Networks Program may be submitted at any time.

##### *What to Submit*

To facilitate processing, proposals should be printed on one side of the page, and may be stapled in the upper left-hand corner, but otherwise unbound, with pages numbered at the bottom and a 1-inch margin at the top.

Review of proposals is facilitated when the contents are assembled in the proper sequence. The Appendix shows the proper sequence for assembling the parts of the proposal.

The following are required:

- Fifteen legible copies of the complete proposals;
- One copy of NSF Form 1225 attached to the signature copy of proposal only;
- Three sets of extra forms, each stapled into a unit and containing:
  - One copy of the Cover Sheet, one copy of the Data Sheet, one copy of the Budget, and one copy of the Project Summary Form.

Organizations applying for the first time, or which have not received an NSF award within the preceding two years, should refer to the NSF Grant Policy Manual, section 340, for instructions on specific information that may be requested by NSF.

##### *Where to Submit*

The required materials should be sent to:

Proposal Processing Unit—room 223, NSF/Publication/Announcement/Solicitation/ No. NSF 91–105, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

For those projects requiring that specific materials be sent to Program Officers, send a copy of the material(s) to:

Proposal Material, Teacher Enhancement or Preparation Program, room 635B, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

##### **Proposal Review**

The Teacher Preparation and Enhancement Division instructs its reviewers to review proposals on the basis of the four NSF-wide criteria listed below (see pages 8–9 of the GRESE manual for a fuller description of these criteria as they apply to research proposals) and the education-specific additional comments listed below them. Although these criteria have been developed to aid the reviewers, they should also be of assistance to those preparing proposals.

1. *Research performance competence*—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, and the adequacy of the institutional resources available.

- The designated personnel such as mathematicians, scientists, engineers, mathematics and science educators, current teachers, and administrators of state and local education agencies, are adequate in number and experience, and not overly committed elsewhere.

- The project establishes partnerships based on mutual interest and purpose with all partners sharing not only in financing, but in the planning, development, implementation, and follow-up activities growing out of the collaboration.

- The contributing partners are involved in formulating and implementing plans for the continuation of the proposal's goals and objectives beyond the scope of the NSF funding.

- The project is appropriate and cost-effective relative to its objective, its participants and anticipated results.

**2. Intrinsic merit of the research—**

This criterion is used to assess the likelihood that the research will lead to new discoveries or fundamental advances within its field of science or engineering, or have substantial impact on progress in that field or in other scientific and engineering fields.

- The program advocates active rather than passive learning, through hands-on, experimental and experiential approaches. The appropriate learning environment for the students must be modeled in the instruction of the teachers in the project.

- The project supports and implements new and/or proven curricular programs.

- The project promotes an interchange of ideas, methods, and experiences among teachers of all levels that will continue to function, independent of NSF funds.

**3. Utility or relevance of the research—**

This criterion is used to assess the likelihood that the research can contribute to the achievement of a goal that is extrinsic or in addition to that of the research field itself, and thereby serve as the basis for new or improved technology or assist in the solution of societal problems.

- The proposal emphasizes a solid foundation in mathematics or science content, appropriate for teachers at the grade levels for which they are being prepared. The appropriate content should be determined by the various published state and national standards. The project should enhance the ability of teachers to facilitate the development of problem-solving skills in their students.

**4. Effect of the research on the infrastructure of science and engineering—**

This criterion relates to the potential of the proposed research to contribute to better understanding or improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering research, education and manpower base.

- The proposal integrates research on teaching and learning, educational technology, and appropriate instructional strategies and methodologies. Proposers must demonstrate an awareness of current mathematics and science education research and the relationship with their project.

- The project develops the means of increasing the participation of underrepresented groups such as women and minorities in mathematics and science.

- The project strongly reflects the science and mathematics education needs of the Nation, have clearly

formulated objectives correlated to these needs as they apply to the participants.

- The project has unique aspects with the potential for transportability and replication.

- A mechanism for disseminating the results of the project is in place.

- An evaluation plan for studying the impact upon teachers and students in the classroom is described and assessed.

Proposals will be reviewed by practicing mathematicians and/or scientists, mathematics and/or science educators, precollege classroom teachers and administrators, and others having knowledge and expertise in the field(s) represented in the proposal.

**Grant Reports****Annual Progress Report**

All multi-year grants require the Principal Investigator to submit an annual report to the NSF Program Officer. The first report should be submitted no later than 90 days after the anniversary of the effective date of the grant, with succeeding reports annually thereafter, except in the final year.

The items listed below are examples of information that should be included in the Annual Progress Report:

- A summary of overall progress, including a comparison of actual accomplishment with the proposed goals of the project;

- An indication of any current problems or favorable or unusual developments;

- A list of the participants with school affiliations and the subject and grade level taught;

- An updated current data sheet (see Appendix 2);

- A summary of the work to be performed during the succeeding budget period, including any modifications made to the original plan, resulting from ongoing formative evaluation;

- Any information specified in the term and conditions of the grant.

**Final Report**

Within 90 days following the expiration of the grant, the Principal Investigator is required to submit a Final Project Report to the NSF Program Officer. NSF will provide the Principal Investigator with a computer-generated Form 98A (and submission instructions), approximately 30 days in advance of the grant's expiration date. Clear documentation of the functioning of the project activities should be presented in the Final Project Report. In some cases, statistical analysis may be appropriate;

in others, observations and anecdotes may be more meaningful.

The documentation required for submission of the Final Report will be found in GRESE. Note that Part IV Summary Data on Project Personnel must also be completed and remitted with Part III and all other accompanying materials. The items listed below are examples of information that should be included as part III—Technical Information.

- Most successful and least successful aspect of the project.

- Features of the project most likely to have wide impact or be transferable to other sites.

- Evidence of changes in knowledge, behavior, or attitude of participants.

- Evidence of impact of the program on students of the participants.

- Evidence of institutionalization of the project.

- Summary of dissemination and outreach activities already undertaken or to be undertaken in the future.

- Materials generated by the project staff.

- Materials generated by the participants for use in their own classrooms.

- Other project-related products, publications, or presentations and the means of making them available to others.

- Evaluation instruments and their results.

- List of participants with school affiliations and subject and grade levels taught.

- A copy of the Data Sheet with all correct information as a result of the completion of the project.

Failure to submit the Final Report (NSF Form 98-A) will prevent the funding of subsequent proposals.

Charles R. Puglia,

Division Director, Teacher Preparation and Enhancement, Directorate for Education and Human Resources.

[FR Doc. 91-22025 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

**Division of Biotic Systems and Resources Fall 1991 Panel Meetings**

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meetings to be held at 1800 G Street, NW., Washington, DC 20550 (with the exception of the Advisory Panel for Ecosystem Studies; see footnote 2 on following table).

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to provide

advice and recommendations to the National Science Foundation concerning the support of research in the Biotic Systems and Resources Division. The agenda is to review and evaluate proposals as part of the selection process of awards. The entire meeting is

closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with

the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: September 9, 1991.

**M. Rebecca Winkler,**  
*Committee Management Officer.*

Panel name	Review agenda	Date(s)	Times	Room <sup>1</sup>
Ecosystem studies .....	Contact: James Reynolds 202/357-9598.....	10/03-04/91	8:30 a.m.-5 p.m. ....	( <sup>2</sup> )
Ecology .....	Contact: Laurel Fox 202/357-9734.....	10/02-04/91	8:30 a.m.-5 p.m. ....	1242
Population biology and physiological ecology ..	Contact: Carol B. Lynch 202/357-9728.....	10/16-18/91	8:30 a.m.-5 p.m. ....	543
Systematic biology .....	Contact: Terry L. Yates 202/357-9588.....	10/21-23/91	8:30 a.m.-5 p.m. ....	1243

<sup>1</sup> At 1800 G Street, NW., Washington, DC.

<sup>2</sup> Conference room at The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037  
All sessions will be closed and will be held from 8:30 a.m. to 5 p.m. unless otherwise indicated.

[FR Doc. 91-22026 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for Engineering Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Engineering.

*Date and Time:* October 3 and 4, 1991. 9:30 a.m.-5 p.m., Thursday, October 3; 9 a.m.-12 Noon, Friday, October 4.

*Place:* National Science Foundation, 1800 "G" Street, NW., room 540, Washington, DC 20550.

*Type of Meeting:* Open

*Contact Person:* Dr. William S. Butcher, Advisory committee for Engineering, room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9571.

*Minutes:* Dr. William S. Butcher at the above address.

*Purpose of Meeting:* To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

*Agenda:* Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: September 9, 1991.

**M. Rebecca Winkler,**  
*Committee Management Officer.*

[FR Doc. 91-22027 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for International Programs Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for International Programs.

*Date:* October 3, 1991, 8:30 a.m. to 5 p.m. October 4, 1991, 8:30 a.m. to 3 p.m.

*Place:* National Science Foundation, 1800 G Street, NW., room 1243, Washington, DC 20550.

*Type of Meeting:* Open.

*Contact Person:* Dr. Eduardo L. Feller, Executive Secretary, Division of International Programs, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7613.

*Summary of Minutes:* May be obtained from Contact Person.

*Purpose of Meeting:* To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

*Tentative Agenda:*

- Status report on international programs of NSF.
- Status of current international initiatives.
- Organizational matters.
- European Programs.
- Subcommittee report on ICSU.

Dated: September 9, 1991.

**M. Rebecca Winkler,**  
*Committee Management Officer.*

[FR Doc. 91-22028 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation Announces the following meeting.

*Name:* Special Emphasis Panel in Science Resources Studies.

*Date & Time:* October 1, 1991; 8:30 a.m. to 5 p.m. and October 2, 1991; 8:30 a.m. to 12 noon.

*Place:* The Residence Inn Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland.

*Type of Meeting:* Open.

*Contact Person:* Mrs. Marge Machen, Project Officer or Dr. J. G. Huckenpohler, Project Officer for Division of Science Resources Studies, room L-809, National Science Foundation, Washington, DC 20550 Telephone: (202) 634-4300.

*Purpose of Meeting:* To provide a forum for the discussion of the academic sector surveys by data users and data providers.

*Agenda:* To advise on survey methodology, data use, and conceptual anomalies and to promote new dissemination strategies.

Dated: September 9, 1991.

**M. Rebecca Winkler,**  
*Committee Management Officer.*

[FR Doc. 91-22029 Filed 9-12-91; 8:45 am]

BILLING CODE 75550-01-M

### Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Teacher Enhancement.

*Dates:* 3-5 October 1991.

*Times:* 3 October—7:30 p.m. to 10 p.m.—Panel Meeting. 4 October—8 a.m. to 6 p.m.—Panel Meeting. 5 October—8 a.m. to 2 p.m.—Panel Meeting.

*Place:* Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

*Meeting Rooms:* 104, 204, 304, 404, 504, 604, 704, 114, 214, 314, 414, 514, 614, 714, Plus Meeting Rooms on First Floor and Lobby of Hotel.

*Type of Meeting:* Closed.

*Purpose:* To review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

*Agenda:* Review and evaluate Teacher Enhancement Proposals.

*Contact:* Mrs. Ethel Schultz, Teacher Enhancement Program, Institutes and Recognition Section, Division of Teacher Preparation and Enhancement, Directorate for Education and Human Resources, National Science Foundation, Room 635B, Washington, DC 20550, (202) 357-7539.

Dated: September 9, 1991.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 91-22030 Filed 9-12-91; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315, 50-316]

### Indiana Michigan Power Co.; (Donald C. Cook Nuclear Plant Units 1 and 2); Exemption

#### I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-58 and DPR-74 which authorize operation of the Donald C. Cook Nuclear Plant Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

#### II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.3 of appendix E requires that each licensee at each site shall exercise with off-site authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorize by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

#### III

By letter dated May 24, 1991, the licensee requested an exemption from the scheduled requirements of section IV.F.3 of appendix E to perform a biennial full participation emergency preparedness exercise for Donald C. Cook Nuclear Plant during 1992. The last biennial full participation emergency preparedness exercise at Donald C. Cook Nuclear Plant was conducted on April 3, 1990. The ext biennial full participation exercise is scheduled for November 1992.

The required biennial full participation exercise is currently conducted for Donald C. Cook Nuclear Power Plant on an even-year cycle. The State of Michigan and FEMA have stated that this practice of conducting full participation exercises for Donald C. Cook during the even year has caused logistical and resource utilization difficulties. The licensee, therefore, has requested that the November 1992 full participation exercise be rescheduled for May 1993, a time convenient to all affected parties. The November 1992 exercise would then be a utility only exercise.

For the last two Systematic Assessment of Licensee Performance (SALP) cycles, Donald C. Cook has received a SALP rating of one (the highest rating) for emergency preparedness reflecting a consistent high level of on-site emergency preparedness.

Additionally, FEMA has indicated in their letter of July 5, 1991, that Donald C. Cook has conducted numerous successful exercises, including the last one in 1990. During that exercise, no major issues requiring corrective actions were identified. Based on their performance, FEMA has granted an exemption to the requirement of title 44 CFR 350.9(c) for Donald C. Cook, allowing them to reschedule the November 1992 exercise for May 1993.

In respect to the training for Berrien County, Berrien County also participates in the Palisades emergency preparedness exercises.

#### IV

Based on a consideration of the facts presented in section III above, the NRC staff finds that the following factors support the granting of the requested exemption:

a. The capability of the State of Michigan and the local government agencies to respond to an emergency at Donald C. Cook has been adequately demonstrated in previous exercises at Donald C. Cook. FEMA has found that there is reasonable assurance that

appropriate measures can be taken to protect the health and safety of the public in the event of a radiological accident at D. C. Cook and has granted an exemption to the requirements of title 44 CFR part 350.9(c).

b. The State of Michigan maintains a high level of preparedness through its participation in exercises with each of the nuclear power plants located in the State which, for 1992, will include two full participation exercises.

c. The licensee has maintained a SALP rating of one in the area of on-site emergency preparedness and will conduct an on-site exercise in November 1992. The State and local governments will have the opportunity to participate in this exercise at their option.

d. FEMA, State and local agencies have indicated their agreement with the proposed exercise schedule change.

The requested exemption is a one-time schedule change which will result in postponing the biennial full participation exercise for approximately six months. The exemption will relieve the State of Michigan of the burden of conducting three full participation exercises two calendar years in a row, thereby resulting in a more balanced and efficient allocation of resources. The licensee has made a good faith effort to comply with the regulations by conducting the required full participation exercises at Donald C. Cook with the State and local government agencies since 1984. The licensee has taken into consideration the various concerns of FEMA and the local governments in rescheduling the Donald C. Cook exercise. All affected parties support the proposed exercise schedule change.

#### V

Accordingly, the Commission, has determined that pursuant to 10 CFR 50.12(a)(1), this exemption as described in section IV, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission determines further that special circumstances as provided in 10 CFR 50.12(a)(2)(v) are present justifying the exemption.

Therefore, the Commission hereby grants the Exemption from the requirements of 10 CFR part 50, appendix E, section IV.F.3, for the conduct of a biennial off-site full participation emergency preparedness exercise in 1992, provided that such an exercise be conducted prior to June 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no

significant impact on the environment (56 FR 37373).

The Exemption is effective upon issuance.

Dated at Rockville Maryland this 4th day of September 1991.

For the Nuclear Regulatory Commission.

**Bruce A. Boger,**

*Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-22074 Filed 9-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352 and 50-353]

### **Philadelphia Electric Co.; Withdrawal of Application for Amendment to Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (the licensee) to withdraw its January 31, 1991 application for proposed amendments to Facility Operating License No. NPF-39 and Facility Operating License No. NPF-83 for the Limerick Generating Station, Units 1 and 2, located in Montgomery and Chester Counties, Pennsylvania.

The proposed amendments would have revised section 4.9.2.b of the facility Technical Specifications to delete surveillance requirement 4.9.2.b.1, which presently requires performance of a source range monitor (SRM) channel functional test within 24 hours prior to the start of core alterations while retaining the existing surveillance requirement in 4.9.2.b.2, which requires performance of the same SRM functional test at least once per 7 days. Both of these surveillance requirements only apply when the reactor mode switch is locked in the refuel or shutdown position.

The Commission has previously issued a notice of consideration of issuance of amendment to Facility Operating License and Proposed No Significant Hazards Determination and Opportunity for Hearing which was published in the *Federal Register* on February 20, 1991 (56 FR 6878). However, by letter dated August 15, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 31, 1991, and the licensee's letter dated August 15, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Pottstown

Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 4th day of September 1991.

For the Nuclear Regulatory Commission.

**Richard J. Clark,**

*Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-22073 Filed 9-12-91; 8:45 am]

BILLING CODE 7590-01-M

### **OFFICE OF MANAGEMENT AND BUDGET**

#### **Office of Federal Procurement Policy**

#### **Increase to the Emerging Small Business Reserve Amount Under the Small Business Competitiveness Demonstration Program**

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy.

**ACTION:** The Office of Management and Budget, Office of Federal Procurement Policy is increasing the emerging small business reserve amount for the Architectural and Engineering Services industry from \$25,000 to \$50,000.

**SUMMARY:** Section 712(a) of the "Business Opportunity Development Reform Act of 1988," Public Law 100-656, sets a 15 percent goal for awards to emerging small businesses, which are small businesses whose size is no greater than 50 percent of the applicable size standard. In order to further this goal, section 712(b) requires that all contract opportunities of \$25,000 and below be reserved for emerging small businesses. In the event the emerging small business participation goal of 15 percent has not been attained in a designated industry group, section 712(b)(2) requires the Administrator of the Office of Federal Procurement Policy (OFPP) to adjust the dollar threshold semi-annually for contracts reserved exclusively for emerging small businesses.

At the conclusion of calendar year 1990, in the Architectural and Engineering (A&E) Services industry, an emerging small business participation level of less than 15 percent was achieved. In accordance with the statutory provisions of Section 712(b)(2) of Public Law 100-656, OFPP is increasing the emerging small business reserve amount to \$50,000.

**EFFECTIVE DATE:** This notice is effective October 15, 1991.

**COMMENTS:** Comments regarding the methodology or the revised emerging

small business reserve amount are welcomed.

**ADDRESSES:** Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, room 9013, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Neal, Jr., Deputy Associate Administrator, (202) 395-3300.

**SUPPLEMENTARY INFORMATION:** Data from agency reports and Federal Procurement Data System reports indicate that the emerging small business participation level for A&E Services was below 15 percent for 1990. We assumed that (1) the emerging small business participation rate achieved for the reserve amount would also be achieved at higher dollar ranges, and (2) the participation rates for emerging small firms in open competition would remain the same. Under these assumptions, we determined the net increase (in dollars) in emerging small business participation for each dollar range above the reserve amount and added it to the emerging small business total until 15 percent obtained. Using this methodology on the 1990 FPDS data, we have concluded that the emerging small business reserve amount should be raised to \$50,000.

Consequently, Section III.D.3.a of the Test Plan for the Small Business Competitiveness Demonstration Program should be amended by appending an additional sentence after the sentence that currently ends with " \* \* \* or more of the four designated groups." The new sentence reads: "The emerging small business reserve amount for Architect and Engineering Services is \$50,000."

Dated: September 6, 1991.

**Allan V. Burman,**  
*Administrator.*

[FR Doc. 91-22035 Filed 9-12-91; 8:45 am]

BILLING CODE 3110-01-M

### **OFFICE OF SCIENCE AND TECHNOLOGY POLICY**

#### **President's Council of Advisors on Science and Technology (PCAST); Panel on Science and Technology and National Security**

The Panel on Science and National Security of the President's Council of Advisors on Science and Technology (PCAST) will meet on September 28-29, 1991. The meeting will begin at 9 a.m. in Conference Room 476, Old Executive Office Building, 17th Street and

Pennsylvania Avenue, NW.,  
Washington, DC.

The purpose of the Panel is to advise the Council on matters involving science and technology and national security.

#### Proposed Agenda

1. Briefing of the Panel on problems of national security by the Office of Science and Technology Policy and the National Security Council.

2. Briefing of the Panel on problems of national security by the Department of Defense.

All sessions will be closed to the public.

The briefings on national security issues necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. The meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

Dated: September 5, 1991.

Ms. Damar W. Hawkins,

*Executive Assistant, Office of Science and Technology Policy.*

[FR Doc. 91-22110 Filed 9-12-91; 8:45 am]

BILLING CODE 3170-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29657; File Nos. 600-19 and 600-22]

### Self-Regulatory Organizations; MBS Clearing Corporation; Filing of Amended Application for Extension of Temporary Registration as a Clearing Agency

Notice is hereby given that on September 4, 1991, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a)(1) of the Securities Act of 1934 ("Act")<sup>1</sup> a request for a one year extension of its registration as a clearing agency through September 30, 1992.<sup>2</sup>

On February 2, 1987, the Commission granted MBSCC's application for registration as a clearing agency, pursuant to sections 17A(b) and 19(a)(1) of the Act,<sup>3</sup> and Rule 17Ab2-1(c)<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(a)(1).

<sup>2</sup> See letter from J. Craig Long, General Counsel, MBSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated September 4, 1991.

<sup>3</sup> 15 U.S.C. 78q-1(b) and 15 U.S.C. 78s(a)(1).

<sup>4</sup> 17 CFR 240.17Ab2-1(c).

thereunder, for a period of 18 months.<sup>5</sup> Subsequently, the Commission issued several orders extending MBSCC's registration as a clearing agency, the last of which extended MBSCC's registration through September 30, 1991.<sup>6</sup>

MBSCC provides clearance and settlement services for members in processing transactions in mortgage-backed securities. Among other things, MBSCC provides trade-for-trade and net settlement accounting facilities for transactions in Government National Mortgage Association pass-through securities.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.<sup>7</sup> Persons desiring to make written submissions should file six copies with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File Nos. 600-19 and 600-22 and should be submitted by October 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Dated: September 6, 1991.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-22038 Filed 9-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25372]

### New England Energy Inc. et al; Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 6, 1991.

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

<sup>5</sup> See Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (Order granting MBSCC registration as a clearing agency for a period not to exceed 18 months).

<sup>6</sup> See Securities Exchange Act Release Nos. 25957, 27079, and 28492 (August 2, 1988; July 31, 1989; and September 28, 1990), 53 FR 29537, 54 FR 32412, and 55 FR 41148.

<sup>7</sup> 15 U.S.C. 78s(a)(1).

<sup>8</sup> 17 CFR 200.30-3(a)(16).

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 amendments 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 September 30, 1991 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.

#### New England Energy Incorporated (70-7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, the fuel supply subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application filed pursuant to sections 9(a) and 10 of the Act.

In 1974, the Commission authorized NEEI's participation in oil and gas exploration and development activities in order to provide a fuel supply for NEES system companies (HCAR No. 18635, October 30, 1974). NEEI has participated in these activities principally through its partnership ("Partnership") with Samedan Oil Corporation ("Samedan"), a subsidiary of Noble Affiliates, Inc., a nonaffiliate company. The Partnership agreement ("Agreement") provides for capital contributions by the partners to be used to pay the costs and expenses of the Partnership. The Agreement, as amended February 5, 1985, provides for two phases of operation, Phase I, which expired on December 31, 1986, and Phase II, which commenced on January 1, 1987. Under Phase II, NEEI elected not to participate in new oil and gas prospects initiated by Samedan after December 31, 1986, but remains obligated to pay its share of expenses

for exploration, development and production of Phase I prospects acquired on or before December 31, 1986.

By order dated December 29, 1988 (HCAR No. 24795), NEEI was authorized to contribute up to \$40 million to the Partnership (including \$15 million for pre-1984 prospects, \$15 million for post-1983 prospects and \$10 million for contingencies related to actual Partnership expenditures in 1989) for exploration and development of oil and gas prospects initiated prior to December 31, 1986. Jurisdiction was reserved over an additional contribution by NEEI to the Partnership of \$10 million through December 31, 1989.

NEEI now seeks authorization, through December 31, 1993, to contribute up to \$45 million to the Partnership for exploration and development of existing oil and gas prospects.

#### Alabama Power Company (70-7873)

Alabama Power Company ("APC"), 600 North 18th Street, Birmingham, Alabama 35291, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application under sections 6 and 7 of the Act and Rule 50(a)(5) thereunder.

APC has entered into a Firm Power Purchase Contract ("Power Contract") with Alabama Municipal Electric Authority ("AMEA") which obligates APC to supply specified amounts of capacity to AMEA for a term of fifteen years and AMER agrees to pay to APC an initial capacity payment in the amount of \$52.9 million. The Power Contract also provides that in the event Alabama breaches its obligation to provide such capacity, AMEA is entitled to liquidated damages from APC as evidenced by a liquidated damages note ("Note"). The amount of the liquidated damages payable thereunder is set forth in a schedule to the Note, with a maximum principal amount of \$58.5 million and in descending amounts from the end of the third year of the term of the Power Contract through the end of the fifteenth year thereof.

In order for APC to secure its performance under the Note, APC proposes to issue \$58.5 million in the principal amount of its First Mortgage Bonds ("Bonds"), under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5), pursuant to the Indenture between APC and Chemical dated as of January 1, 1942, as heretofore supplemented.

Pursuant to an Escrow Agreement, APC will deposit the Bonds with Central Bank of The South ("Escrow Agent").

Neither the Note nor the Bonds will bear any interest unless and until a default occurs under the Power Contract. In such event, the Note and the Bonds will bear interest at a rate equal to the highest rate borne by AMEA's bonds issued by it to finance the purchase of capacity under the Power Contract. Based upon current market conditions, such rate is expected to be approximately 7.75%.

Upon APC's performance of its obligations under the Power Contract and the decline of the balance payable under the Note, the Escrow Agent will deliver annually to APC a commensurate amount of the bonds for cancellation.

#### Allegheny Power System, Inc. (70-7879)

Allegheny Power System, Inc., a registered holding company ("Allegheny"), Tower Forty Nine, 12 East 49th Street, New York, New York, 10017, has filed an application under section 6(b) of the Act, and Rule 50(a)(5) thereunder.

Allegheny proposes to issue and sell short-term notes to banks ("Bank Notes") and to dealers in commercial paper ("Commercial Paper") in an aggregate principal amount not to exceed \$165 million. This amount includes any short-term debt as may still be outstanding under the Commission's order dated September 6, 1989 (HCAR No. 24947). It is proposed that the Bank Notes and Commercial Paper will be issued from time to time prior to September 30, 1993, provided that no such Bank Notes or Commercial Paper shall mature after March 31, 1994.

Each Bank Note will be dated as of the date of the borrowing which it evidences, will mature not more than two hundred seventy (270) days after the date of issuance or renewal thereof, will bear interest at a mutually agreed upon rate provided that the effective rate for any 30 day period, on an annualized basis, not exceed prime rate plus 2 percentage points, and may or may not have prepayment privileges. Allegheny has agreed to pay for lines of credit with a group of banks by paying an annual cash fee no greater than 15 basis points on all or the balance of the lines of credit.

The Commercial Paper will be of varying maturities, with no maturity more than two hundred seventy (270) days. The Commercial Paper will not be prepayable prior to maturity. Allegheny has designated Merrill Lynch Money Markets, Inc. ("Merrill") and Citicorp Securities Inc. ("Citicorp") as its commercial paper dealers. The Commercial Paper will be sold directly

to the dealers at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of particular maturity. The dealers may reoffer the Commercial Paper at a discount rate of up to 1/2 of 1% per annum less than the discount rate to Allegheny. Allegheny intends to issue Commercial Paper only if (i) the interest cost thereof is reasonably believed by Allegheny to be equal to or less than the effective interest cost at which Allegheny could borrow the same amount from the banks or (ii) Allegheny cannot at that time borrow the same amount for the same period of time from the banks.

Allegheny proposed to use the proceeds of the Bank Notes and Commercial Paper as needed to make capital contributions to its direct, and advances to its indirect, subsidiaries, to acquire notes or stock of such subsidiaries, and to finance other general corporate purposes, including the financing of construction in the event that Allegheny subsidiaries' construction expenses exceed the amounts presently budgeted. Allegheny is not at this time requesting authorization to make such capital contributions, financings or acquisitions, and will file a future application with the Commission to obtain the necessary authority prior to using the proceeds for these purposes. In addition, Allegheny may use the proceeds of such Bank Notes and Commercial Paper to repurchase shares of Allegheny common stock in order to fund its Dividend Reinvestment and Stock Purchase Plan. Allegheny has requested an exception pursuant to Rule 50(a)(5) from the formal competitive bidding requirements of Rule 50(b) and (c) with respect to the issuance and sale of the Commercial Paper.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-22037 Filed 9-12-91; 8:45 am]

BILLING CODE 8010-01-M

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#### SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0323]

#### Stevens Capital Corp.; Surrender of License

Notice is hereby given that Stevens Capital Corporation (Stevens), 301

Milliken Boulevard, Fall River, Massachusetts 02722 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Stevens Capital Corporation was licensed by the Small Business Administration on June 21, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on August 13, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 4, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-22056 Filed 9-12-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region IX Advisory Council, Public Meeting; Hawaii

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Tuesday, October 1, 1991, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850, telephone, (808) 541-2990.

Dated: September 9, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-22052 Filed 9-12-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region X Advisory Council, Public Meeting; Idaho

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Boise, will hold a public meeting at 9 a.m. on Friday, October 18, 1991, at Red Lion Inn Downtowner, Teton Room, 1800 Fairview Avenue, Boise, Idaho to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Thomas E. Bergdoll, Jr., District Director, U.S. Small Business Administration, 1020 Main Street, suite 290, Boise, Idaho, telephone (208) 334-9641.

Dated: September 9, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-22053 Filed 9-12-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region IV Advisory Council, Public Meeting; Kentucky

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, will hold a public meeting at 9:30 a.m. on Wednesday, October 2, 1991, at Northern Kentucky University, Alumni Center, Highland Heights, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William Federhofer, District Director, U.S. Small Business Administration, 600 Dr. Martin Luther King, Jr. Place, room 188, Louisville, Kentucky 40202, telephone (502) 582-5971.

Dated: September 9, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-22054 Filed 9-12-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region X Advisory Council, Public Meeting; Oregon

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Portland, will hold a public meeting at 9 a.m. on Friday, September 20, 1991, at the Small Business Administration, 222 SW. Columbia, suite 500, Portland, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 222 SW. Columbia, suite 500 Portland, Oregon 97201-6605, telephone (503) 328-5521.

Dated: September 9, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-22055 Filed 9-12-91; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

### Bureau of Finance and Management Policy

[Public Notice 1476; Delegation of Authority No. 157-1]

#### Under Secretary for Management; Delegation of Authority

By virtue of the authority vested in me as Under Secretary for Management and by Department of State Advisory Committee Management regulations (22 CFR part 8), I hereby delegate to the Chief Financial Officer the authority to make determinations to close advisory committee meetings to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. I, and General Service Administration advisory committee management regulations, 41 CFR 101-6. I hereby also delegate to the Chief Financial Officer the authority to approve in exceptional circumstances the giving of less than 15 days' public notice of an advisory committee meeting, as provided in 41 CFR 101-6.1015(b)(2). The Chief Financial Officer is authorized to redelegate functions vested in that officer by this delegation of authority, except to the extent required to be exercised by higher authority. Notwithstanding any other provision of this delegation of authority, the Under Secretary for Management may at any time exercise any function delegated by this delegation of authority.

Delegation of Authority No. 157 of June 13, 1985 (50 FR 26068) is hereby revoked.

Dated: August 29, 1991.

Jill E. Kent,

Chief Financial Officer.

[FR Doc. 91-22018 Filed 9-12-91; 8:45 am]

BILLING CODE 4710-35-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Approval of Noise Compatibility Program, Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the City of Pensacola, Florida under the provisions of title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979

(Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 25, 1991, the FAA determined that the noise exposure maps submitted by the City of Pensacola, under part 150, were in compliance with applicable requirements. On July 23, 1991, the Administrator approved the Pensacola Regional Airport Noise Compatibility Program. All of the recommendations for the program were approved.

The FAA also announces that effective July 23, 1991, the "Five-Year (1993 Abated)" noise exposure map submitted by the City of Pensacola under part 150 is in compliance with the applicable requirements. This map substitutes the previously submitted "Five-Year (1993 Unabated)" noise exposure map.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Pensacola Regional Airport Noise Compatibility Program is July 23, 1991.

**FOR FURTHER INFORMATION CONTACT:** Pablo G. Auffant, P.E., Federal Aviation Administration Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Pensacola Regional Airport, effective July 23, 1991.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local

communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision of the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to

financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The City of Pensacola submitted to the FAA on May 10, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study. The Pensacola Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 25, 1991 and notice of this determination was published in the Federal Register.

The FAA also announces that effective July 23, 1991, the "Five-Year (1993 Abated)" noise exposure map submitted by the City of Pensacola under part 150 is in compliance with the applicable requirements. The map substitutes the previously submitted "Five-Year (1993 Unabated)" noise exposure map.

The Pensacola Regional Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on January 25, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained then (10) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 23, 1991.

The approval action was for the following program elements:

Measure	Description	NCP Pages
NA-1	Implement Runway Use Program. This alternative would establish Runway 7 as the preferential runway for departing air carrier aircraft. .... <i>FAA Action:</i> Approved, subject to FAA approval of the revised Tower Order. Final runway use will always be at the discretion of the pilot-in-command.	108
NA-2	Implement Thrust Cut-back Procedure. Will require that air carrier aircraft implement the thrust cut-back procedure described in FAA Advisory Circular 91-53 for all departures on Runways 25 and 34. <i>FAA Action:</i> Approved, subject to the discretion of the pilot-in-command.	91
NA-3	Plant Vegetative Barrier.....	91

Measure	Description	NCP Pages
NA-4	<i>FAA Action: Approved.</i> The sponsor proposes to install a 5,000 foot-long, 50 foot-wide vegetative noise barrier to reduce noise by 10-dBA. Review of the literature on noise attenuation indicates that the amount of vegetative-induced noise reduction varies with the frequency of the noise and the density, arrangement, and species comprising the vegetative screen; therefore, the effectiveness of the 50 foot-wide barrier to provide the expected 10-dBA reduction depends upon its design and maintenance. Noise barriers should provide at least a 5-dBA single event noise reduction at the nearest non-compatible land use. Any landscape/park development enhancement beyond the need to achieve noise reduction is not included in this approval since it would not be related to noise abatement. Restrict Maintenance Runups. This measure will prohibit non-emergency engine maintenance runups for general aviation between the hours of 6 p.m. and 9 a.m. during weekdays and 24 hours on weekends when general aviation maintenance facilities are relocated to the east side of the airport, placing them closer to residential areas.	92
NA-5	<i>FAA Action: Approved.</i> Continue Noise Complaint Procedures. Recording of noise complaints will assist management in determining the effectiveness of the noise abatement procedures. <i>FAA Action: Approved.</i>	92-93
<b>Land Use Actions (LU)</b>		
LU-1	Revise City and County Airport Zoning. This measure will: Change the City and County height zoning; reduce the allowable density of residential development within the Airport Transition Zone; and revise the City's Airport Impact District Zones. <i>FAA Action: Approved, except for the height zoning portion of this measure. Disapproval of the height zoning provision is limited to part 150 and should in no way be construed as a determination on the potential benefits height constraints provide for enhancing aviation safety outside the part 150 planning process.</i>	93
LU-2	Acquire Land. This measure provides for acquisition in fee of parcels of land located within the Airport's 70-DNL noise contour, which adjoins airport property, and that would not result in the division or disruption of an established community. <i>FAA Action: Approved.</i> Federal funding for relocation assistance and payment costs would be subject to 49 CFR part 24.	109
LU-3	Acquire Avigation Easements. This measure provides for the acquisition of avigation easements on residential dwellings located within the 70-DNL noise contour. <i>FAA Action: Approved.</i>	110
LU-4	Revise City and County Building Code. This action would ensure that future dwellings located within the airport's noise zones have proper sound insulation. <i>FAA Action: Approved.</i>	94
<b>Program Revision</b>		
	New noise contours should be prepared when the Airport's commercial aircraft fleet mix reaches 50% stage III aircraft. <i>FAA Action: Approved.</i>	

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 23, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Pensacola Regional Airport.

Issued in Orlando, Florida, on August 9, 1991.

James E. Sheppard,  
Manager, Orlando Airports District Office.  
[FR Doc. 91-22051 Filed 9-12-91; 8:45 am]  
BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

September 9, 1991.

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, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

*OMB Number:* New.

*Form Number:* IRS Form 1040-TEL.

*Type of Review:* New collection.

*Title:* TeleFile Income Tax Return for Single Filers With No Dependents.

*Description:* State of Ohio 1040EZ filers will have the option of filing Form 1040-TEL, in which they will enter their tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax and refund or balance due.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 300,000.

*Estimated Burden Hours Per Respondent/Recordkeeping:*

Recordkeeping 7 minutes  
Learning about the law or the form 6 minutes

Preparing the form 16 minutes  
Copying, assembling, and sending the form to IRS 20 minutes

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 185,670 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. 91-22059 Filed 9-12-91; 8:45 am]

BILLING CODE 4830-01-M

#### Departmental Offices

##### Privacy Act of 1974, System of Records

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of alteration to a Privacy Act System of Records.

**SUMMARY:** The Department of the Treasury, Departmental Offices, is amending the Privacy Act notice for a system of records previously published under the system name of Treasury Payroll Information System (TPIS). TPIS embraces two separate components, a personnel records system [Personnel Management Information Telecommunications Systems (PERMITS) application], and a payroll component [TPIS) application]. This revision reflects the Department's decision to shift personnel and payroll processing from TPIS to the Treasury Integrated Management Information System (TIMIS).

**DATES:** Comments must be received no later than October 15, 1991. The proposed alteration will be effective November 12, 1991, unless comments are received which would result in a contrary determination.

**ADDRESSES:** Comments may be sent to Thomas P. O'Malley, Director, Management Programs Directorate, 1500 Pennsylvania Avenue, NW., Treasury Annex Building, room 6100-Annex, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. O'Malley, Director, Management Programs Directorate, (202) 566-2586.

**SUPPLEMENTARY INFORMATION:** This shift of all personnel and payroll records onto the altered system, renamed the Treasury Integrated Management Information System (TIMIS), is expected to take 3 years. All other systems will stay in existence until such time as their functions are fully absorbed into TIMIS. Once this occurs, the existing historical data will be archived, as required, on magnetic tape for the required 6-year retention period.

There are three basic components to the existing Treasury payroll and personnel systems which are being phased-out: (1) A Treasury personnel component, Personnel Management Information Telecommunications System (PERMITS); (2) a Treasury payroll component, Treasury Payroll Information System (TPIS); and, (3) an Internal Revenue Service payroll component. The files consist of payroll records, personnel records, and time and attendance records.

The Treasury Integrated Management System (TIMIS) shares like records in a single database containing both personnel and payroll information.

Treasury's Acquisition Career (TRAC) system is being deleted from the system notice since it is no longer in use.

The altered system of records notice is published in its entirety below.

Dated: September 9, 1991.

David M. Nummy,  
*Acting Assistant Secretary (Management).*

**Treasury/DO .002**

**SYSTEM NAME:**

Treasury Integrated Management Information System (TIMIS).

**SYSTEM LOCATION:**

The system management staff of TIMIS is located at 1500 Pennsylvania Ave., NW., Treasury Annex Building, room 4153-Annex, Washington, DC 20220. The TIMIS processing site is located at the United States Department of Agriculture National Finance Center,

13800 Old Gentilly Road, New Orleans, LA 70160.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and historical payroll/personnel data of employees of all Treasury bureaus and organizations. Certain non-Treasury agencies, which receive payroll personnel services from Treasury under cross-servicing agreements, will be moving to a system of their choice.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information contained in the records of the existing systems and the new TIMIS system include such data as:

(1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service.

(2) Employment data such as service computation for leave, date probationary period began, date of performance rating, and date of within-grade increases.

(3) Position and pay data such as position identification number, pay plan, step, salary and pay basis, occupational series, organization location, and accounting classification codes.

(4) Payroll data such as earnings (overtime and night differential), deductions (Federal, state and local taxes, bonds and allotments), and time and attendance data.

(5) Employee retirement and Thrift Savings Plan data.

(6) Tables of data for editing, reporting and processing personnel and pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature block table, position title table, financial organization table, and salary tables.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Office of Personnel Management Manual, 50 U.S.C. app. 1705-1707; 31 U.S.C. and Departmental Circular 145 and 830. The Department of the Treasury Fiscal Requirements Manual; 5 U.S.C. 301; FPM Letter 298-10, Office of Personnel Management; Federal Personnel Manual (chapter 713 subchapter 3A).

**PURPOSE(S):**

The purposes of the system include, but are not limited to: (1) Maintaining current and historical payroll records which are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave

accrued and taken, bonds due and issued, taxes paid; maintaining and distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims, and (2) maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training, classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

These records and information in these records may be used to:

(1) Furnish data to the Department of Agriculture, National Finance Center (which provides payroll/personnel processing services for TIMIS under a cross-servicing agreement) affecting the conversion of Treasury employee payroll and personnel processing services to TIMIS; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer.

(2) Furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5217, and 5520, for the purpose of furnishing employees with Forms W-2 which report such tax distributions.

(3) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations.

(4) Furnish another Federal agency information to effect interagency salary or administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish

a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services.

(5) Disclose information to a Federal, State, local or foreign agency maintaining civil, criminal or other relevant enforcement information or other pertinent information which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings.

(7) Disclose information to foreign governments in accordance with formal or informal international agreements.

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(9) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to civil and criminal proceedings.

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(11) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

(12) Provide wage and separation information to another agency, such as the Department of Labor or Social Security Administration, as required by law for payroll purposes.

(13) Provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state employment compensation board, housing administration agency and Social Security Administration.

(14) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or

potential violation of civil, or criminal law or regulation.

(15) Disclose information about particular Treasury employees to requesting agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs (i.e., matching for delinquent loans or other indebtedness to the government).

#### **DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982; debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97-365), to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 701(a)(3).

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Magnetic media, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center.

##### **RETRIEVABILITY:**

Records are retrieved generally by social security number, position identification number within a bureau and region, or employee name. Secondary identifiers are used to assure accuracy of data accessed, such as master record number or date of birth.

##### **SAFEGUARDS:**

Entrance to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to

the same privacy controls as other documents of like sensitivity.

#### **RETENTION AND DISPOSAL:**

The current payroll and personnel system and the Treasury Integrated Management Information System (TIMIS) master files are kept on magnetic media. Information rendered to hard copy in the form of reports and payroll information documentation is also retained in automated magnetic format. Employee records are retained in automated form for as long as the employee is active on the system (separated employee records are maintained in an "inactive" status). Files are purged in accordance with Treasury Directives Manual TD 25-02, "Records Disposition Management Program."

#### **SYSTEM MANAGER(S) AND ADDRESS:**

Director, Treasury Integrated Management Information System (System Manager for TIMIS), 1500 Pennsylvania Avenue, NW., Treasury Annex Building, room 4153-Annex, Washington, DC 20220.

#### **NOTIFICATION PROCEDURE:**

Individuals wishing to be notified if they are identified in this system, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identification of the record system; (2) identification of the category and types of records sought; and (3) at least two items of secondary identification (e.g. employee name and date of birth, employee identification number, date of employment or similar information). The individual's identity must be verified by one other identifier, such as a photocopy of a driver's license or other official document bearing the individual's signature. Alternatively, a notarized statement may be provided. Address inquiries to Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., room 1054-MT, Washington, DC 20220.

#### **RECORD ACCESS PROCEDURES:**

See notification procedures above.

#### **CONTESTING RECORD PROCEDURES:**

See notification procedures above.

#### **RECORD SOURCE CATEGORIES:**

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 91-22058 Filed 9-12-91; 8:45 am]

BILLING CODE 4810-25-M

**DEPARTMENT OF VETERANS AFFAIRS****Advisory Committee on Cemeteries and Memorials; Meeting**

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at TechWorld Plaza, 801 I Street, Washington, DC 20420 in room 1105 on October 8 and 9, 1991.

The sessions will begin at 9 a.m. each day to conduct routine business. The

meeting will be open to the public up to the seating capacity which is about 40 persons. Those wishing to attend should contact Mr. Terry Glaser, Special Assistant to the Director, National Cemetery System, [phone (202) 535-7819] not later than 12 noon, e.s.t. September 17, 1991.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to

discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon est September 17, 1991. Oral statements will be heard only between 1:30 p.m. and 2 p.m. October 8th, 1991.

Dated: August 29, 1991.

By Direction of the Secretary:

**Diane H. Landis,**

*Committee Management Officer.*

[FR Doc. 91-22045 Filed 9-12-91; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 56, No. 178

Friday, September 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 3:28 p.m. on Tuesday, September 10, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Steven R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), Jonathan L. Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidation agent of those assets:

Case No. 47,721

The National Bank of Washington,  
Washington, DC.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: September 11, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-22185 Filed 9-11-91; 1:46 p.m.]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:06 p.m. on Tuesday, September 10, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Steven R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), Jonathan L. Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,743

Policy for the Sale of Large Asset Pools on Term

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: September 11, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-22186 Filed 9-11-91; 1:46 pm]

BILLING CODE 6714-01-M

## FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m.—10:00 a.m.

Friday, September 20, 1991.

PLACE: Board Room, Second Floor,  
Federal Housing Finance Board, 1777 F  
Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

### MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
  - A. Approval of Board Minutes
  - B. District Bank Directorate
  - C. Housing Finance Directorate

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Legislative/Strategic Discussion
2. Examination Reports
3. Review of 1992 Budget Projections
4. Membership Correspondence Services Study
5. Office of Finance Update
6. Review of Preliminary Staff Recommendations for FHLBank Presidents' Compensation

The above matters are exempt under one or more of sections 552 (c)(2), (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b (c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-22245 Filed 9-11-91; 3:25 pm]

BILLING CODE 6725-01-M

## U.S. RAILROAD RETIREMENT BOARD

### Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 19, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

- (1) Chief Executive Officer's Performance Appraisal.
- (2) RRB Awards Program.
- (3) Sustained Superior Performance Award, etc. (Delegation of Authority to the Inspector General).
- (4) Board Order 75-4, Travel.
- (5) Proposed Legislative Changes.
- (6) ZIP+4 Software.
- (7) Backlog Review Task Force Report.
- (8) Compromise on Section 2(f) and 12(o) Debts—Union Pacific Railroad.
- (9) RRB Medicare Part B Contract Competitive Process.
- (10) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
- (11) Regulations—Part 203, Employees Under the Act.
- (12) Regulations—Parts 209, 211 and 345, Railroad Employers Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports.
- (13) Regulations—Part 229, Social Security Overall Minimum.

(14) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: September 10, 1991.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 91-22242 Filed 9-11-91; 3:15 pm]

01-M

# Corrections

Federal Register

Vol. 56, No. 178

Friday, September 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM92-1-103-000]

#### Moraine Pipeline Co.; Proposed Changes In FERC Gas Tariff

##### *Correction*

In notice document 91-21201 appearing on page 43918, in the issue of Thursday, September 5, 1991, in the third column, in the first line, the "Docket No." should read as set forth above.

BILLING CODE 1505-01-D

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

21 CFR Parts 172 and 173

[Docket No. 88F-0176]

#### Food Additives Permitted for Direct Addition to Food for Human Consumption; Dimethyldialkylammonium Chloride

##### *Correction*

In rule document 91-20706 beginning on page 42685 in the issue of Thursday,

August 29, 1991 make the following correction:

On page 42686, in the first column, in the first full paragraph, in the third line "section" should read "action".

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID 020-01-4212-11;l-27741]

#### Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

##### *Correction*

In notice document 91-20322 appearing on page 42065 in the issue of Monday, August, 26, 1991, make the following correction:

On the same page, the second column, in the land description, in "Sec. 33:" "Lot E." should read "Lot 3."

BILLING CODE 1505-01-D

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## INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub.-No. 9)]

#### Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-1991 Update

##### *Correction*

In rule document 91-20533 beginning on page 42236 in the issue of Tuesday, August 27, 1991, make the following correction:

### § 1002.2 [Corrected]

On page 42238, in the table, in the second column, in § 1002.2(f) Part VII (62)(ii), in the first line "others" should read "other".

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 91-9]

#### Uniform Rules of Practice and Procedure

##### *Correction*

In rule document 91-18864 beginning on page 38024 in the issue of Friday, August 9, 1991, make the following correction:

### § 19.197 [Corrected]

On page 38045, in the 2d column, in the 2d paragraph, in § 19.197(c), in the 13th line "§ 19.99" should read "§ 19.199".

BILLING CODE 1505-01-D



**Federal Register**

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Friday  
September 13, 1991

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**Part II**

**Department of  
Education**

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**34 CFR Part 222**

**Assistance for Local Educational  
Agencies in Areas Affected by Federal  
Activities and Arrangements for  
Education of Children Where Local  
Educational Agencies Cannot Provide  
Suitable Free Public Education; Proposed  
Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 222

RIN 1810-AA20

**Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education**

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department proposes to amend the regulations governing section 2 of Public Law 81-874, the Impact Aid maintenance and operations assistance program law. These proposed regulations would implement an amendment made to Public Law 81-874 by section 722(a) of the Excellence in Mathematics, Science and Engineering Education Act of 1990, Public Law 101-589, which added section 2(f) to Public Law 81-874. This statutory amendment, and the proposed regulations, may affect the amounts of payments for applicant school districts under section 2 of Public Law 81-874.

**DATES:** Comments must be received on or before December 12, 1991.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Mr. Charles Hansen, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 2077, Washington, DC 20202-6272.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Hansen. Telephone: (202) 401-3637. Deaf and hearing impaired individuals may call (202) 401-3637. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**SUPPLEMENTARY INFORMATION:** Public Law 81-874, as amended, 20 U.S.C. 236 through 241-1 and 242 through 244, known as the Impact Aid maintenance and operations assistance program law, authorizes payments to local educational agencies (LEAs) that are financially burdened by a reduced local real property tax base resulting from the Federal acquisition of real property or by an increased student population due to Federal activities. Section 2 of the law addresses the first type of burden and authorizes payments to certain LEAs that experience financial burdens due to the Federal acquisition, generally since 1938, of real property within the school districts. These payments supplement

local revenues and assist the LEAs in meeting their maintenance and operations costs. Regulations governing the Impact Aid maintenance and operations assistance program are found at 34 CFR part 222.

On November 11, 1990, the President signed into law the Excellence in Mathematics, Science and Engineering Education Act of 1990, Public Law 101-589. Section 722(a) of Public Law 101-589, which adds paragraph (f) to section 2 of Public Law 81-874, creates an exception to one of the general section 2 eligibility requirements. Under that general eligibility requirement (section 2(a)(1)(C) of Public Law 81-874), the United States must have acquired, in the aggregate, at least 10 percent of the total assessed value of real property within a school district since 1938 for the district to qualify for section 2 assistance. New section 2(f) permits a school district to meet this 10 percent eligibility requirement if the school district (1) as demonstrated by written evidence from the United States Forest Service, satisfactory to the Secretary, contains between 50,000 and 55,000 acres of land that has been acquired by the Forest Service between 1915 and 1990, and (2) serves a county chartered by State law in 1875. These proposed regulations would implement the section 2(f) exception to the 10 percent eligibility requirement with respect to both regular and consolidated LEAs.

These proposed regulations also would clarify, for a school district that meets the section 2(f) exception, which real property would be considered as the basis for the section 2 eligibility determinations (other than the 10 percent requirement) and entitlement calculations. Such a district's section 2 eligibility and entitlement would be calculated based upon federally owned, tax-exempt land that was acquired by the Forest Service between 1915 and 1990, in addition to the traditional federally owned tax-exempt section 2 real property acquired by the United States after 1938.

Described below are changes that would be made through these proposed regulations to §§ 222.91, 222.94, 222.95, 222.96, 222.98, 222.99, and 222.102 of the regulations as a result of newly added section 2(f) of Public Law 81-874, and a minor clarifying change that would be made to § 222.101 of the regulations. Other minor editorial and clarifying changes also are made.

**Section 222.91 What Definitions Apply to the Subpart?**

A new definition of "eligible Federal property" is added to clarify which Federal property is used as the basis for

section 2 eligibility and entitlement determinations, including determinations for an LEA that qualifies under the eligibility exception contained in new section 2(f) of Public Law 81-874. The eligibility and entitlement of a section 2(f) district would be calculated based upon land that was acquired by the United States Forest Service between 1915 and 1990, as well as upon traditional section 2 real property that must have been acquired after 1938. This is because section 2(f) can be read to mean that all section 2 eligibility and entitlement determinations for an LEA qualifying under the section 2(f) criteria should be based upon the federally acquired property described in section 2(f) (*i.e.*, land acquired by the United States Forest Service between 1915 and 1990), in addition to any traditional section 2 real property that must have been acquired by the Federal Government after 1938. Both categories of property, however, must still meet the underlying requirements of the definition of "Federal property" for section 2 purposes as set forth in § 222.3. That is, the property generally must be: (1) Owned by the Federal Government and (2) tax-exempt as the result of Federal law, agreement, or policy.

The authority citation also is amended. In addition, conforming changes to incorporate the new term "eligible Federal property" are made in §§ 222.94, 222.95, 222.96, 222.98, 222.99, and 222.102.

*Section 222.94 What Criteria Must be Met Regarding Federal Acquisition of Real Property in a School District?*

Paragraph (a) is revised to incorporate the new definition of "eligible Federal property" in § 222.91, and to implement new section 2(f). This is because section 2(f) is an exception to the general eligibility rule under section 2(a)(1) that the Federal Government must have acquired, since 1938, an aggregate assessed value of 10 percent or more of all real property in the school district, based upon the assessed values of the Federal property and of all real property on the date or dates of acquisition of the Federal property. Section 2(f) provides that, beginning with fiscal year 1991, a school district (or LEA) meets the eligibility requirement under section 2(a)(1)(C) of Public Law 81-874 if the school district (or LEA): (1) As demonstrated by written evidence from the United States Forest Service, satisfactory to the Secretary, contains between 50,000 and 55,000 acres of land acquired by the Forest Service between 1915 and 1990; and (2) serves a county chartered by State law in 1875.

Introductory language also is added to redesignated paragraph (d) to clarify that the records requirements of that paragraph would not apply to an LEA qualifying under the new eligibility exception. In addition, minor clarifying changes are made in that paragraph. The authority citation also is amended.

*Section 222.101 How is an LEA's Section 2 Need-Based Entitlement Determined?*

Paragraph (a) is amended by revising the language of the first sentence to clarify that, in determining an LEA's section 2 need-based entitlement, the Secretary uses the same estimated current assessed value for the eligible Federal property that is used in determining the LEA's maximum entitlement. This change is made solely for the purpose of simplification. In addition, the second sentence of paragraph (a) is deleted as unnecessary.

*Section 222.102 How are Section 2 Eligibility and Entitlement Determined for an LEA Formed by Consolidation of School Districts?*

Paragraph (b)(ii) is amended by designating a portion of the existing language as paragraph (b)(ii)(A) and adding a new paragraph (b)(ii)(B), to implement new section 2(f) with respect to consolidated LEAs qualifying under section 2 on the basis of former districts. This is because section 2(f) is an exception to the general eligibility rule under section 2(a)(1) that the Federal Government must have acquired, since 1938, an aggregate assessed value of 10 percent or more of all real property in the school district, based upon the assessed values of the Federal property and of all real property on the date or dates of acquisition of the Federal property. If an LEA was formed after 1938 by consolidation, under certain circumstances the LEA may elect to have its section 2 eligibility and entitlement determined on the basis of the consolidated district as a whole, or on the basis of one or more of the former school districts that meet the eligibility criteria. Under this change, a former district that does not meet the general 10 percent aggregate assessed value requirement in section 2(a)(1)(C) would qualify for section 2 eligibility if it met the requirements of the eligibility exception in new section 2(f) and otherwise is eligible.

In addition, conforming and clarifying changes are made in paragraph (c) regarding the calculation of the section 2 maximum and need-based entitlements for a consolidated LEA qualifying on the basis of one or more former districts. The authority citation also is amended.

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

**Regulatory Flexibility Act Certification**

The Department certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These amendments merely conform the existing regulations to new statutory requirements and make other minor editorial and technical revisions.

**Paperwork Reduction Act of 1980**

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 2077, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Department invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**List of Subjects in 34 CFR Part 222**

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid—Maintenance and Operations.)

Dated: August 9, 1991.

David T. Kearns,  
Deputy Secretary of Education.

The Department amends part 222 of title 34 of the Code of Federal Regulations as follows:

**PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION**

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. Section 222.91 is amended by adding, in alphabetical order, a new definition of "Eligible Federal property", and revising the authority citation, to read as follows:

**§ 222.91 What definitions apply to this subpart?**

*Eligible Federal property.*

The term means section 2 "Federal property" as defined in § 222.3, that meets the following additional requirements:

(1) For LEAs that are eligible under the general 10 percent requirement in § 222.94(a)(1) or, if based upon former districts, in § 222.102(b)(1)(ii)(A), only Federal property that—

(i) The United States has acquired since 1938; and

(ii) Was not acquired by exchange for other Federal property that the United States owned within the school district before 1939.

(2) For LEAs that are eligible under the eligibility exception in § 222.94(a)(2) or, if based upon former districts, in § 222.102(b)(1)(ii)(B), only Federal property that—

(i)(A) The United States has acquired since 1938; and

(B) Was not acquired by exchange for other Federal property that the United States owned within the school district before 1939; or

(ii) Is land acquired by the United States Forest Service between 1915 and 1990.

(Authority: 20 U.S.C. 237(a) and (f))

3. Section 222.94 is amended by revising paragraph (a), revising the first sentence of paragraph (c), paragraph (d) introductory text, introductory text of paragraphs (d)(1) and (d)(2), and revising the authority citation to read as follows:

**§ 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?**

(a) For an LEA to be eligible to receive financial assistance under section 2, the LEA must meet the following criteria:

(1) The United States must own or acquire "eligible Federal property," as that term is defined in § 222.91, within the school district of the LEA, that has an aggregate assessed value of 10 percent or more of the assessed value of all real property in the school district, based upon the assessed values of the eligible Federal property and of all real property (including that Federal property) on the date or dates of acquisition of the eligible Federal property; or

(2) Beginning with fiscal year 1991, the school district of the LEA—

(i) As demonstrated by written evidence from the United States Forest Service satisfactory to the Secretary, contains between 50,000 and 55,000 acres of land that has been acquired by the United States Forest Service between 1915 and 1990; and

(ii) Serves a county chartered by State law in 1875.

\* \* \* \* \*

(c) If, during any fiscal year, the United States sells, transfers, is otherwise divested of ownership of, or relinquishes an interest in or restriction on, Federal property upon which an LEA's eligibility is based, the Secretary redetermines the LEA's eligibility for the following fiscal year, based upon the remaining eligible Federal property, in accordance with paragraph (a) of this section. \* \* \*

(d) Except as provided under paragraph (a)(2) of this section, the Secretary's determinations and redeterminations of eligibility under this are based on the following documents:

(1) For an initial determination of eligibility under paragraph (a) for a new section 2 applicant or newly acquired eligible Federal property, only upon—

\* \* \* \* \*

(2) For a redetermination of an LEA's eligibility under paragraph (c) of this section, only upon—

\* \* \* \* \*

(Authority: 20 U.S.C. 237(a)(1), (e), and (f))

4. Section 222.95 is amended by revising paragraph (a) to read as follows:

**§ 222.95 What constitutes a substantial and continuing financial burden?**

(a) An LEA is eligible to receive section 2 assistance only if acquisition of the eligible Federal property places a substantial and continuing financial burden on the LEA.

\* \* \* \* \*

5. Section 222.96 is amended by revising the introductory text and paragraph (a), to read as follows:

**§ 222.96 When is an LEA not substantially compensated from Federal activity?**

An LEA is eligible to receive section 2 assistance only if the LEA is not being substantially compensated, by increases in local revenue from Federal activities with respect to the eligible Federal property in the school district, for the loss of local revenue resulting from Federal acquisition of that real property. The Secretary considers that an LEA is being substantially compensated by increases in local revenue from the carrying on of Federal activities with respect to the eligible Federal property if—

(a) The LEA receives new or increased local revenue that is generated directly from the eligible Federal property or activities in or on that property; and

\* \* \* \* \*

6. Section 222.98 is amended by revising paragraph (a) to read as follows:

**§ 222.98 How is an LEA's section 2 maximum entitlement determined?**

\* \* \* \* \*

(a) In accordance with § 222.99, the Secretary first establishes an estimate of what the total assessed value of the eligible Federal property would be if it were on the tax rolls in the fiscal year for which assistance is sought ("estimated current assessed value"), based on the classification, character, and condition of that property as it was when acquired by the United States. The Secretary does not include in this figure any estimated current assessed value for improvements or other changes made in or on the eligible Federal property after the Federal acquisition.

\* \* \* \* \*

**§ 222.99 [Amended]**

7. In section 222.99, remove the words "Federal property" each time they appear, and add, in their place, the words "eligible Federal property", and revise the authority citation to read "(Authority: 20 U.S.C. 237(a) and (f))".

8. Section 222.101, paragraph (a) is revised to read as follows:

**§ 222.101 How is an LEA's section 2 need-based entitlement determined?**

\* \* \* \* \*

(a) The Secretary divides the total estimated current assessed value established under § 222.98(a) by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the school district of the applicant.

\* \* \* \* \*

9. Section 222.102 is amended by revising paragraphs (b)(1)(i) and (ii), the

introductory text of paragraph (c), paragraphs (c)(1) and (c)(2)(i), and the authority citation to read as follows:

**§ 222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) At the time of consolidation contained some eligible Federal property; and

(ii) For the year of application—

(A) Contains within its former boundaries eligible Federal property, that has an aggregate assessed value of 10 percent or more of the assessed value of all real property (including the eligible Federal property) in the former school district, based upon the assessed values of the eligible Federal property and of all real property (including that Federal property) on the date or dates of acquisition of the eligible Federal property; or

(B) Beginning with fiscal year 1991, meets the description in § 222.94(a)(2); and

(2) \* \* \*

(c) *Entitlement.* Except as otherwise limited by law or the amount of appropriated funds, an LEA that meets the eligibility criteria in paragraph (b) of this section on the basis of a former school district is entitled to financial assistance under section 2 in an amount equal to the lesser of the maximum entitlement or the need-based entitlement, which are determined as follows:

(1) For each former school district meeting the eligibility criteria in paragraph (b)(1) of this section, the Secretary determines a maximum entitlement figure in accordance with § 222.98. If more than one former school district is eligible, the Secretary combines the maximum entitlement figures for all eligible former school districts within the LEA to determine the LEA's total maximum entitlement.

(2) \* \* \*

(i) Dividing the total estimated current assessed value for all eligible Federal property meeting the criteria in paragraph (b)(1)(ii) of this section, that is within former school districts meeting the criteria in paragraph (b)(1) of this section, by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the consolidated LEA; and

\* \* \* \* \*

(Authority: 20 U.S.C. 237 (c) and (f))

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BILLING CODE 4000-01-M

**14 CFR Part 93**

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**Friday  
September 13, 1991**

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**Part III**

**Department of  
Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 93  
High Density Traffic Airports; Slot  
Allocation and Transfer Methods;  
Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 93****[Docket No. 25758; Notice No. 88-18A]****RIN 2120-AD93****High Density Traffic Airports; Slot Allocation and Transfer Methods****AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Federal Aviation Regulations relating to the allocation and transfer of air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport. This proposal would (1) add a definition of "limited incumbent" to refer to air carriers and commuter operators holding fewer than 12 slots at a high density airport; (2) provide for allocation of slots by lottery to certain new entrants and limited incumbents; (3) restrict the transfer of newly acquired lottery slots and provide for the recall of those slots upon the sale or merger of the limited incumbent slot holder; (4) amend the minimum slot use requirements; (5) amend the slot use reporting requirements; and (6) make various editorial revisions. The proposed revisions would promote the availability of slots to new entrant and limited incumbent carriers at the high density airports, and thereby promote competition in the airline industry. The proposal is in compliance with recent legislation requiring the agency to initiate rulemaking to consider more efficient methods of allocating existing capacity at high density traffic airports.

**DATES:** Comments must be received on or before November 12, 1991.**ADDRESSES:** Comments on this regulation may be mailed in triplicate to:

Attention: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC-10), Docket No. 25758, 800 Independence Avenue, SW., Washington, DC 20591.

Or delivered in triplicate to:

Federal Aviation Administration, Rules Docket, room 915, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3491.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the address listed above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25758." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule 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.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**Background: Notice No. 88-18**

The High Density Traffic Airport Rule, 14 CFR part 93, subpart K, limits the number of operations during certain hours or half hours at four airports: Kennedy International, LaGuardia, O'Hare International, and Washington National. Comprehensive rules for the allocation and transfer of high density airport slots were adopted in December 1985 (14 CFR part 93, subpart S). A "slot" is defined as the authority to

conduct one allocated IFR landing or takeoff operation during a specific period at one of the high density airports. These periods are either one hour or 30 minutes, depending on the airport.

On December 16, 1988, the Department of Transportation issued Notice of Proposed Rulemaking No. 88-18 (53 FR 51628, December 22, 1988; corrected 54 FR 831 and 54 FR 3079). In that notice, the Department denied the petition of America West Airlines to withdraw slots from incumbent carriers at National and LaGuardia Airports and to reallocate those slots to new entrants and smaller incumbent carriers.

Second, the Department proposed for discussion six issues relating to the effect of the slot restrictions on competition and market entry, as required by section 149 of Public Law 100-457.

Finally, the notice proposed two specific amendments to the current slot rules. The first proposal was that a slot would not be withdrawn from a carrier with 8 or fewer slots (for reasons other than nonuse) if the carrier itself uses the slot, but that such protection would not extend to a carrier that holds 8 or fewer slots but leases slots to other carriers for operation. The second amendment proposed in the notice was to increase the slot use requirements for carriers holding a substantial number of slots in certain hours or half-hours, so as to minimize holding of unused slots. For a time period (hour or half-hour, depending on the airport) in which a carrier holds 10 or more slots, the FAA would withdraw a slot used less than 90 percent of the time in a 2-month period. For a time period in which a carrier holds 5 through 9 slots, the FAA would withdraw a slot used less than 80 percent of the time in a 2-month period. In all other cases a minimum percentage of 65 percent utilization, the same as under the existing rule, would apply.

**Comments Received on Notice No. 88-18**

Twenty-six comments were received on Notice No. 88-18 covering all of the various issues raised in that notice. Supplemental comments filed after the close of the comment period by Air Wisconsin, the Regional Airline Association, and the City of Chicago Department of Aviation were considered in this SNPRM. In general, the comments on Notice No. 88-18 not discussed in this notice will be addressed, together with additional comments received in response to this SNPRM, in any final disposition of the rulemaking.

### Comments on Air Carrier/Commuter Slot Categories

At the time Notice 88-18 was issued, commuter slots could be used only by aircraft with turboprop or reciprocating engines with a certificated maximum passenger capacity of less than 56 or a maximum payload capacity of less than 18,000 pounds. (§ 93.123(c).) Operation of an air carrier aircraft, i.e., an aircraft having a seating capacity of 56 or more or a maximum payload capacity of more than 18,000 pounds, required an air carrier slot.

Of those commenters addressing the underlying issue of the existing rule's distinction between commuter and air carrier slots, Pan Am, Pan Am Express, the Regional Airline Association, and several other carriers stated that the ability for air carrier slots to be operated by commuters is necessary to maintain scheduling flexibility. American, Pan Am, Pan Am Express, and the Regional Airline Association also stated that scheduling flexibility could be increased by eliminating this distinction altogether. While USAir/Piedmont argued that elimination of the distinction would threaten service to small markets, American suggested that removing this distinction would enhance such service. Air Wisconsin argued that a flat prohibition on the use of commuter aircraft in air carrier slots would unfairly penalize carriers that operate both types of aircraft as a single entity.

Pan Am, Pan Am Express, and the Regional Airline Association and several of its individual members further claimed that the types of aircraft that can use commuter slots should be expanded in response to the needs of smaller communities where traffic has increased significantly. These commenters argued that the 56-seat limit contained in the definition of "air carrier" and "scheduled commuter operator" under § 93.123(c) is based on the types of aircraft that were available at the time of the adoption of the High Density Rule in 1969. Since that time, new aircraft have been developed that have more than 55 seats, but should still be properly considered "commuter" aircraft for the purposes of § 93.123(c) due to their limited range and cruise speed.

#### Amendment No. 93-57

On August 22, 1989, the Department published Amendment No. 93-57, a final rule that amended the definitions of commuter and air carrier aircraft and made two other technical amendments to the slot allocation rules (54 FR 34904; corrected 54 FR 37303, September 8, 1989). In response to the comments

received and to a petition filed by Air Wisconsin to permit the use of larger propeller-driven aircraft with commuter slots, the FAA redefined commuter operations as those using turboprop or reciprocating aircraft having fewer than 75 passenger seats. On September 21, 1989, the Department suspended the effectiveness of this amendment to the extent that it would prohibit operations by turbojet aircraft with fewer than 56 seats using commuter slots, to consider information presented by manufacturers currently developing small turbojet aircraft intended for commuter operations (54 FR 39843, September 28, 1989). USAir requested reconsideration of Amendment No. 93-57 to permit turbojets with fewer than 75 seats to use commuter slots. The USAir request and other comments on the use of jet aircraft in commuter slots will be considered in the final rule adopted in this docket.

Amendment No. 93-57 also provided that a carrier holding fewer than 8 slots would be protected from withdrawal of those slots only if that carrier was operating the slots, and amended the definition of "summer" and "winter" season to conform to current daylight savings time dates under Federal law.

#### Public Law 101-508

Title IX of the Omnibus Reconciliation Act of 1990, Public Law 101-508, referred to as the "Aviation Safety and Capacity Expansion Act of 1990," contains the following provisions:

##### Section 9126. Allocation of Existing Capacity at Certain Airports.

(a) Rulemaking.—The Secretary of Transportation shall, by July 1, 1991, initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density traffic airports in order to provide improved opportunities for operations by new entrant air carriers.

\* \* \* \* \*

Definition.—In this section, the term *new entrant air carrier*, as used with respect to a high density traffic airport, means an air carrier having less than 12 operating rights at such airport.

The subject matter of the rulemaking required by the above legislation is identical to issues presented by the Department for public comment in Notice No. 88-18 in FAA Rules Docket 25758. Accordingly, the Department believes that the most productive and efficient means of initiating the rulemaking required by Public Law 101-508 would be to incorporate it in the existing agency docket on the same subject. This notice, therefore, continues and supplements the rulemaking initiated in December 1988.

### Proposed Amendments

In consideration of issues raised in the America West petition, comments received in response to Notice No. 88-18, and the status of current slot holdings, and in compliance with the provisions of section 9126 of Public Law 101-508, the Department is proposing additional and alternate amendments to the proposals contained in Notice No. 88-18. As with the previous proposal, the amendments proposed would amend subpart S of part 93 of the Federal Aviation Regulations (14 CFR part 93, subpart S) to alter certain restrictions concerning allocation of slots at the high density airports.

The amendments proposed are intended to promote access to high density traffic airports by carriers that do not now serve these airports or that have only limited operations at one or more of the airports, by making lottery slots available exclusively to new entrant and limited incumbent carriers and by increasing the use requirement for slots, thereby making some marginally used slots available for purchase. Entry by new carriers and expanded service by smaller carriers at the high density airports can provide increased competition among airlines serving these airports. The benefits to the public associated with increased competition include lower fares, increased choice of carriers and services for consumers, and a potentially greater number of markets served from each of the high density airports. The amendments are proposed in furtherance of the interest of the Department of Transportation in promoting competition in all aspects of the airline industry.

In summary, the proposed amendment would:

1. Add a new definition for "limited incumbent," to mean an air carrier or commuter operator that holds fewer than 12 slots at the airport (including slots transferred or lost for nonuse by a carrier since adoption of the allocation rules in December 1985).

2. Provide that only new entrants and limited incumbents could participate in a lottery of unallocated slots until all new entrant and limited incumbent participants had completed their selections. Certain restrictions would apply to transfer of the slots for 24 months after selection in a lottery: (1) The slots could be sold or leased only to another new entrant or limited incumbent carrier; (2) the slots could be traded only for another lottery slot at the same airport; (3) within 24 months after a lottery, slots would be

withdrawn upon the failure of the holder to use the slots or upon the sale or merger of the limited incumbent, insofar as the sale or merger would result in the gaining carrier holding a combined slot base of more than 12 slots.

Other, non-limited incumbent carriers could select remaining slots for temporary allocation until the next lottery.

3. Increase the percentage of slot use required in order to avoid withdrawal for nonuse to 90 percent and apply the requirement only to weekdays. For slots allocated for weekends only or for less than 5 days per week, a 65 percent use requirement would continue to apply.

4. Revise the bankruptcy provision to provide that the use-or-lose provisions would not apply to slots held or operated by a carrier in bankruptcy for 60 days after initial filing, 30 days after a subsequent cessation of operations, or up to 30 days after filing of a Hart-Scott-Rodino notice with the Department of Justice.

5. Require the reporting of international slot use by U.S. carriers already required to file a similar report for the use of domestic slots.

6. Provide that if a slot was obtained for an international flight under § 93.217, operation of that flight will not count toward use of any domestic slot.

7. Remove obsolete penalty provisions.

The intent of the proposed amendments is to make slots available to new entrants through encouraging the sale of marginally used slots by incumbent carriers, in order to promote competition in the airline industry to the extent possible without substantial disruption of existing air service; and to make various administrative refinements in the administration of the slot allocation program.

#### Discussion of Specific Proposals

##### *I. Availability of Slots for New Entrant and Limited Incumbent Air Carriers*

###### *Lottery Procedures*

It is proposed that primary participation in slot lotteries conducted under FAR § 93.225 would be limited to new entrant and limited incumbent carriers.

The proposed rule would establish a limited incumbent carrier status. Limited incumbents would be defined as air carriers or commuter operators with fewer than 12 slots (including as slots held those slots previously lost for nonuse or sold to other carriers). This is consistent with the definition of "new entrant" in Public Law 101-508.

The Department also proposes to limit primary participation in the lottery to

carriers that hold appropriate DOT economic authority and an FAA part 121 or part 135 operating certificate. The existing rule provides that a carrier that has made substantial progress toward obtaining an FAA certificate may participate. However, experience with such carriers actually beginning and continuing operations after selecting slots has not been positive, and the Department believes that participation in current lotteries should be limited to those carriers most likely to be able to make efficient use of slots.

The proposed rule would permit new entrant and limited incumbent carriers to acquire any available slots without competing with carriers already holding a substantial number of slots at the airport. The current procedure permitting new entrants to select 4 slots rather than 2 in the first lottery sequence would be retained. Limited incumbents could select 2 slots each turn, as at present. Carriers holding 12 or more slots at an airport would be eligible for participation in the lottery only after all participating new entrants and limited incumbents had completed their selections. Slots selected by carriers holding 12 or more slots would be allocated only until the date of the next lottery at that airport.

Other lottery procedures in § 93.225 remain unchanged.

###### *Restrictions on Transfer of Lottery Slots*

Certain new restrictions on slots allocated by lottery would apply to new entrant and limited incumbent participants, to make it impractical for a carrier to participate in lotteries for the purpose of selling the slots obtained. The restrictions would apply only to slots allocated to a new entrant or limited incumbent carrier in a lottery held after June 1, 1991. Slots acquired by other incumbent carriers would not be subject to the same restrictions, because the allocation to the incumbent would expire on the date of the next lottery.

Specifically, unless and until a slot had been used continuously for 24 months by the limited incumbent holder, the slot could be sold or leased only to another new entrant or limited incumbent carrier, and could be traded only for another slot at that airport obtained in a lottery held within the preceding 24 months. Under the existing rule, lottery slots can be transferred without restriction after 60 days of operation. Many slots allocated to new entrants under this procedure were sold to larger carriers, sometimes immediately after the minimum 60-day period. Also, peak period slots obtained by new entrants were traded to incumbents for less valuable off-peak

slots (and, presumably, other consideration) and the less valuable slots were then returned to the FAA. Therefore, while the proposal to restrict trades to other limited incumbent carriers somewhat limits a carrier's scheduling flexibility, the limitation is necessary to maintain the independence of the limited incumbent's operation.

The proposed transfer restrictions would encourage the continued use of the slots by new entrant and limited incumbent carriers, and thereby foster greater competition at the airport in two ways. First, the restrictions would discourage participation in the lottery by operators interested only in liquidating the slots and not in providing long-term service. Carriers genuinely interested in serving the airport, therefore, would stand a greater chance of obtaining slots. Second, the newly acquired slots would not be the target of purchase offers by larger carriers, so that a smaller carrier would not continually be forced to choose between operating authority and the proceeds of a sale of that authority. All special restrictions on the use and transfer of the slots would cease after 24 months of continued operation.

###### *Requiring Notice to New Entrants and Limited Incumbents of Pending Slot Sales*

The Department has not specifically proposed, but requests comments on a measure to require that large incumbent slot holders advise new entrant and limited incumbent carriers of opportunities to purchase or lease slots that come on the market. Currently, an incumbent carrier may enter into a private transaction for the permanent transfer (sale) or temporary transfer (lease) of a slot. The transfer must be reported to the FAA and confirmed by the FAA before the slot can be operated by the acquiring carrier, under FAR § 93.221. The terms of the underlying transaction, such as consideration, are not reported to the Department in any form. The Department favors such a market system, because it promotes the most economically efficient use of slots and permits carriers to adjust their slot holdings as they see fit with a minimum of government intervention in the marketplace. In general, this system has worked well in providing carriers with the flexibility to accommodate slot holdings to their desired operating schedules.

However, several carriers have complained that they were unaware of the opportunity to purchase slots that were on the market, or that the price of such slots was within the reach of only

the largest incumbent carriers. With respect to the price of the slots, the Department does not intend to place any restrictions on the terms of the consideration paid for slots in private transactions; the market value of operating slots at high density airports can only be determined by interested buyers and sellers in the marketplace.

However, the Department is requesting comments on the feasibility, and potential benefits and costs, of a measure to require that incumbents intending to sell slots notify limited incumbent and new entrant carriers of the impending slot sales. Such a provision would have two parts. First, the rule would provide for the establishment of a formal list of interested carriers who qualify as new entrants and limited incumbents. Second, the rule would provide for notice of pending slot sales and leases to carriers on the list, to ensure that such carriers did not miss opportunities to obtain slots because of lack of advance knowledge of the slot transfer.

Several methods of providing slots for allocation to new entrants were proposed by commenters and considered by the Department, but are not proposed for adoption.

#### Withdrawal and Reallocation

Several commenters on Notice 88-18 urged that the Department withdraw slots used by incumbent carriers and reallocate them to new entrants and limited incumbents. As noted in the preamble to Notice 88-18, when substantially all slots are allocated, as at present, withdrawal and reallocation is the only certain means of providing slots to carriers not currently serving the airport. The Department did not, in that notice, propose to withdraw and reallocate slots, in consideration of the disruptive impact on current air service provided by incumbent carriers; the efficiency of the buy-sell market mechanism in providing for most of the carriers' scheduling adjustment needs; and the limited scope of unmet demand for new entry to high density airports.

It is the position of the Department that new entry and the growth of smaller carriers in high density airport markets fosters competition, and that increased competition in the airline industry can have benefits for the public in the form of reduced fares and a greater variety of services. However, each of the high density airports currently experiences intense competition among carriers, and none of the four airports is dominated by a single carrier. Also, in each of the three high density markets—Chicago, New York, and Washington, DC—there is one

or more alternate airports serving the same market that is not slot-restricted. Therefore, the extent to which additional new entrants at the four high density airports would actually enhance competition in these particular markets is uncertain. Moreover, there is no evidence that service provided by new entrants would have a higher (or lower) economic value than the incumbent service it would replace. For the above reasons, the Department continues to believe that the goal of increased competition should not be achieved at the expense of air service currently provided to the public by incumbent air carriers.

Finally, a large number of slots at Washington National, La Guardia, and O'Hare Airports was recently sold at a public auction open to all interested air carriers, including new entrants. Although some carriers complained that the sale favored larger carriers because slots were "bundled" with other assets or sold in large blocks, no carrier was excluded from the process.

#### Establishing New Slots for New Entrants/Limited Incumbents

Several commenters requested that the Department take steps to increase the capacity of the high density airports. Any such new capacity would be represented by additional slots, which could be allocated in whole or in part to new entrants and limited incumbents.

Kennedy, La Guardia, and O'Hare now experience some of the highest percentages of operating delays of any airports in the U.S.; the Department will not accept the degradation of air service to the public and the additional impacts on Air Traffic Control resources that a substantial increase in air carrier operations at these airports would entail, until an increase in system capacity can be attained.

The FAA has completed or has in progress a number of measures to increase the efficiency of air traffic operations in the New York and Chicago areas, including upgrading of radar and computer equipment, increased controller staffing, reorganization of air traffic sectors and arrival and departure routes, and the improvement and refinement of ATC's traffic flow management capability. The Department is also funding a state and local government study to determine whether, and if so, where, to construct an additional airport for the Northern Indiana/Northern Illinois area, and is promoting the use of existing alternate and reliever airports in the New York area. Nonetheless, the airspace, runway configuration, and noise sensitivities of communities around these airports

represent formidable obstacles to capacity expansion. Moreover, some of the measures planned to improve the efficiency of operations will not necessarily increase capacity. As a result, the addition of a substantial number of air carrier operations at Kennedy, O'Hare, and LaGuardia is not currently feasible without unacceptable operational impacts.

At Washington National Airport, substantial capacity exists to add air carrier operations, all of which would be allocated to new entrants and limited incumbents under the changes to the slot lottery procedures proposed in this notice. However, an increase in air carrier operations at National Airport is prohibited by the statutory limit on scheduled air carrier operations at the airport (section 6009(e)(1) of Pub. L. 100-591).

#### Use of Commuter Slots for Air Carrier Operations

Other commenters, particularly American Airlines and the Regional Airline Association, requested that the distinction between air carrier and commuter slots be eliminated and that commuter slots be available for use with aircraft of any size and type. American also petitioned the FAA to permit the use of Stage 3 110-seat jets in commuter slots at O'Hare Airport (54 FR 40191, October 2, 1990). While the commenters made the request for their own benefit, the Department considered the conversion of commuter slots as a potential source of additional capacity for air carrier operations that could be reserved for new entrants and limited incumbents.

The Department believes that some use of commuter slots with larger aircraft is feasible on a limited trial basis. The FAA has published a notice of proposed rulemaking proposing to permit a limited number of jet operations in commuter slots at O'Hare Airport as requested by American. (56 FR 21404; May 8, 1991). However, the limited action requested in American Airlines' petition would not in itself benefit new entrant carriers, and would not make new slots—commuter or air carrier—available for allocation to new entrants. (Virtually all commuter slots at the high density airports are now allocated). Also, at Washington National Airport the use of commuter slots for additional air carrier operations is specifically prohibited by statute.

Accordingly, the Department does not consider the use of commuter slots by larger aircraft to be an immediate source of airport capacity that can be reallocated to new entrant and limited

incumbent air carriers. The agency's proposed rulemaking to consider the limited use of commuter slots for jet operations at O'Hare Airport will, if a final rule is adopted, permit the evaluation of the concept. If such a program is implemented, and some adjustment of the current mix of commuter and air carrier operations is determined to be feasible from an operational standpoint and not to have an unacceptable impact on small community air service, the Department will consider further rulemaking for this purpose.

#### Use of Capacity Allocated for General Aviation

The Department is not proposing to convert any of the general aviation "slots" for use by air carriers or commuters, because of the importance of retaining some access to the high density airports by general aviation operators and because of the effects on operations of exchanging general aviation operations for scheduled operations by larger aircraft. The Department will continue to evaluate the appropriate mix of air carrier, commuter, and general aviation operations at each of the high density airports.

#### II. General Restrictions on Slot Allocation and Use

The proposed rule would impose several additional slot use restrictions that would not affect the normal operating use of slots but would tend to reduce the incidence of unused slots or otherwise facilitate the fair and efficient allocation of slots.

#### Withdrawal of Slots From Carrier Holding Fewer Than 8 Slots

Notice No. 88-18 proposed to protect slots held by a limited incumbent from withdrawal for operational reasons, such as international operations, only if that carrier actually operates the slots. This prevents larger incumbents from entering into a sale and leaseback of vulnerable slots with a limited incumbent in order to obtain the protection enjoyed by the limited incumbent. This rule has been adopted as proposed, in Amendment No. 93-57. This notice proposes to increase the limit of protected slots to 12 for consistency with the general definition of limited incumbent carriers. Comments are requested on whether a higher number should be adopted, for example 20 slots, so that smaller carriers that held too many slots to be considered limited incumbents would nevertheless receive some protection from withdrawal.

#### Minimum Slot Use Percentage

The Department proposes to increase the minimum percentage of use for slots under § 93.227(a) to 90 percent for all carriers for weekday (Monday through Friday) slots. The Department is not adopting the proposal in Notice 88-18 to increase the percentage only for carriers holding a substantial number of slots in one time period, in view of opposition to the proposal, and the difficulties for carriers in complying with the rule and for the FAA in administering a rule with differential slot use requirements. Under the current rules, a carrier holding 3 slots in one hour or half hour can protect an unused slot by distributing 2 operations across the 3 slots. The proposal would substantially reduce this practice by requiring a carrier to hold at least 10 slots in one hour or half hour to protect one slot. The amendment would not affect smaller carriers or interfere with the normal operating flexibility required for use of slots, however. Only weekday slots would be counted, so there would be no penalty to commuter and other operators for nonuse of slots on Saturday and Sunday, a common scheduling practice. While the proposed rule would reduce the ability to retain unused slots, it would not reduce the number of permissible flight cancellations by a carrier operating a normal 5-day Monday-through-Friday schedule. A 65 percent requirement would continue to apply to the very few domestic slots used only on weekends or otherwise less than 5 days per week.

Because carriers have the ability to sell and lease slots, it is not expected that carriers currently protecting unused slots would return those slots to the FAA or lose them through nonuse. However, a sale of any such slots would place more slots on the market and thereby enhance competitive opportunities for new entrants.

The Department specifically requests comments on the effects of the proposed 90%/5-day minimum slot use requirement, including whether the requirement is consistent with the number of flight cancellations for maintenance, etc., actually experienced by carriers, and whether a different percentage or formula would accomplish the same purpose of preventing the holding of unused slots.

#### Reporting Use of International Operations

The Department proposes to add a provision that if a slot was obtained for an international flight under § 93.217, operation of that flight will not count toward use of any domestic slot. International slots are not subject to the

use requirements of § 93.227.

Theoretically, a carrier may obtain a slot for an international flight under § 93.217, then report some of the operations of that flight under a domestic slot number in order to bring the domestic slot up to the minimum use percentage. The proposed amendment would prohibit the retention of underutilized domestic slots by reporting the use of a flight for which the carrier has already been provided an international slot. (A domestic slot could continue to be used for an international flight, if the carrier has not obtained an additional slot for the flight under § 93.217).

The Department also proposes to require, in an amendment to § 93.227(g), the reporting of the use of international slots by U.S. air carriers that are now required to report the use of domestic slots under § 93.227(i). Most U.S. carriers already report use of international slots as part of their bimonthly slot use reports under § 93.227(i). The addition of international slots in the same report filed by other U.S. carriers would be a minimal burden, and would assist the FAA in the monitoring of slot use and patterns of airport operations in peak periods. Reporting by non-U.S. carriers is not proposed at this time due to the limited number of slots held by any individual foreign carrier at JFK and O'Hare Airports.

#### Bankruptcy Provision

The Department is proposing to modify the rule applicable to a carrier that ceases operation after filing for bankruptcy. The existing rule provides simply that the use-or-lose provision of § 93.227(a) does not apply to a carrier filing a bankruptcy petition for 60 days after filing. That provision has proved unsatisfactory, because the term "filing" may exclude several other significant events in the course of a bankruptcy, which merit a brief period of protection from the general slot use requirement. Several bankruptcy courts have attempted to assert jurisdiction over the slots of a carrier in bankruptcy, which has interfered with the operation of agency regulations for recovery and reallocation of slots. This issue was addressed by the U.S. Court of Appeals for the First Circuit, in *In re Gull Air, Inc.* (890 F.2d 1255). The Court held that while the debtor had some proprietary interest in high density airport slots, that interest was defined by the FAA regulations that established the slots; when the debtor's slots were subject to a mandatory withdrawal by the FAA for nonuse, under FAR § 93.227(a), the debtor lost any proprietary interest it

may have had in the slots. It remains the Department's position that slots are not property and are subject to the agency's absolute control, consistent with agency regulations adopted for that purpose.

In the interest of establishing a precise date when unused slots would revert to the FAA, and at the same time providing a brief period for the sale of slots within the bankruptcy process, the Department proposes to retain the current 60-day moratorium from the slot use requirement for the initial bankruptcy petition and to provide an additional 30-day period when a slot holder or operator in bankruptcy voluntarily, or under court order, ceases scheduled operations at a high density airport. The Department believes that 30 days is sufficient for relief subsequent to the initial petition, because the court, trustee, and creditors would be familiar with slot use and transfer requirements and a sale could be consummated quickly if demand for the slots exists. The proposed amendment also would clarify that the bankruptcy provision applies to the bankruptcy of either the holder or operator of a slot, to avoid penalizing a slot holder for the bankruptcy of a carrier leasing that holder's slots.

The Department is also proposing to except the slots of a bankrupt carrier for 20 days after the parties to a proposed slot transfer comply with compulsory information requests issued by the Department of Justice in connection with an antitrust investigation of a proposed slot transfer. The proposed rule would permit the Department of Justice a sufficient period, based on the time periods established, to conduct a review of substantial transfers of assets for anticompetitive implications. The rule is needed to assure the Department of Justice is able to conduct the review without adversely affecting the use-or-lose status of the slots subject to the transfer.

### III. Penalty Provisions

The rule adopted in December 1985 contained a special penalty provision for subpart S violations. Section 93.229 provides for a maximum \$1,000 civil penalty for each unlawful takeoff or landing and for each day that a slot is not returned to the FAA after a requirement to do so. In practice, all enforcement actions taken for violations of the High Density Rule (part 93, subpart K) and the slot transfer and allocation rules (part 93, subpart S) have cited only violations of § 93.125, which prohibits an operation at a high density traffic airport during restricted hours without an ATC reservation for that operation. Civil penalties have been

sought under the general penalty provisions of section 901 of the Federal Aviation Act of 1958, as amended, and part 13 of the FAR. As a result, the separate penalty provision in § 93.229 is unnecessary.

In addition, the \$1,000 penalty provided in § 93.229 is not necessary and is not consistent with current law. The \$1,000 amount represented the maximum FAA civil penalty when the rule was adopted in 1985, but Congress increased the maximum penalty for carriers to \$10,000 in 1987 (section 204, Pub. L. 100-223). The maximum for individual airmen remains \$1,000. For the above reasons, the Department proposes to remove § 93.229 in its entirety.

### Request for Comments

In proposing the specific alternatives listed above, the Department does not intend to limit the scope of public comment on either the nature and extent of the problem—i.e., the apparent inability of non-incumbent carriers to gain entry at high density traffic airports—or the respective benefits of various actions to correct that problem. Comments are requested not only on the alternatives proposed, but also on any other actions the commenter considers necessary and on the relative need for any changes to the current rules.

### Regulatory Evaluation

The proposed amendment would not significantly alter the current operations environment for either air carrier or commuter operations at the high density airports. The proposal to promote the availability of slots for limited incumbent and new entrant carriers (through stricter slot use requirements) and to direct all lottery slots to those carriers would be a benefit to those carriers. However, as a result of the proposed restrictions on transfer of slots obtained through a reallocation lottery, the benefit of those slots would be limited during the period of the restrictions to their value as an operating permit rather than as a liquid asset. The proposed amendment to the use-or-lose requirement could as a practical matter require a carrier to transfer an unused slot rather than hold it without operation, but the carrier would be compensated for the transfer.

The most direct impact of the transfer of slots at the high density airports would be felt by the carriers that would lose slots (through sale or withdrawal for nonuse) and those that would gain slots (through purchase or lottery). While the Department does not have reliable data on the value of slots either as an operating asset or as a salable

asset, some observations can be made on the effects of the transfers. Due to the economic dynamics of hub service patterns, the value of a slot to an incumbent with a hubbing operation at an airport is, arguably, higher than the value of that slot to a carrier without a hubbing operation at that airport. The values to the carriers would be reflected in the values to the public of the uses of the affected slots. As a result, the transfer might not have a net balance of zero for the system as a whole. However, since both losing and gaining carriers would be using the slots for similar services, the difference is not thought to be substantial.

A second effect of the transfer of slots from one carrier to another would be felt by individual communities. Losing carriers might reduce service at some locations served through the affected hub, and gaining carriers might increase service to communities on their systems. It is also possible that the gaining carriers could start service on their systems in exactly the same markets in which the losing carriers reduced service. Presumably, the losing carriers would opt to reduce service at those locations with the lowest marginal profit; however, the hubbing structure obscures the determination as to which locations contribute the least to marginal profit. The receiving carriers would, presumably, use the slots to initiate or increase service where they expected to capture the greatest marginal profit, with again the complications added by hubbing strategies. Without some direct knowledge of who the gainers and losers would be, and of their actions, the Department cannot estimate the net effect of this proposed regulatory action. However, it does seem likely that the effect on the losing communities will be largely offset by the impact on the gaining communities, resulting in a relatively minor net system effect.

The principal reason for all of these proposed changes is they would, to a greater or lesser degree, increase competition, or at least improve the potential for competition, at the subject airports. One of the important benefits of competition—either actual or potential—is to act as a constraint on fares. While the Department is not able to estimate the actual effect of this action on fares, it is possible to provide order-of-magnitude estimates of impacts under various assumptions. First, it is assumed that connecting traffic through major airports is generally subject to strong competitive restraint. Therefore, the markets that are likely to be affected by the impact of this action on

competition are origin and destination (O&D) markets using these airports. During calendar year 1988, O&D traffic at the three airports included in this proposed regulation generated the following revenues:

[In billions of dollars]

Chicago O'Hare .....	\$2.7
New York La Guardia .....	1.6
Washington National .....	1.3
Total .....	\$5.6

While we have no way to know how the rule will translate into actual savings to consumers, the revenues above provide a measure of the magnitude of the environment for possible savings.

In addition, it should also be recognized that should this action result in an enhanced competitive environment in the air transportation industry generally, the benefits of ensuring healthy competition would be felt more widely than at the airports directly affected by this proposed regulation. Therefore, it might be argued that the benefits to the traveling public are understated by limiting the estimate of those benefits (as has been done above) to the fares at the airports directly affected by the regulation. Thus, there is a significant benefit to the traveling public which can be balanced against any net cost (should there be one) to the carriers as a group, to the communities served, or to the public as a result of these changes.

In summary, the provision of the proposed rule change that is likely to have the most significant impact is the possible (voluntary) transfer of slots from incumbent operators to new entrant and limited incumbent operators. That action would result in a redistribution of the value of slots among carriers and, in all probability, a reduction in service to some individual communities and an increase to others. With respect to changes in community service levels, there is no *ex ante* way to estimate the system impact or even whether it is positive or negative, but again the net effect should be minimal.

In general, the major effects of these proposed changes would be felt through their impacts on competition. While we are not able to develop a specific numerical estimate of those impacts, their potential magnitude can be discerned through the direct effect of a positive price impact at the airports directly involved, as described above. Second order impacts on markets at other locations in the system are certainly smaller and even less

quantifiable but would only enhance any positive direct price impacts. On this basis, the Department believes that there would be a positive net impact of implementing the proposed rule change.

Because of the difficulty in determining quantifiable costs and benefits of the proposed rule, this summary represents the regulatory evaluation for this rulemaking, and it is not necessary to place a separate document in the docket.

**Conclusion**

The Department has determined that the proposed amendment (1) is not a "major rule" under Executive Order 12291; and (2) is a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), for the reasons discussed above under Regulatory Evaluation, I certify that under the criteria of the Regulatory Flexibility Act, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of subpart S. OMB Approval Number 2120-0524 has been assigned to subpart S.

**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. While the proposed rule would remove the ability of state and local governments to hold high density airport slots, no state or local government entity has ever held a slot since the slot allocation rules were adopted in December 1985. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 14 CFR Part 93**

Aviation safety, Air traffic control.

**The Proposed Amendment**

Accordingly, the Department of Transportation proposes to amend part

93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

**PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS**

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983); Public Law 101-508.

2. In § 93.213, new paragraph (a)(5) is added to read as follows:

**§ 93.213 Definitions and general provisions.**

(a) For purposes of this subpart—

\* \* \* \* \*

(5) *Limited incumbent* means an air carrier or commuter operator that holds fewer than 12 air carrier slots or 12 commuter slots, respectively, at a particular airport, not including slots between the hours of 2200 and 0659 at National Airport or La Guardia Airport or international slots. However, for the purposes of this paragraph, the operator is considered to hold slots at that airport that the carrier has, since December 16, 1985,

- (i) Returned to the FAA;
- (ii) Had recalled by the FAA under § 93.227(a); or
- (iii) Transferred to another party other than by trade for one or more slots at the same airport.

\* \* \* \* \*

**§ 93.221 [Amended]**

3. In § 93.221, paragraph (a)(1) is amended by removing the reference to "Slot Transfers, Office of the Chief Counsel, Rules Docket, 800 Independence Avenue, SW., room 915G, AGC-204," and substituting: "Slot Administration Office, AGC-200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave. SW.,."

4. In § 93.221, paragraph (a)(5) is revised to read as follows:

**§ 93.221 Transfer of slots.**

\* \* \* \* \*

(a) \* \* \*

(5) Requests for confirmation of transfers of slots obtained in a lottery held under § 93.225 of this part after June 1, 1991, must be accompanied by documentation of use. Until a slot obtained in such a lottery has been used by the carrier that obtained it for a continuous 24-month period after the lottery in accordance with § 93.227(a) of this part, that slot may be transferred only by:

(i) Trade for another slot obtained in a lottery within the preceding 24 months or

(ii) By transfer to another new entrant or limited incumbent carrier after a minimum of 60 days of use by the obtaining carrier.

The transfer restrictions described in this paragraph apply to a slot acquired by trade to the same extent as to the slot traded at the time of the trade. The transfer restrictions apply to a slot acquired by one-way transfer until 24 months of continuous use after the lottery in which it was allocated to a new entrant or limited incumbent carrier.

5. In § 93.223, paragraphs (b), (c)(3) and (f) are revised to read as follows:

§ 93.223 Slot withdrawal.

(b) Separate slot pools shall be established for air carriers and commuter operators at each airport. The FAA shall assign, by random lottery, discrete withdrawal priority numbers for the recall priority of slots at each airport. Each additional permanent slot, if any, will be assigned the next higher number for air carrier or commuter slots, as appropriate, at each airport. Each slot shall be assigned a designation consisting of the applicable withdrawal priority number; the airport code; a code indicating whether the slot is an air carrier or commuter operator slot; and the time period of the slot. The designation shall also indicate if the slot is daily or for certain days of the week only; is limited to arrivals or departures; is allocated for international operations or for EAS purposes; or, at Kennedy International Airport, is a summer or winter slot.

(c) \* \* \*

(3) Except as provided in § 93.227(a), the FAA shall not withdraw slots held and operated at an airport by an air carrier or commuter operator holding 12 or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

(f) For 24 months after a lottery held after June 1, 1991, a slot acquired in that lottery, or any slot acquired in an initial or subsequent trade for such a slot, shall be withdrawn from an operator by the FAA upon the sale, merger, or acquisition of more than 50 percent ownership or control of that operator if the resulting total of slots held at the airport by the surviving entity would exceed 12 slots.

6. In § 93.225, paragraphs (c), (e), (g), and (h) are revised to read as follows:

§ 93.225 Lottery of available slots.

\* \* \* \* \*

(c) Slot allocation lotteries shall be held on an airport-by-airport basis with separate lotteries for air carrier and commuter operator slots. The slots to be allocated in each lottery will be each unallocated slot not necessary for international or Essential Air Service Program operations, including any slot created by an increase in the operating limits set forth in § 93.123(a) of this part.

(e) Participation in a lottery is open to each incumbent U.S. air carrier or commuter operator operating at the airport and providing scheduled passenger service at the airport; however, new entrant and limited incumbent carriers will be permitted to complete their selections before participation by other incumbent carriers is initiated. Any U.S. carrier which

(i) Has not operated scheduled service at the airport at any time after December 16, 1985, and

(ii) Has not failed to operate slots obtained in the previous lottery, but wishes to initiate scheduled passenger service at the airport, shall be included in the lottery if that operator notifies, in writing, the Office of the Chief Counsel, Slot Administration Office, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The notification must be received 15 days prior to the lottery date. The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in § 93.213(c).

(g) In order to select slots during a slot lottery session, an operator must have appropriate economic authority for scheduled passenger service under title IV of the Federal Aviation Act of 1958, as amended, and must hold FAA operating authority under part 121 or part 135 of this chapter.

(h) During the first selection sequence, 25 percent of the slots available but no less than two slots shall be reserved for selection by new entrant carriers. If new entrant carriers do not select all of the slots set aside for new entrant carriers in a lottery, limited incumbent carriers may select the remaining slots. If every participating new entrant and limited incumbent carrier has ceased selection of available slots or has obtained 12 slots at that airport, other incumbent carriers may select the remaining slots; however, slots selected by non-limited

incumbent carriers will be allocated only until the date of the next lottery.

7. In § 93.227, paragraphs (a), (b), (d), and (g) are revised to read as follows:

§ 93.227 Slot use and loss.

(a) Minimum slot use. (1) Except as provided in paragraphs (b), (c), (d) and (g) of this section, a slot shall be recalled by the FAA if it is not used for the following percentage of the time over a 2-month period:

(i) for slots allocated 5 or more days per week including the days Monday through Friday: 90 percent of the days Monday through Friday. Only operations on days Monday through Friday will be counted toward this requirement.

(ii) for all other slots: 65 percent. Operations on all 7 days of the week will be counted toward this requirement.

(2) For the purposes of paragraph (a) of this section, operation of a flight for which an international slot was allocated pursuant to § 93.217 of this subpart will not be considered as use of any other slot, regardless of how the operation is reported by the operating carrier.

(b) Paragraph (a) of this section does not apply to slots obtained under § 93.225 of this part during (1) the first 90 days after they are allocated to a new entrant carrier or (2) the first 60 days after they allocated to an incumbent carrier.

(d) In the case of a company that files for protection under the Federal bankruptcy laws, paragraph (a) of this section does not apply:

(1) During the 60 days after the initial petition in bankruptcy, to any slot held or operated by that company, or

(2) During a period after a carrier ceases operations at an airport, as to any slot held or operated by that carrier at that airport, extending until the later of:

(i) 30 days after the carrier ceases operations at that airport, or

(ii) 20 days after the parties to a proposed transfer of any such slot comply with requests for additional information issued pursuant to 15 U.S.C. 18a(e) or a civil investigative demand issued pursuant to 15 U.S.C. 1312 in connection with an antitrust investigation of the transfer by the Department of Justice.

(g) This section does not apply to slots used for the operations described in § 93.217 (a)(1) of this part, except that a U.S. air carrier or commuter operator

required to file a report under paragraph (i) of this section shall include all slots operated at the airport, including slots described in § 93.217(a)(1).

\* \* \* \* \*

**§ 93.229 [Removed]**

8. Section 93.229 is removed.

Issued in Washington, DC, on September 9, 1991.

**Samuel K. Skinner,**

*Secretary of Transportation.*

[FR Doc. 91-22031 Filed 9-10-91; 3 pm]

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# **Federal Register**

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**Friday  
September 13, 1991**

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## **Part IV**

### **Department of Education**

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**Grants to Institutions to Encourage  
Minority Participation in Graduate  
Education Program; Notice Inviting  
Applications for New Awards for Fiscal  
Year 1992**

## DEPARTMENT OF EDUCATION

(CFDA No.: 84.202)

**Grants to Institutions to Encourage Minority Participation in Graduate Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1992**

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program, and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

The purpose and activities of this program complement the American 2000: An Education Strategy, specifically relating to the National Education Goals for making U.S. students first in the world in science and mathematics achievement. The national education objectives include increasing the number of teachers with a substantive background in mathematics and science, and significantly increasing the number of undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science and engineering. This program also addresses Track III of the America 2000 strategy—transforming America into "A Nation of Students"—by enabling graduate students to gain further knowledge and skill, and thereby demonstrate to American youth the importance of continued learning throughout their lives.

**Purpose of Program:** To provide grants to enable institutions of higher education to make available fellowship aid to talented undergraduate students, without baccalaureate degrees, who demonstrate financial need and are from minority groups that are underrepresented in graduate education in order to provide those students with effective preparation for graduate study.

**Eligible Applicants:** (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended (HEA), is eligible to apply for a grant to conduct a fellowship program.

**Note:** The Secretary encourages each institution of higher education to submit only one consolidated application rather than separate applications for different academic departments.

(b) An individual is eligible to apply for a fellowship if the individual—

- (1) Is a talented undergraduate student without a baccalaureate degree;
- (2) Demonstrates financial need;
- (3) Is from a minority group that is underrepresented in graduate education; and
- (4)(i) Is a citizen or national of the United States;
- (ii) Is a permanent resident of the United States;
- (iii) Provides evidence from the Immigration and Naturalization Service that

he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section of the notice.

(d) Additional eligibility requirements may be established by the institution of higher education.

**Deadline for Transmittal of Applications:** October 28, 1991.

**Deadline for Intergovernmental Review:** December 27, 1991.

**Available Funds:** The Administration has proposed in its FY 1992 HEA reauthorization request that the Minority Participation in Graduate Education and Ronald E. McNair Post-baccalaureate programs be merged into a new McNair Graduate Outreach program. The Administration therefore requested no funds for Minority Participation in Graduate Education for FY 1992. However, the actual level of funding is contingent upon Congressional action.

**Estimated Range of Awards:** \$25,000–\$100,000.

**Estimated Average Size of Awards:** \$78,000.

**Estimated Number of Awards:** 75.

**Estimated Number of Fellowships per Program:** 10–50.

**Maximum Cost per Student:** \$5,000.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Six weeks to one year. All student activities must begin summer 1992.

**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), and part 86 (Drug-Free Schools and Campuses)).

**Description of Program:** The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized by part A of title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (20 U.S.C. 1134–

1134b). Grants under this program are designed to enable institutions of higher education to identify, recruit, and make available fellowship aid to talented undergraduate students, without baccalaureate degrees, who demonstrate financial need and are from minority groups that are underrepresented in graduate education in order to provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. The program of study must consist of summer research internships augmented by seminars and other educational experiences. All funds received under this program must be used for direct fellowship aid. Fellowships should provide an opportunity for fellows to spend from six to ten weeks during the summer on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

**Note:** For guidance purposes only, the Secretary suggests that applicants consider "minority" to mean American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Practice Islander, or other ethnic groups underrepresented in graduate education.

**Selection Criteria**

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria:*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of part A of title IX of the HEA, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of part A of title IX of the HEA.

(2) *Extent of need for the project:* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in part A of title IX of the HEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation:* (28 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: The part A of title IX of the HEA requires that fellowship awards be made to talented students from minority groups underrepresented in graduate education.

(4)(i) *Quality of key personnel:* (7 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness:* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan:* (5 points) The Secretary reviews each application to determine the quality of the evaluation

plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and  
(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources:* (5 points) The Secretary reviews such application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Note: Part A of title IX of the HEA provides that all funds received under this program be used for direct fellowship aid.

(C) *Additional considerations required by the statute*

(1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

#### *Intergovernmental Review of Federal Programs*

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of contact, see the list published in the *Federal Register* on September 17, 1990, (55 FR 38210-38211).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any

comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA No.: 84.202, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as the application (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application.

Do not send applications to the above address.

#### *Instructions for Transmittal of Application*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, room 3633, Regional Office Building #3, 7th and D Street, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant

should call the U.S. Department of Education Application Control Center at (202) 708-8495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

#### *Application Instructions and Forms*

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

*Part I: Application for Federal Assistance (Standard Form 424) (Rev. 4-88) and instructions.*

*Part II: Budget Information—Non-Construction Programs (Form and instructions).*

*Part III: Application Narrative.*

#### *Additional Materials*

Estimated Public Reporting Burden.

**Assurances—Non-Construction Programs (Standard Form 424B) Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements, Primary Covered Transactions (ED Form 80-0013).**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014, 9/90) and instructions.**

(Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department).

**Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).**

An applicant may submit information on a photostatic copy of the application and budget form, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only) including appendices, although the Secretary will consider applications of greater length. The Department has found that successful applications under this program generally meet this page limit.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Walter T. Lewis, Program Manager, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5251, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9393. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m. Eastern time.

**Program Authority:** 20 U.S.C. 1134-1134b.

**Dated:** September 6, 1991.

**John B. Childers,**  
*Acting Assistant Secretary for Postsecondary Education.*

**BILLING CODE 4000-01-M**

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> <i>Application</i> <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction  <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier														
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier														
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier														
<b>5. APPLICANT INFORMATION</b>																	
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)															
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> <table style="width:100%; border: none;"> <tr> <td>A State</td> <td>H Independent School Dist</td> </tr> <tr> <td>B County</td> <td>I State Controlled Institution of Higher Learning</td> </tr> <tr> <td>C Municipal</td> <td>J Private University</td> </tr> <tr> <td>D Township</td> <td>K Indian Tribe</td> </tr> <tr> <td>E Interstate</td> <td>L Individual</td> </tr> <tr> <td>F Intermunicipal</td> <td>M Profit Organization</td> </tr> <tr> <td>G Special District</td> <td>N Other (Specify) _____</td> </tr> </table>		A State	H Independent School Dist	B County	I State Controlled Institution of Higher Learning	C Municipal	J Private University	D Township	K Indian Tribe	E Interstate	L Individual	F Intermunicipal	M Profit Organization	G Special District	N Other (Specify) _____
A State	H Independent School Dist																
B County	I State Controlled Institution of Higher Learning																
C Municipal	J Private University																
D Township	K Indian Tribe																
E Interstate	L Individual																
F Intermunicipal	M Profit Organization																
G Special District	N Other (Specify) _____																
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A Increase Award    B Decrease Award    C Increase Duration D Decrease Duration    Other (specify): _____		<b>9. NAME OF FEDERAL AGENCY</b>  U.S. Department of Education															
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> TITLE: GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION 8 4 2 0 2		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT</b>															
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)</b>																	
<b>13. PROPOSED PROJECT:</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>															
Start Date	Ending Date	a Applicant	b Project														
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>															
a Federal	\$ .00	a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____															
b Applicant	\$ .00	b NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW															
c State	\$ .00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>															
d Local	\$ .00	<input type="checkbox"/> Yes    If "Yes," attach an explanation <input type="checkbox"/> No															
e Other	\$ .00																
f Program Income	\$ .00																
g TOTAL	\$ .00																
<b>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</b>																	
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 1-88 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:   | Entrv: | Item:  | Entrv: |
|---|--------|--|--------|
| 1. Self-explanatory.  |        | 12. List only the largest political entities affected (e.g., State, counties, cities).   |        |
| 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  |        | 13. Self-explanatory.  |        |
| 3. State use only (if applicable).  |        | 14. List the applicant's Congressional District and any District(s) affected by the program or project.  |        |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  |        | 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 <i>only</i> 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. |        |
| 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.   |        | 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.  |        |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  |        | 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.  |        |
| 7. Enter the appropriate letter in the space provided.  |        | 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.)  |        |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "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.   |        |  |        |

UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, DC 20202

FORM APPROVED  
OMB 1840-0603  
EXPIRATION DATE:  
03/31/94

**PART II. BUDGET INFORMATION**

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0603; Washington, DC 20503.

**SECTION A. ENUMERATION OF STUDENT EXPENSES**

Room and Board	\$
Transportation	
Tuition	
Other Applicable Expenses	
(Specify)	
Total Federal Request	\$
	\$

**SECTION B. DATA ON FELLOWSHIPS**

1. Number of Fellowships Requested	2. Number of Weeks of Project
------------------------------------	-------------------------------

**SECTION C. FELLOWSHIP ACTIVITIES**

Period of Activity - Beginning Date: \_\_\_\_\_ Ending Date: \_\_\_\_\_  
List of Academic Areas \_\_\_\_\_

**SECTION D. OTHER SOURCES OF SUPPORT FOR PROGRAM**

SOURCE	AMOUNT
--------	--------

## Instructions for Completing Part II. Budget Information

### General

Applicants will be funded to serve approximately 10 to 50 participants at a maximum of \$100,000 with individual student costs not to exceed \$5,000. All student fellowship activities must begin in the Summer of 1992, and end no later than one year from the start date. No costs will be allowed for payment of staff, indirect costs, or other administrative costs.

**Important Note:** When it is determined that a student had financial aid eligibility at his/her home institution in the academic year preceding the Summer program, that student will become eligible for participation in this program. The student need only to submit a statement verifying his/her financial aid eligibility to the grantee institution program officials that should be obtained from the student's home institution financial aid office.

### Specific

#### Section A

1. **Room and Board**—Allowed for non-commuting students during Summer only.

2. **Transportation**—Allowed for one round trip for out-of-town participants' travel to and from the institution. Commuting costs to and from campus may be paid for students residing in the community. Costs will also be allowed for field trips related to research and other scholarly activities.

3. **Tuition**—Allowed only for courses for which credit will be given by institution. No tuition costs may be paid for courses that are included in students' normal course matriculation schedules.

4. **Other Applicable Expenses**—Stipends may be paid during Summer only. Insurance, supplies, laboratory fees, and other materials relevant to the fellowship activities may also be paid from the grant.

5. **Total Federal Request**—Enter the total of items 1 through 5.

#### Section B

1. Indicate the number of students that will be recruited for fellowships in this program.

2. Indicate the number of weeks that students will be involved in the program.

#### Section C

1. **Period of Activity**—Please indicate the date that students will arrive on campus to begin their fellowship activities and the date that these activities will end.

2. **List of Academic Areas**—Please list all academic areas that will be included in the program.

#### Section D

Applicants are requested to list all sources of support for the program if any, in addition to the Federal share. This may include State, private or institutional sources. Please also include a total budget with cost breakouts for both Federal and other sources in each budget line item.

### Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the purpose of the program, description of the program and the selection criteria the Secretary uses to evaluate applications. Applicants should address the selection criteria in the order the criteria are listed in this application notice.

The narrative should encompass each function or activity for which funds are being requested and should—

(1) Begin with a one-page Abstract; that is, a summary of the proposed project;

(2) Include information regarding—  
(a) the program of study which should take the form of summer research internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed

description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program.

(3) Include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given;

(4) Include information regarding the number of students you propose to recruit to participate in the program from each minority group that is underrepresented in graduate education; and

(5) Include any other pertinent information that might assist the Secretary in reviewing the application including:

- (a) the proposed project period.
- (b) timelines for the completion of each project objective.

### Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0603, Washington, DC 20503.

(Information collection approved under OMB control number 1840-0603. Expiration date: (3/31/94)

BILLING CODE 4000-01-M

**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. 291 dc-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.

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 and to 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

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

#### A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about--
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0348-0044

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

**1990  
FEDERAL REGISTER**

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**Friday  
September 13, 1991**

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**Part V**

**Department of  
Education**

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**Graduate Assistance in Areas of National  
Need Program; Applications for new  
Awards for Fiscal Year 1992; Notice**

## DEPARTMENT OF EDUCATION

CFDA No.: 84.200

## Graduate Assistance in Areas of National Need Program

Notice inviting applications for new awards for fiscal year (FY) 1992.

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

The purpose and activities of this program complement the AMERICA 2000: An Education Strategy, specifically relating to the National Education Goals for making U.S. students first in the world in science and mathematics achievement. The national education objectives include increasing the number of teachers with a substantive background in mathematics and science, and significantly increasing the number of undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science and engineering. This program also addresses Track III of the America 2000 strategy—transforming America into "A Nation of Students"—by enabling graduate students to gain further knowledge and skill, and thereby demonstrate to American youth the importance of continued learning throughout his or her life.

*Purpose of Program:* To provide—through academic departments and programs of institutions of higher education—fellowships to assist graduate students of superior ability who demonstrate financial need, in order to sustain and enhance the capacity for teaching and research in areas of national need.

*Deadline for Transmittal of Applications:* October 28, 1991.

*Deadline for Intergovernmental Review:* December 27, 1991.

*Available Funds:* The President's budget requested no funds for this program. Awards are contingent upon the availability of appropriations for FY 1992. Proposed legislation reauthorizing the Higher Education Act of 1965, as amended consolidates the graduate education fellowship programs, including the Graduate Assistance in Areas of National Need Program. No funds have been appropriated at this time.

*Estimated Range of Awards:* \$100,000–\$500,000.

*Estimated Average Size of Awards:* \$170,000.

*Estimated Number of New Awards:* 22.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), 34 CFR part 75 (Direct Grant Programs), 34 CFR part 77 (Definitions that Apply to Department Regulations), 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities), 34 CFR part 82 (New Restrictions on Lobbying), 34 CFR part 85 (Government-wide Debarment and Suspension) (Nonprocurement), and Government-wide Requirements for Drug-Free Workplace (Grants), and 34 CFR part 86 (Drug-Free Schools and Campuses).

*Description of Program:* The Graduate Assistance in Areas of National Need Program is authorized under part D of title IX of the Higher Education Act of 1965, as amended by Public Law 99-498, the Higher Education Amendments of 1986 (20 U.S.C. 11341–1134q).

*Eligibility:* (a)(1) Any academic department, or program or other academic unit (hereafter referred to as "academic department") of an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, that provides courses of study leading to a graduate degree in an area of national need as established in the PRIORITIES section of this notice and that has been in existence for at least four years at the time of application is eligible to apply for a grant.

(2) An academic department, as described in paragraph (a)(1) of this section, may submit a joint application with one or more nondegree-granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. For the purposes of this program, a nondegree-granting institution is any organization that—

(i) Is described in section 501(c)(3) of the Internal Revenue Code of 1954, and is exempt from tax under section 501(a) of the Code;

(ii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iii) Is not a private foundation;

(iv) Has academic personnel for instruction and counseling who meet the standards of the institution of higher

education in which the graduate students are enrolled; and

(v) Has necessary research resources not otherwise readily available in such institutions to such students.

(b) An individual is eligible to receive an award from an academic department participating in this program if the individual—

(1) Has financial need, as determined under criteria developed by the institution of higher education;

(2) Has an excellent academic record in the individual's previous program or programs of study;

(3) Plans a teaching or research career;

(4) Plans to pursue the highest possible degree available in the individual's course of study; and

(5)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands.

(c) An institution must provide assurances that in making fellowship awards under this program it will seek talented students from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider "traditionally underrepresented backgrounds" to mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded.

(d) The academic department of the institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section.

*Priorities:* The Secretary gives an absolute preference to applications that propose to provide fellowships in one or more of the following areas of national need: Chemistry, Biology, Engineering, Foreign Languages, Mathematics, and Physics. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet one or more of these absolute priorities. Under 34 CFR 75.105(c)(1), the Secretary invites, under the priority for Foreign Languages, applications that address the "less commonly taught languages", i.e., languages other than French, German, Italian and Spanish. However, an application that meets this invitational priority does not receive competitive or

absolute preference over other applications.

**Selection Procedures:** (a)

Geographically balanced review panels of nationally recognized scholars will use the selection criteria to evaluate, score, and rank applications.

(b) Consistent with an allocation of awards based on quality of competing applications, an equitable geographic distribution among public and private institutions of higher education will be promoted.

**Selection Criteria:** (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria. (1) Meeting the purposes of the authorizing statute. (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of 20 U.S.C. 1134l-1134q, including consideration of—

(i) The objectives of the project; and  
(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) Extent of need for the project. (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;  
(ii) How the applicant identified those needs;  
(iii) How those needs will be met by the project; and  
(iv) The benefits to be gained by meeting those needs.

(3) Plan of operation. (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;  
(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;  
(iii) How well the objectives of the project relate to the purpose of the program;  
(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) Quality of key personnel. (13 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapped condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) Budget and cost effectiveness. (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and  
(ii) Costs are reasonable in relation to the objectives of the project.

(6) Evaluation plan. (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and  
(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: see 34 CFR 75.590 Evaluation by the grantee.)

(7) Adequacy of resources. (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

**Funding Requirements:** (a) No grant to an academic department of an institution of higher education shall be less than \$100,000 nor greater than \$500,000 for any fiscal year.

(b) Grant awards are for a three-year period, beginning with the Fall academic term in 1992. Amounts not designated

for fellowships under this program by June 15, 1992, will be reallocated to academic departments and programs of institutions which can use the grants authorized by this program.

(c) From at least 60 percent of the funds received under this program, an academic department of an institution of higher education shall, consistent with the limitations in this paragraph, make commitments to graduate students at any point of their graduate study to provide stipends for the length of time necessary for a student to complete the course of graduate study, but in no case longer than 5 years. Because original awards to an academic department of an institution of higher education may not be made for longer than three years, an academic department of an institution of higher education may not make a commitment to a graduate student for more than three calendar years of support under the Graduate Assistance in Areas of National Need Program.

**Note:** The institution could make a commitment beyond the three years with its own funds.)

If an institution successfully competes for a new award in a subsequent competition, a student may receive additional support, but in no case shall a student receive more than five calendar years of support.

(d) The size of the stipend awarded to students each year shall be determined by the institution, except that no annual stipend award under this program may exceed \$10,000, or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

(e) From the remaining 40 percent of the funds received under this program, the academic department or program may award fellowship recipients amounts to pay tuition, fees and other costs of education not included in student stipends. No grant funds may be used for the general operational overhead of the academic department.

**Matching Requirements:** An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (c) through (e) of the Funding Requirements section of this notice.

**Intergovernmental Review of Federal Programs**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal

Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on September 15, 1989, pages 38342-38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372-CFDA #84.200, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

#### *Instructions for Transmittal of Applications*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # 84.200), Washington, DC 20202-4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.200), room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202.

(b) An application must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

*Notes:* (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date you mailed the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

#### *Application Instructions and Forms*

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The

parts and additional materials are as follows:

- Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.
- Part II: Budget Information—Graduate Assistance in Areas of National Need Program (OMB No. 1840-0604) (Standard Form 424A) and instructions.
- Part III: Application Narrative Statutory Assurances

#### *Additional Materials*

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B). Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80-0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/9) and instructions.

*Note:* ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Proctor-Kelly, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Washington, DC 20202-5251. Telephone: (202) 708-9419. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202-708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C., 11341-q.

Dated: September 6, 1991.

**John B. Childers,**

*Acting Assistant Secretary for Postsecondary Education.*

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Preapplication Construction <input checked="" type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier																					
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier																					
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier																					
<b>5. APPLICANT INFORMATION</b>																								
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)																						
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> <table style="width:100%; border: none;"> <tr> <td>A. State</td> <td>H. Independent School Dist.</td> </tr> <tr> <td>B. County</td> <td>I. State Controlled Institution of Higher Learning</td> </tr> <tr> <td>C. Municipal</td> <td>J. Private University</td> </tr> <tr> <td>D. Township</td> <td>K. Indian Tribe</td> </tr> <tr> <td>E. Interstate</td> <td>L. Individual</td> </tr> <tr> <td>F. Intermunicipal</td> <td>M. Profit Organization</td> </tr> <tr> <td>G. Special District</td> <td>N. Other (Specify) _____</td> </tr> </table>		A. State	H. Independent School Dist.	B. County	I. State Controlled Institution of Higher Learning	C. Municipal	J. Private University	D. Township	K. Indian Tribe	E. Interstate	L. Individual	F. Intermunicipal	M. Profit Organization	G. Special District	N. Other (Specify) _____							
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F. Intermunicipal	M. Profit Organization																							
G. Special District	N. Other (Specify) _____																							
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other (specify): _____		<b>8. NAME OF FEDERAL AGENCY:</b>  U.S. Department of Education																						
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> 8   4   2   0   0 <b>TITLE:</b> GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>  _____ _____ _____																						
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>  _____ _____																								
<b>13. PROPOSED PROJECT:</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>																						
Start Date	Ending Date	a. Applicant	b. Project																					
<b>15. ESTIMATED FUNDING:</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>a. Federal</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td>.00</td> </tr> <tr> <td><b>g. TOTAL</b></td> <td>\$</td> <td>.00</td> </tr> </table>		a. Federal	\$	.00	b. Applicant	\$	.00	c. State	\$	.00	d. Local	\$	.00	e. Other	\$	.00	f. Program Income	\$	.00	<b>g. TOTAL</b>	\$	.00	<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b> a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW.	
a. Federal	\$	.00																						
b. Applicant	\$	.00																						
c. State	\$	.00																						
d. Local	\$	.00																						
e. Other	\$	.00																						
f. Program Income	\$	.00																						
<b>g. TOTAL</b>	\$	.00																						
<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No																								
<b>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</b>																								
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 3-88) 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:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 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 <i>only</i> 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. |
| 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.   | 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.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 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.  |
| 7.    | Enter the appropriate letter in the space provided.  | 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.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "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.  |       |  |

FORM APPROVED: 4/89  
 OMB NO.: 1840-0604  
 EXPIRATION DATE: 12/91

**PART II****BUDGET INFORMATION****GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED****FISCAL YEAR 1992****SECTION A - SUMMARY OF FELLOWSHIPS****AREA OF APPLICATION****NUMBER OF FELLOWSHIPS REQUESTED****SECTION B - FUNDS REQUESTED AND COST SHARING**

1. Federal Funds Requested for Student Stipends	\$
Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included	
2. in Student Stipends.	\$
3. Total Federal Funds Requested	\$
4. Non-Federal Funds	\$
Total Program Funds	\$

BILLING CODE 4000-01-C

### Instructions for Part II—Budget Information

#### Section A—Summary of Fellowships

Enter the area of application and the number of fellowships requested.

#### Section B—Funds Requested and Costs Sharing

1. **Federal Funds Requested for Student Stipends:** Enter the dollar amount of Federal funds requested for student stipends for applicable expenses except for tuition and fees. (At least 60% of the funds received under this program must be used to provide stipends.) See "Funding Requirements."

2. **Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends:** Enter the dollar amount of Federal funds requested for tuition, fees and other costs of education not included in student stipends.

3. **Total Federal Funds Requested:** Enter the total Federal funds requested (sum of 1 and 2). Total Federal funds requested must not be less than \$100,000 nor greater than \$500,000 per year.

4. **Non-Federal Funds:** Enter the dollar amount of funds to be provided from other sources, e.g., state governments, local governments, private organizations, etc., which must equal at least 25 percent of the amount of Federal funds requested.

5. **Total Program Funds:** Enter the total program funds (sum of 3 and 4).

### Instructions Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the information regarding priorities, and the *Selection Criteria* the Secretary uses to evaluate applications.

The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the current academic program and the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Set forth policies and procedures to ensure that Federal funds made available under this program will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and in no case to supplant those funds;

4. Set forth policies and procedures to assure that, in making fellowship awards under this program, the

institution will make awards to individuals who—

(A) Have financial need, as determined under criteria developed by the institution;

(B) Have excellent academic records in current or their previous program or programs of study;

(C) Plan teaching or research careers;

(D) Plan to pursue the highest possible degree available in their course of study; and employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree;

(E) To the extent possible, are from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider that "traditionally underrepresented backgrounds" mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded; and

5. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. An applicant submitting a proposal requesting support in more than one of the priority areas may submit the suggested page limit for each priority area requested.

#### Statutory Assurances

1. From at least 60 percent of the funds received under this program, the applicant will make commitments to graduate students at any point in their graduate study to provide stipends for the length of time necessary for the student to complete the course of graduate study, but in no case longer than 5 years. No such commitments will be made to students under this program unless the applicant has determined adequate funds are available to fulfill the commitment either from funds received or anticipated under this program, or from institutional funds. In the event that funds made available to the academic department under the program are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it, to fulfill the commitment to the student.

2. The size of the stipend awards to students for an individual academic

year will be determined by the institution except that no annual stipend award under this program will exceed \$10,000 or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

3. The applicant will ensure that no student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, or if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

4. An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (c) through (e) of the Funding Requirements section of this notice.

Signature of Authorized Certifying Official:

Title:

Applicant Organization:

Date Submitted:

#### Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average five hours of response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0604, Washington, DC 20503.

(Information collection approved under OMB control number 1840-0604. Expiration date: December, 1991.)

BILLING CODE 4000-01-M

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.

Standard Form 424B (4-88)  
Prescribed by OMB Circular A-102

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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 and to 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

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT		PR/AWARD NUMBER AND/OR PROJECT NAME	
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE			
SIGNATURE		DATE	

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMS  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.



**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 217**

(INS No. 1447-91)

**Visa Waiver Pilot Program; Designated Countries****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends 8 CFR part 217 to expand the Visa Waiver Pilot Program by permitting nationals of 13 additional designated countries, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, to apply for admission for 90 days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This rule will facilitate international travel and tourism and promote the more effective use of resources of affected Government agencies, while not posing a threat to the welfare, health, safety or security of the United States.

**DATES:** This interim rule is effective October 1, 1991. Comments must be received on or before October 15, 1991.

**ADDRESSES:** Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper and timely handling, please reference INS number 1447-91 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Virginia F. Gorman, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514-3995.

**SUPPLEMENTARY INFORMATION:** The Visa Waiver Pilot Program, as authorized in section 217 of the Immigration and Nationality Act, was established by section 313 of the Immigration Reform and Control Act of 1986, Public Law 99-603. Under the Visa Waiver Pilot Program, nonimmigrant visitors from no more than 8 countries jointly designated by the Attorney General and the Secretary of State were eligible to apply for admission into the United States as nonimmigrant visitors for business or pleasure for ninety (90) days or less

without obtaining nonimmigrant visitor visas at United States embassies or consulates. The program was established by Congress to determine if a visa waiver provision could facilitate international travel and tourism and promote the more effective use of resources of affected Government agencies while not posing a threat to the welfare, health, safety or security of the United States.

The Visa Waiver Pilot Program, as implemented on July 1, 1988, allowed visitors from the United Kingdom to apply for admission at air and sea ports after arrival on signatory carriers. Japan was added as a designated country on December 15, 1988. France and Switzerland were added on July 1, 1989, the Federal Republic of Germany and Sweden were added on July 15, 1989, and Italy and the Netherlands were added on July 29, 1989 as designated countries under the Visa Waiver Pilot Program.

Section 201 of the Immigration Act of 1990, Public Law 101-649, November 29, 1990, extended the period of the Pilot Program until September 30, 1994, and provided for the expansion of the Program by removing the numerical limitation on countries that could be designated under the Pilot Program, and by allowing initial entries at land border ports. A final rule providing for the admission at land border Ports of Entry was published in the Federal Register on July 18, 1991, at 56 FR 32952.

The designation of the following 13 additional countries was accomplished by the Attorney General and the Secretary of State, acting jointly through their designees. As set forth by statute, the designation of the countries was based upon reciprocity in addition to other requirements contained in section 201 of the Immigration Act of 1990. This rule amends 8 CFR 217.5(a) by adding Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain as designated countries under the Visa Waiver Pilot Program. (See the Department of State rule published in this issue of the Federal Register).

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity are as follows: This rule relieves a restriction and is beneficial to both the traveling public and U.S. businesses.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse

economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

**List of Subjects in 8 CFR Part 217**

Administrative practice and procedures, Aliens, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 217—VISA WAIVER PILOT PROGRAM**

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

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.5, paragraph (a) is revised to read as follows:

**§ 217.5 Designated countries.**

(a) *Countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); Germany and Sweden (effective July 15, 1989); Italy and the Netherlands (effective July 29, 1989); and Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino and Spain (effective October 1, 1991) have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

Dated: August 30, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-22084 Filed 9-12-91; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF STATE****Bureau of Consular Affairs****22 CFR Part 41**

[Public Notice 1481]

**Visas: Passports and Visas Not Required for Certain Nonimmigrants**

**AGENCY:** Bureau of Consular Affairs, DOS.

**ACTION:** Interim rule with requests for comments.

**SUMMARY:** This interim rule amends part 41, title 22 of the Code of Federal Regulations, to implement section 201 of the Immigration Act of 1990 (IA), Public Law 104-649. Section 201 extends the Visa Waiver Pilot Program (sec. 217 of the Immigration and Nationality Act, (8 U.S.C. 1187)) to all countries which qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B-1/B-2 visa requirement. Section 201 also extends the time period of the Pilot Program to September 30, 1994 for those countries already in the program as well as to any countries which may be designated thereunder by this Rule or another rule at a later date.

**DATES:** This interim rule is effective as of October 1, 1991. Written comments are invited and must be received on or before October 15, 1991.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Deputy Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0113.

**FOR FURTHER INFORMATION CONTACT:** A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522-0113 (202) 663-1205.

**SUPPLEMENTARY INFORMATION:** Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603 (section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)) established the nonimmigrant Visa Waiver Pilot Program which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. A final rule containing regulations designed to implement facilitation of the admission of certain nonimmigrant alien visitors was published in the *Federal Register* of June 30, 1988 (pp. 24903-24904). Under that final rule the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective on December 15, 1988 in a Final Rule published on pages 50161-50162 of the *Federal Register* of December 13, 1988. France, The Federal Republic of Germany, Italy, The

Netherlands, Sweden, and Switzerland, having met all of the requirements for participants in the Visa Waiver Pilot Program, were added on their respective effective dates as designated countries participating in the Pilot Program (i.e., the six remaining countries under the Eight Country Pilot Program established by section 313 of IRCA). This action was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees in a Final Rule published on pages 27120-27121 of the *Federal Register* of June 27, 1989.

(Section 201 of Public Law 101-649, Immigration Act of 1990 (IA))

On November 29, 1990, the President approved The Immigration Act of 1990 (Pub. L. 101-649, 104 Stat. 4978) (hereinafter IA). Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (section 217 INA, 8 U.S.C. 1187), and extended its provisions to all countries which meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program Countries thereunder. Section 201 also extended the period of the pilot program until September 30, 1994 for the eight pilot program countries already designated under the IRCA provisions as well as for any Pilot Program countries which may be designated under the law, as amended, subject to their continued qualification thereunder.

This interim rule, with requests for comments, amends part 41, title 22 to implement the provisions of section 201 of the IA by extending the Visa Waiver Pilot Program to certain other countries which have met its requirements. Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program (section 217 INA, as amended), are added, effective on October 1, 1991, and designated as countries participating in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Immigration and Naturalization Service Rule published elsewhere in this issue of the *Federal Register*.) The last sentence of § 41.2(1) is amended by adding at the end thereof the names of the newly designated countries; effective on October 1, 1991. Therefore,

effective on that date, citizens of those countries shall be eligible for participation in the Visa Waiver Pilot Program.

This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to both the traveling public and United States businesses. Therefore, it is being made effective less than thirty days after publication in the *Federal Register*.

This interim rule is not considered to be a major rule for purposes of Executive Order 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements.

#### List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, 22 CFR part 41 is amended as follows:

#### PART 41—VISAS; DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation is revised to read:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1153 note; 8 U.S.C. 1187.

2. In § 41.2 the last sentence of paragraph (1) is amended by removing "and" before Italy and the period at the end of the sentence and adding the following text:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

(1) Visa Waiver Pilot Program. \* \* \* ; and Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991).

Dated: September 6, 1991.

James L. Ward,  
Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91-22046 Filed 9-12-91; 8:45 am]

BILLING CODE 4710-06-M



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