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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 91-ASW-1; Special Condition No. 29-ASW-3]

Special Conditions: Sikorsky Model S-76C Helicopter, Turbomeca Arriel Model 1S1 Engine Tachometer Box

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Sikorsky Model S-76C helicopter. This helicopter will have a novel or unusual design feature associated with installation of the Turbomeca Arriel Model 1S1 engine. This design feature is associated with the tachometer box which is installed as an approved accessory to the Arriel Model 1S1 engine. The special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111, telephone 817-624-5121.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1989, Sikorsky Aircraft, Division of United Technologies Corporation, 6900 Main Street, Stratford, Connecticut 06601-1381, applied for an amendment to its Type Certificate No. H1NE to include the new Sikorsky Model S-76C helicopter. The Sikorsky Model S-76B is being modified to incorporate two Turbomeca Arriel Model 1S1 engines in place of the two Pratt and Whitney Corporation Model PT6 B-36 engines. Various other alterations will be made to accommodate the installation of these different engines, including the installation of the required Arriel engine accessory tachometer box. The Model S-76C will be a derivative of the Model S-76B, which is currently approved under Type Certificate No. H1NE. The Model S-76B is a 12-passenger, two-engine, 11,400-pound transport category helicopter.

Type Certification Basis

The certification basis for the Model S-76B includes: FAR part 29, February 1, 1965, and Amendments 29-1 through 29-11, and in addition, portions of Amendment 29-12, specifically, §§ 29.67, 29.71, 29.75, 29.141, 29.173, 29.175, 29.931, 29.1189(a)(2), 29.1555(c)(2), 29.1557(c) and portions of Amendment 29-13, specifically § 29.965; Instrument Flight Criteria for S-76 (interim) dated February 10, 1977; Special Conditions 29-82-NE-3 (Docket No. 17721), dated March 27, 1978; Partial Grant of Exemption from § 29.811(h), Exemption No. 2542 (Docket No. 17403), dated January 9, 1979, for the Model S-76A, granted July 3, 1985, for the Model S-76B; equivalent safety finding for § 29.173(b); National Environmental Act of 1969; Noise Control Act of 1972. Sikorsky Aircraft also elected to comply with: Ditching provisions §§ 29.563 including 29.801 and 29.807(d) and excluding 29.1411, 29.1415, and 29.1561 of Amendment 29-12, when emergency flotation gear, P/N 76076-02002, is installed. For over-water operations, compliance with the operating rules and §§ 29.1411, 29.1415, and 29.1561 must be shown. Compliance must be shown with Cargo Hook § 29.865, including § 29.25 of Amendment 29-12, when cargo hook system, P/N 76255-02000, is installed. For external load operations, compliance must be shown with Part 133, including Amendments 1-4. In addition, for the Model S-76B, compliance must be shown with portions of Amendment 29-24, specifically § 29.1325(f); equivalent safety finding for §§ 29.1013(e), 29.1203(a), 29.1181(a)(6), and 29.1189(a).

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

Notice of Proposed Special Condition No. SC-91-1-SW was published in the **Federal Register** on January 31, 1991 (56 FR 3807). No comments were received. Therefore, the special condition is adopted as proposed.

The Sikorsky Model S-76C helicopter will incorporate one and possibly more electrical/electronic systems and equipment that will be performing functions critical to the continued safe flight and landing of the helicopter. The "tachometer box," which is a required accessory of the Turbomeca Arriel Model 1S1 engine, is an electronic device performing the function of engine overspeed protection. This protection from engine overspeed is critical to the continued safe flight and landing of the helicopter during all operating flight regimes (both Visual Flight Rules (VFR) and Instrument Flight Rules (IFR)). When the design is finalized, Sikorsky Aircraft will provide the FAA with a preliminary hazard analysis to identify any other critical functions performed by electrical/electronic systems and equipment.

If it is determined that this helicopter incorporates other electrical/electronic systems performing cirtical functions, it will be necessary to show that those systems meet the requirements of this special condition.

Conclusion

This action would affect only certain unusual or novel design features on one series of rotorcraft. It would not be a rule of general applicability and would affect only the manufacturer who applied to the FAA for approval of these features on the rotorcraft identified in this special condition.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special condition is issued as a part of the type certification basis for the Sikorsky Model S-76C helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 21, 1992.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-2243 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-76-AD; Amendment 39-8168; AD 91-20-14]

Airworthiness Directives; Beech Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD), which was previously made effective by individual letters as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. The AD requires the incorporation of revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM), and operation of the airplane in accordance with these performance charts. The Federal Aviation Administration (FAA) determined that under certain conditions takeoff and climb performance required by regulations may not be achieved while utilizing the original performance criteria. The actions specified by this AD are intended to ensure that minimum takeoff and climb performance can be achieved for each approved configuration, weight, pressure altitude, and temperature.

DATES: Effective February 20, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-20-14, issued September 26, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1992.

ADDRESSES: The revision to the POH/AFM that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention; Rules Docket 91-CE-76-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Blacklock, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4166.

SUPPLEMENTARY INFORMATION: On September 26, 1991, priority letter Airworthiness Directive (AD) 91-20-14 was issued and made effective immediately as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. The AD requires the incorporation of revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Flight Manual (POH/AFM) and operation of the airplane in accordance with these charts.

The action was based upon the FAA's determination that when production Beech Models B300 and B300C airplanes are operated at a maximum takeoff weight calculated by reference to the POH/AFM for existing conditions of temperature and pressure altitude, takeoff and climb performance required by Federal Aviation Regulations (FAR) 23.1583(c)(3) may not be achieved. A recent test showed that the climb performance with one engine inoperative was less than that shown in the Beech Models B300 and B300C POH/AFM.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued September 26, 1991, as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The takeoff and climb performance charts were included in the priority letter AD 91-20-14 package that was sent to all owners of Beech Models B300 and B300C airplanes. Since that time, Beech has issued these charts in an OH/AFM supplement format. The charts originally sent are the same as the POH/AFM supplement. Since the charts sent out with the priority letter AD 91-20-14 package and the POH/AFM supplement formats are the same, the charts will be referenced in this AD as the B2 revision, part number (P/N) 130-590031-1, dated September 1991.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

91-20-14 **Beech**: Amendment 39-8168; Docket No. 90-CE-76-AD. Applicability: Models B300 and B300C airplanes (all serial numbers), certificated in any category.

Compliance: Within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To ensure that required minimum takeoff and climb performance can be achieved for each approved combination of takeoff configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Incorporate the takeoff and climb performance charts, B2 revision, part number (P/N) 130-590031-1, dated September 1991, into the Model B300 and B300C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, and operate the airplane accordingly.

Note: The charts that were sent in the priority letter AD 91-20-14 package and the B2 revision, P/N 130-590031-1, dated September 1991, are the same.

(b) FAR 43-3 notwithstanding, the actions required by this AD may be performed by a pilot and must be recorded in accordance with FAR section 43.9.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The takeoff and climb performance limitations required by this AD shall be done in accordance with the Beech Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, B2 revision, part number (P/N) 130-590031-1, dated September 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(e) This amendment (39-8168) becomes effective on February 20, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-20-14, issued September 26, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2214 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-92-AD; Amendment 39-8167; AD 91-25-11]

Airworthiness Directives; EMBRAER (Empresa Brasileira de Aeronautica, S.A.) EMB-110 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-25-11, which was previously made effective by individual letters as to all known U.S. owners and operators of EMBRAER EMB-110 series (Bandeirante) airplanes. The AD requires an inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed. The AD was issued based upon reports of broken rudder trim tab rods. The actions specified by this AD are intended to prevent severe vibration, flutter, and loss of control of the airplane caused by incorrect installation of the rudder trim tab system.

DATES: Effective February 10, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-25-11, issued December 6, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from EMBRAER, P.O. Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-92-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: On December 6, 1991, priority letter AD 91-25-11 was issued and made effective immediately as to all known U.S. owners and operators of EMBRAER EMB-110 series airplanes. The AD requires an inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed.

The AD was prompted by reports from the Centrol Tecnico Aerospacial (CTA) and the Departamento de Aviacao Civil (DAC), which are the airworthiness authorities for Brazil, of two instances of broken rudder trim tab rods. This condition could cause severe vibration or flutter and complete loss of control of the airplane. Further analysis revealed that the rudder trim tab system was incorrectly installed on the above reported incidents. In addition, there has been one more report of an incorrect rudder trim tab system installation, but it was detected prior to further incident.

The manufacturer, EMBRAER, issued Service Bulletin 110-27-0091, dated December 5, 1991, which specifies procedures for inspecting the rudder trim tab actuator system for proper assembly, and reinstallation procedures if found incorrectly installed.

The CTA issued CTA AD T91-11-01 in order to assure the airworthiness of these airplanes in Brazil. CTA AD T91-11-01 requires a one-time inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed. These airplanes are manufactured in Brazil and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CTA and DAC kept the FAA totally informed of the above situation.

The FAA examined the findings of the CTA and DAC, reviewed all available information, and determined that AD action was necessary for products of this type design that are certificated for operation in the United States.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued December 6, 1991, to all known U.S. owners and operators of EMBRAER EMB-110 series airplanes (all serial numbers). These conditions still exist, and the AD is

hereby published in the **Federal Register** as an amendment to §39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

91-25-11 **Embraer** (Empresa Brasileira de Aeronautica, S.A.): Amendment 39-8167; Docket No. 91-CE-92-AD.

Applicability: EMB-110 Series airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 10 hours time-in-service after receipt of this AD, unless already accomplished.

To prevent severe vibration, flutter, and loss of control of the airplane caused by incorrect installation of the rudder trim tab system, accomplish the following:

(a) Visually inspect the rudder trim tab system for correct assembly in accordance with the instructions in EMBRAER Service Bulletin (SB) No. 110-27-0091, dated December 5, 1991.

(1) If determined to be correctly installed in accordance with the criteria specified in EMBRAER SB No. 110-27-0091, return the airplane to service.

(2) If determined to be incorrectly installed in accordance with the criteria specified in EMBRAER SB No. 110-27-0091, reinstall the rudder trim tab system in accordance with the instructions in EMBRAER SB No. 110-27-0091.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) The inspection and possible reinstallation required by this AD shall be done in accordance with EMBRAER Service Bulletin (SB) No. 110-27-0091, dated December 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EMBRAER, P.O. Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(e) This amendment (39-8167) becomes effective on February 10, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-25-11, issued December 6, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2215 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; revision of interpretative guideline.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising herein its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR part 5, appendix A (1990) ("Guideline No. 1"). The Commission is revising Guideline No. 1 to streamline the designation approval process for both futures and option contract markets. These revisions clarify the standard of review for specified terms and conditions of proposed contract market designations under sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (1988) ("Act") and reduce unnecessary or redundant materials for the required application. A revised format for applications for designation of contract markets in options on futures and options on physical commodities is also included as a new section of Guideline No. 1. Finally, the Commission is reiterating that information which should be included by persons seeking an opinion whether a futures contract on a group or index of securities traded on a foreign exchange may be offered or sold in the United States.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254-3201 or 254-6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Designation

The requirement that boards of trade demonstrate that they meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges since the Future Trading Act of 1921, Public Law No. 67-66, 42 Stat. 187 (1921).[1] Currently,

[1] Designation as a contract market under the 1921 Act was contingent upon a board of trade's

Continued

the statutory requirements for designation are found in sections 5 and 5a of the Act, and additionally, for indexes of certain securities, in section 2(a)(1)(B) of the Act. Contract markets must demonstrate that they meet these requirements both for initial designation and on a continuing basis.[2] Included among these, section 5(g) of the Act requires that exchanges demonstrate that trading in a proposed contract is not contrary to the public interest.[3]

The Commission provided guidance to exchanges on meeting these requirements in its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975), ("Guidelines No. 1."). Subsequently, the Commission revised this guideline, publishing it as appendix A to part 5 of chapter 17 of the Code of Federal Regulations. 47 FR 49832 (November 3, 1982). These revisions to Guideline No. 1, as proposed, were intended to provide boards of trade with more specific criteria for initial and continued compliance with Sections 5 and 5a of the Act for applications for contract market designation and for all currently designated contract markets, and * * * [to] reflect specific requirements relating to proposed futures contracts based on financial instruments and aggregates or indices of securities. In addition, the Commission believes that this * * * will provid[e] a uniform procedural framework within which boards of trade shall be required to meet their burden of demonstrating, both initially and for purposes of continued designation, compliance with the Act.

47 FR 49833 (citation and footnote omitted).

As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including, in particular, futures contracts on financial instruments and on various indices and cash-settled futures contracts. Experience has demonstrated that the Guideline has been adaptable and flexible, enabling the designation of a wide range of innovative products.[4]

Under the revised Guideline, the time elapsed for Commission review and approval of proposed contracts steadily declined throughout the period. In Fiscal Year 1983, for example, the average number of days during which complete applications were pending with the Commission was 428 for futures and 361 for options. In Fiscal Year 1991, this period was roughly half that of 1983, 225 days for futures and 190 for options; but somewhat higher than Fiscal Year 1990's average review period of 151 days for futures and 134 days for options.

Despite the relative success of the designation procedures of Guideline No. 1, the Commission, based upon its experience, reviewed the existing Guideline with the view of removing duplication of effort between its staff and the exchanges, streamlining further its procedures, reducing paperwork when such reductions could be made consistent with statutory requirements, updating the Guideline for market innovations and further clarifying and refining the requirements for designation. On September 4, 1991, the Commission proposed far-reaching revisions to Guideline No. 1 and requested comment on these proposals. 56 FR 43726. The comment period ended on November 4, 1991.

II. Proposed Revisions to Guideline

The Commission proposed to revise Guideline No. 1 in several fundamental respects. First, the Commission proposed to revise the Guideline to specify those terms or conditions of a proposed contract which, because they relate directly to the contract's susceptibility to manipulations, corners, squeezes or other disorderly trading, require a complete justification and explanation. In contrast, for certain other terms or conditions, the Commission proposed to permit Exchanges to certify that certain other terms or conditions of contracts are consistent with the cash market without providing further justification or evidence. For those terms or conditions, which are in essence business decisions of the exchange, no justification, explanation or certification would be required. In addition, a cash market overview was proposed to be required only to the extent that an application for designation differs from a previously designated contract.

Secondly, the Commission proposed to amend its policies regarding liquidity requirements for designation of options which, in effect, prohibited the simultaneous designation of options on futures and the underlying futures contract. Accordingly, as amended Guideline No. 1 would encourage exchanges to seek simultaneous designation of futures contracts and options thereon.

Thirdly, a new format for applications for designation of options on futures was proposed. This format specified those specific terms and conditions which clearly meet the requirements for designation and where met, no written justification or explanation for such terms and conditions would be required.

Lastly, guidance was provided with respect to the information required for a determination on whether stock indices traded on foreign boards of trade may be offered or sold in the United States. That guidance is repeated herein for the convenience of the reader.

III. Comments Received

The Commission received seven comments in response to its proposed revisions to Guideline No. 1. All seven were from futures exchanges. One commenter supported unreservedly the proposed revisions, stating that:

> The Exchange endorses the Commission's proposals to revise Guideline No. 1. The proposals clearly will streamline the submission of unnecessary or redundant information. The proposals will also clarify the standard of review for specified terms and conditions of proposed contract market designation as a contract market for options by recognizing the general uniformity of options terms and conditions. Each of these reforms will be beneficial in conserving the resources of exchanges and the Commission.

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providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping, for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. *See*, sections 5(a), (b), (c), (d), and (e) of the Future Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

[2] Section 6 of the Act provides, in part, that: [a]ny board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

[3] In addition, designated contract markets must provide for the prevention of dissemination of false information (section 5(c) of the Act); must provide for the prevention of price manipulation (section 5(d) of the Act); must provide for delivery periods which will prevent market congestion (section 5a(4) of the Act); and must permit delivery on the contract of such qualities, at such points and at such differentials as will minimize market disruptions (section 5a(10) of the Act). The Act further requires as a condition for contract market designation, that the contract market: be located at a terminal cash market or provide for terms and conditions as approved by the Commission (section 5(a) of the Act); provide for various forms of recordkeeping (section 5(b) and 5a(2) of the Act); permit the membership of cooperative associations (section 5(e) of the Act); provide for compliance with Commission orders (section 5(f) of the Act); submit its rules to the Commission (sections 5a(1) and 5a(12) of the Act); provide that the terms of the contracts conform to United States commodity standards or those adopted by the Commission (section 5a(6) of the Act); accept warehouse receipts issued under United States law (section 5a(3) of the Act); and enforce exchange rules (section 5a(8) of the Act).

[4] In this regard, the Commission notes that the past nine years have been a time of phenomenal growth and creativity in the futures industry. During this time, 115 futures contracts were designated by the Commission under the procedures established in the revised Guideline No. 1.

The Exchange supports the Commission's efforts.

Other commenters generally supported the proposals, but made several additional specific suggestions. For example, one commenter recommended that the Commission require that applications for designation include an index to the application cross-referencing the requirements of Guideline No. 1 to the application. This commenter further recommended that notice of an application be published in the Federal Register within thirty days of its submission and that the Commission staff rely on public comment rather than its own evaluation in analyzing whether the contract meets the requirements of the Act for designation. This commenter further opined that, in the absence of a contrary determination, the Commission approve automatically applications for contract market designation seven business days following the close of the public comment period. Several commenters agreed that the Commission should "move toward a contract market designation procedure which would provide for automatic approval of a proposed contract in the absence of Commission objection."

Several commenters shared the view, expressed by one, that the proposed revisions "do not go far enough." This commenter suggested that "(w)hile the Commission's proposal eliminates some of the paperwork required * * * new product innovation will continue to be subject to time-consuming regulatory requirements which are not imposed on other types of markets." A second commenter, agreed, stating that:

> it is not clear that the current proposal would, in practice, have any measurable effect on the length of approval periods. . . . The exchanges would still be required to make a submission prior to trading, the exchanges and potential users of the proposed contract would still have to wait for the submission to undergo review and approval by the CFTC staff, and the Commission would still retain the right to send a request for supplemental information, and perhaps, a 'materially incomplete' letter to an exchange if its application is deemed incomplete. Thus, reducing redundant paperwork would only be a marginal improvement to a process requiring redundant reviews, analysis and decisions—first by the exchanges and then by the Commission.

This commenter also contended that the proposed revisions "benefitted 'copy-cat' exchanges relative to innovative exchanges," and that foreign boards of trade "should be subject to equivalent contract 'designation' requirements as those imposed on U.S. exchanges."

Finally, one commenter urged that "the Commission * * * act quickly on its intent to reevaluate the current fee structure for designation applications," and suggested "a significant reduction or the elimination of the options contract filing fee, when such an options contract is submitted simultaneously with its underlying futures contract."

IV. The Final Rules

The Commission has considered carefully the comments received and is promulgating the revisions to Guideline No. 1, as proposed, with only slight technical modifications. These include a clarification in section (a)(2) that contract terms which are not justified because they are identical to other contract terms or conditions previously approved by the Commission must provide a citation to the previously approved term or condition, and technical corrections in section (a)(3)(iv) replacing "demand certificate" with "depository receipt" and in section (a)(3)(v) deleting the term "proportional rail billing" and revising it to read "freight allowances."

The Commission believes that the revisions to Guideline No. 1 being promulgated herein, in practice, will accomplish the goals stated by the commenters of achieving a more expeditious process for bringing new contracts to market. In this regard, the Commission is mindful of the competitive environment in which the exchanges operate, while at the same time adhering to the spirit and the requirements of the Act.

For example, although one commenter recommended that notice be required to be provided in the Federal Register within thirty days of receipt, it currently is the Commission's practice to provide such public notice within that time period, except in cases where fundamental amendments to the contract are apparently necessary, making a request for comment on the application as filed clearly premature.[5]

With regard to the suggestion that contract designation be automatic a short time after the public comment period has elapsed, the Commission notes that of the twelve contracts designated during the past six months under existing procedures, one-third have been approved within a period of three months of their receipt.

It can be assumed that as applications for contract market designation are filed and reviewed under the revised procedures, the time for review will be reduced even further. Moreover, the Commission will also reexamine its internal administration to determine whether additional time can be cut from the process. Accordingly, the Commission believes that, applying current policies along with these anticipated savings, the time necessary for the designation of routine applications will approach the time limits suggested by the commenter, while permitting the Commission the flexibility to give greater attention to those contracts which raise novel regulatory issues or which have proposed terms and conditions which are inconsistent with the statutory or regulatory requirements for designation. Finally, the Commission notes that the checklist format being adopted for options is indeed a form of "automatic" approval of applications.

With regard to the suggested requirement that applications contain an index cross-referencing the requirements of Guideline No. 1 to the terms of the proposed contract and to the analysis of those terms, the inclusion in applications for contract market designation of such an index would certainly aid Commission staff in its review. Although the Commission encourages exchanges to include such an index, the Commission, however, is not mandating its use. In promulgating Guideline No. 1 the Commission has attempted to provide guidance to exchanges on that which is necessary to demonstrate compliance with the requirements for designation of the Act. The Commission, however, believes that, with the exception of the option checklist, the actual format of the document itself need not be mandated.

With regard to the relative benefits of the revisions to the Guideline, the Commission expects that the revisions will be applicable to all applications, whether the contract is novel or a "copy-cat." In this connection, even novel contracts may share specific terms or conditions which under the revised Guideline would not be required to be justified. Further, this revision permits both the exchanges and Commission

[5] Of the 19 contracts pending as of December 10, 1991, eleven were published in the Federal Register within approximately one calendar month of their receipt. They are: CBT ECU Bonds, 56 FR 13630 (April 3, 1991); Comex Dubai Sour Crude, 56 FR 31616 (July 11, 1991); NYMEX Sour Crude Oil, 56 FR 36778 (August 1, 1991); CBT Homeowners Insurance, 56 FR 38123 (August 12, 1991); CME Mid-Cap 400 Futures, 56 FR 49177 (September 27, 1991); CME Mid-Cap 400 Futures Options, 56 FR 57323 (November 8, 1991); NYMEX Gulf Gasoline Futures, 56 FR 50569 (October 7, 1991); NYMEX Spread Options (2 contracts), 56 FR 56410 (November 4, 1991); CSCE Brazil Differential Coffee, 56 FR 59248 (November 25, 1991); and MCE Rough Rice Options, 56 FR 61236 (December 2, 1991).

staff better to focus their attention on the particularly complex issues involved in the novel applications. As the Commission noted in proposing these revisions:

By concentrating on delineating those parts of the application for designation most crucial to demonstrating compliance with the requirements of the Act and Commission regulations, both the exchanges and the Commission will better be able to marshall their resources and to improve the timeliness of review.

56 FR at 43727. This will benefit all applications, whatever the level of originality.

Finally, one commenter suggested that the Commission "act quickly" in restructuring its fee structure in light of these revisions. The Commission believes that this suggestion has merit and, in a separate notice published recently in the **Federal Register**, 57 FR 1372 (January 14, 1992), has undertaken a restructuring of the fee structure. Of course, even with such a formal restructuring of fees, the fees charged in the future will continue to be adjusted to reflect any further savings brought about by these revisions.

A. Revisions to Guideline No. 1

Guideline No. 1 is being revised, as proposed, to include three sections which relate to the designation of futures contracts, options on futures contracts and options on physicals, respectively.

1. Revisions Relating to Applications for Futures Designation

Section (a)(1) of the Guideline, as amended, requires that an application for designation include a description of the relevant cash market. As revised herein, however, a cash market overview would be required to be included only when a contract, or only to the extent that a specific contract term, differs from a currently designated contract which is not dormant within the meaning of Rule 5.2, 17 CFR 5.2. In light of the Commission's and the exchanges' increased experience, the Commission believes that cash market overviews need only be included in a contract market designation application when a proposed instrument is materially different from, and not merely iterative of, an existing, non-dormant contract. As revised, Guideline No. 1 permits further that a cash market overview may be confined to the matters pertinent to a particular contract term(s), where no cash market overview would otherwise be required.[6]

Section (a)(2) of the Guideline, as amended, provides that an exchange justify those individual terms and conditions of the contract relating to the pricing and delivery mechanism of the contract. Consistent with the requirements for the cash-market overview, the justification of the proposed contract's individual terms and conditions would not be required when that term or condition is the same as one already approved by the Commission for a similar, non-dormant contract. Rather, when the previously approved and proposed rules are in all material respects identical, the application would be required to include only the text of the proposed rule and the rule number or other citation to the approved contract market rule upon which it is based. When the proposed rule is similar, but not identical, to a previously approved rule, an explanation and evaluation of the deviation should be provided. When the term is unique, a complete justification is required.

The evidence which is necessary to make the required showing is clearly set out in the Guideline. See, section (a)(2) of Guideline No. 1. As a whole, this evidence must demonstrate that the contract terms and conditions would result in a deliverable supply which will not be conducive to price manipulation or distortion, or when a term or condition does not conform with the prevailing cash market practices, that the particular term is nonetheless appropriate for the contract. For cash-settled contracts, the application must demonstrate that the settlement price of the contract is at a price reflecting the underlying cash market, and is not subject to manipulation or other distortions. Finally, the application would be required to specify and justify speculative position limits as required under Commission Rule 1.61, 17 CFR 1.61.[7]

Section (a)(3) of the Guideline, as amended, permits exchanges merely to stipulate that certain terms and conditions of a contract, which are more closely related to the contract's ease of trading but which normally do not bear directly on the contract's deliverable supply or cash settlement, are consistent with the cash market rather than requiring their full justification. These terms and conditions relate to: the delivery pack or composition of the delivery units; the size of the contract unit as related to the size of the typical cash market transaction; inspection and certification procedures, including the duration of inspection certificates; verification of delivery eligibility; requirements surrounding the delivery instrument; transportation terms at the point of delivery; and provisions for payment of costs in making and taking delivery, including inspection, assay, certification, warehouse charges or freight charges.[8] Similarly, with respect to maximum price limits, an exchange would stipulate that the proposed limits are not unduly restrictive.

Finally, for the reasons detailed in the Commission's Notice of Proposed Rulemaking, and in particular to avoid duplication of effort between Commission and exchange staff, the Commission is revising Guideline No. 1 to provide that a board of trade applying for contract market designation shall submit additional evidence pertaining to the economic purpose test, the public interest standard of section 5(g) of the Act, or any other requirement for designation under the Act or Commission rules, only as requested.[9] In

[6] Although the determination is left to the exchange, in the first instance, of whether a complete or partial cash market overview is necessary and the appropriate degree of specificity which it should include, when a cash market overview is required, the analysis should support the justification of individual contract terms. See, section (a)(2) of the Guideline. As under current practice, however, supplementation of applications can be required when, in the view of Commission staff, necessary. Of course, where there is a question regarding these requirements, the Commission encourages exchanges to consult informally with its staff in advance of filing.

[7] As the Commission noted in the Notice of Proposed Rulemaking, 56 FR 43728–29, although applications for contract market designation presently are required to justify prospective speculative position limits by analogy to those levels initially approved for an existing contract for a similar commodity or, by reference to opportunity for arbitrage between the cash and proposed futures market and the breadth and liquidity of the cash market, the Commission is reviewing generally its speculative position limit policies and will propose further revisions to this section of Guideline No. 1 if it becomes appropriate in light of subsequent revisions to its speculative position limit policies.

[8] As the Commission previously noted, in certain instances, depending on the provision of the rule, the Commission might be required to consider further the particular rule under the standards of Section 15 of the Act. See, 56 FR at 43729, n.5.

[9] When the Congress, in 1974, enacted section 5(g) of the Act, it included a public interest test which it made clear, is broader than, but included, an economic purpose test for designation. See S. Rep. 1194, 93rd Cong., 2d Sess. 36 (1974). The economic purpose test requires a board of trade to demonstrate that transactions for future delivery in a commodity are, or reasonably can be expected to be, quoted and disseminated for price basing, or used as a means of hedging against possible loss through price fluctuation on more than an occasional basis.

Because the economic purpose of a contract is often implicit, or encapsulated, in the exchange's demonstration that the terms and conditions of the proposed contract meet the criteria of the Guideline, a further, separate justification is, in most instances, unnecessary and no longer will be required.

this way, the amount of information concerning the contract routinely filed will be reduced, and the Commission will be able to request with specificity the additional information or justification needed when particular instances warrant.

2. Revisions Relating to Applications for Options Designations

The requirements for the designation of option contract markets previously was not included in Guideline No. 1. Rather, in the absence of a guideline specific to options, applications for designation of options followed the pattern established in Guideline No. 1, substituting compliance with the various Commission rules, as appropriate.[10] In light of several recent revisions to the designation requirements for options,[11] the Commission determined that further guidance to the exchanges on the format for applications for designation might facilitate and expedite both the application and the review process. Accordingly, the Commission proposed to add to Guideline No. 1 two new sections, one relating to designation of contract markets for options on futures and one relating to designation of contract markets on options on physicals. The Commission is herein incorporating those revisions into the revised Guideline.

These revisions depart from prior practice in two fundamental ways. First, the Commission is promulgating a checklist format for option applications, based upon its experience that options have tended to exhibit uniform terms and conditions. 56 FR 43730. Secondly, as explained in the Notice of Proposed Rulemaking, the Commission has determined to encourage the filing of applications for designation of options simultaneously with that of the underlying futures contract. As the Commission noted:

> The Commission believes that when an exchange anticipates the eventual listing of both a futures and an associated option, the simultaneous designation of both instruments presents a ready opportunity to facilitate the designation process. In particular, because of the uniformity of their terms and the prior review of the underlying future, the time required currently for option designations is far less than for a related futures contract. However, the simultaneous analysis of these applications should avoid any duplicative effort by the staff, further reducing the time necessary for approval. In addition, simultaneous designations would be more efficient with regard to the preparation of both the applications and Commission documents by reducing the need for overlapping or redundant materials.
>
> While the Commission is not proposing to mandate that exchanges file such applications simultaneously, it encourages all exchanges to undertake to do so. This change in procedure, in addition to creating additional opportunities for administrative savings, should also provide exchanges with the opportunity to explore more fully any competitive advantages which they perceive may attach to an ability simultaneously to list new futures contracts and options thereon.

56 FR at 43731.

Part B of revised Guideline No. 1 standardizes the format for applications for designation of options on futures contracts. The application required under the Guideline, as amended, includes three documents: (1) The proposed exchange rules which constitute the terms and conditions of the option; (2) the exchange rules which constitute the terms and conditions of the underlying futures contract; and (3) the specified list of requirements or explanatory information as indicated, in the format identified in the Guideline.

The list of requirements identifies seven items which are reviewed by the Commission and the standard which unambiguously would meet each of the identified requirements.[12] No explanation or justification is necessary for those exchange rules which meet the stated standard; for those that do not, an explanation of how the exchange rule complies with the applicable Commission rule is required. Of course, the proposed checklist is merely a means of limiting the information which must be provided routinely by exchanges whose rules conform to these criteria. In this regard, the Commission will analyze the terms and conditions of the proposed contract to ascertain whether the contract meets all of the criteria for designation, in addition to those listed. Accordingly, the Guideline, as amended, clearly reserves to Commission staff the ability to request additional information or data as necessary and appropriate.[13]

V. Breadth and Effect of These Amendments

As the Commission noted in its Notice of Proposed Rulemaking, Guideline No. 1 pertains only to the economic and public interest requirements for contract market designation. These revisions do not broaden its applicability. Accordingly, as the Commission previously stated,

> there are additional requirements for designation which the Commission must consider and which are not addressed routinely in the required written application.
>
> As is true under current designation procedures, contract market applicants would continue to be subject to these requirements, despite their exclusion from the written submission required under the guideline. The Commission contemplates that, except for the initial contract market designation for a board of trade, its staff would continue to require written submissions regarding those designation requirements not addressed in revised Guideline No. 1 on a case-by-case basis.

56 FR 4372 (footnote omitted).

In proposing these revisions, the Commission determined to permit exchanges to file applications consistent with the proposed format immediately upon its publication in the Federal Register. *Id.* However, of the seven

[10] Unlike the requirements for the designation of futures contracts which are found in the Commodity Exchange Act, the requirements for the designation of exchange-traded options are provided in Commission rules, in particular, Commission Rule 33.4, 17 CFR 33.4 (1990).

[11] See, 56 FR 43694. After reviewing the requirements for designation of option contract markets, the Commission revised several of its rules, removing the following: Rule 33.4(a)(5)(iii), which required a specified volume of trading in the underlying futures contract prior to designation; Rule 5.4, which established a delisting criterion for the trading of options on low-volume futures contracts; Rule 33.4(b)(1)(iv), which required that exchanges adopt rules establishing a period of time before the expiration of an option during which no new option strike prices can be added; and Rule 33.4(g), which required exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option. In addition, the Commission revised Rule 33.4(d)(1), which required exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever came first, redesignating it as Rule 33.4(b)(2). In addition, the Commission amended Rule 15.00(b)(2), to raise to 50 contracts the minimum reportable level requiring no exchange justification.

[12] The Guideline checklist identifies the following standards as clearly meeting the requirements of Commission Rules 33.4(b), 33.4(d), 1.61, and 15.00(b)(2), 17 CFR 33.4(b), 33.4(d), 1.61, and 15.00(b)(2) (1990). Commission Rule 33.4(b)(1) is met by exchange rules which provide procedures for the listing of strike prices which are specified and automatic. Except for options on cash-settled futures contracts, the option may not expire later than the day before first notice day or the last trading day of the future, whichever comes first. 17 CFR 33.4(d)(1). The minimum tick size of the option must be equal to, or less than, that of the underlying futures; and a daily price limit, if any, must be equal to, or greater than, that of the underlying futures. 17 CFR 33.4(d). The exchange rule for aggregation of accounts must be identical with the language of Commission Rule 1.61(g) or with a previously approved rule of the exchange. The speculative position limit must provide for a combined net position in futures and options on a futures equivalent basis at the futures position levels with inter-month spread exemptions consistent with those of the futures contract. 17 CFR 1.61. And finally, the contract must have a reportable level of fifty contracts or fewer. 17 CFR 15.00(b)(2).

[13] Section (c) of the Guideline sets forth the information which should be included in an application for the designation of contract markets in options on physicals. Because options on physicals combine characteristics of both futures and options, the applications for designation of such instruments combine the relevant portions of the previous sections of the Guideline.

applications for designation submitted to the Commission subsequent to the notice, none were submitted in the revised format. Nevertheless, the Commission has begun to review pending applications under the standards articulated in the proposed revisions to this Guideline, as applicable. Because exchanges may have incurred costs associated with submissions already under development which comply with the existing Guideline, the Commission will continue to accept new applications in the current format for a period of six months from the effective date of these amendments. However, exchanges are encouraged to comply with the revised format immediately. Of course, all pending applications will continue to be processed in the form in which they were submitted. And, as the Commission stated previously, "on a case-by-case basis, it may permit certain modifications to, or adjustments in, the required format as necessary to mitigate any particular burdens associated with the transition to the revised format." 56 FR 43732.

VI. Foreign Exchange-Traded Stock Index Futures Contracts

In the Notice of Proposed Rulemaking, the Commission, in order to facilitate the process for filing requests for staff "no-action" letters regarding stock index contracts based on foreign securities by a foreign board of trade, identified that information which would assist in the staff's analysis of such requests. See, 56 FR 43733 for an explanation of the procedure and a list of the contracts subject to such relief. The Commission, for the convenience of the reader, is reproducing that list, *in toto*. As previously explained by the Commission, the following information is suggested to be included in such a no-action request by a foreign board of trade:

(1) The terms and conditions of the contract and all other relevant rules of the exchange, and if applicable, of the exchange on which the underlying equities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign boards of trade and the exchange(s) on which the underlying equities are traded;

(3) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts; and

(4) Information and data relating to:

(a) The computation, availability, and timeliness of the index;

(b) The total capitalization, number of stocks, and weighting of the stocks by capitalization and, if applicable, by price, in the index;

(c) Breakdown of the index by industry segment;

(d) Procedures and criteria for selection of individual stocks for inclusion in, or removal from, the index;

(e) Method of calculation of the cash-settlement price and the timing of its public release;

(f) Average daily volume of trading by calendar month in each of the underlying equities for a six month period of time, and separately, the daily volume in each underlying stock for six expirations (cash-settlement dates) or for the six days of that period on which cash-settlement would have occurred had each month of the period been an expiration month.

In addition, Commission staff considers the ability and willingness of the foreign regulatory authority to share information with the Commission. Finally, it should be noted that, in particular instances, additional information may be required by the Securities and Exchange Commission. All of the above correspondence, justifications, and information should be submitted in English. This includes the explanatory notes appended to tables and other charts of data.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. 47 FR 18618 (April 30, 1982). This interpretative guideline provides guidance to contract markets on what information is necessary to demonstrate compliance with the Statutory requirements for designation. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Commission invited comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities. None was received.

List of Subjects in 17 CFR Part 5

Contract markets, Commodity futures, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending part 5 as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for part 5 continues to read as follows:

Authority 7 U.S.C. 6c, 7, 7a, 8 and 12a.

2. Appendix A to part 5 is revised to read as follows:

Appendix A to Part 5—Guideline No. 1; Interpretive Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

For purposes of a board of trade seeking designation as a contract market and thereafter for the purpose of demonstrating continued compliance with the requirements of sections 4c, 5, and 5a of the Commodity Exchange Act, and regulations thereunder, the following shall be provided to the Commission.

(a) *For Designation of Contract Markets for Futures*—(1) *Description of the Cash Market.* In support of the justification and demonstration to be furnished under paragraph (a)(2) of this Guideline, a board of trade shall submit with its application a description of the cash market for the commodity on which the contract is based: *Provided, however*, That no such description is required when the same, or a closely related commodity, is already designated as a contract and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. When a particular term(s) or condition(s) of the proposed contract differs from those of the designated contract market, but otherwise is substantially the same, the description of the cash market can be confined to those aspects relevant to the particular term(s) or condition(s). For purposes of this section, the term cash market includes all aspects of the spot and forward markets in which the commodity underlying the contract is merchandised and for which the contract serves a hedging or price basing function. As applicable to the justification of individual contract terms or the contract's hedging or price basing function, the cash market description shall include:

(i) Production of the underlying commodity, including as appropriate, geographical locations and seasonal patterns in the case of

tangible commodities and scheduled issuances in the case of financial instruments;

(ii) Consumption of the underlying commodity, including, as appropriate, geographic locations and seasonal patterns of intermediate and ultimate consumption in the case of tangible commodities;

(iii) The nature and structure of the cash marketing channels, including the nature and number of marketing institutions, the nature of the forward contracting market, and the manner in which the price of the commodity is determined at various stages in its marketing;

(iv) The prevalent means of communications, methods of financing commodity ownership, and, in the case of tangible commodities, the manner in which tangible commodities are transported and stored; and

(v) Information provided by the board of trade pursuant to this paragraph shall include statistical data when applicable and when reasonably available. Such data shall cover a period of time sufficient to show accurately the historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions. In the absence of a justification of providing data from a shorter period, at least five (5) years of such data should be provided. If the board of trade through reasonable effort cannot obtain sufficient data, interviews with, or statements by, persons having knowledge of the cash market may be used to supplement or, if necessary, substitute for quantitative information.

(2) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of significant individual terms and conditions of the contract. Such analysis and justification for each term and condition should be supported in the manner provided by section (a)(1)(v) of the Guideline: *Provided, however,* That no such analysis or justification is required, when a contract on the same or a closely related commodity is already designated as a contract market and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. Instead, the individual term(s) or condition(s) of the proposed contract need only be referenced to the original, approved term(s) or condition(s). When, however, a particular term(s) or condition(s) of the proposed contract differs from that of the designated contract market, only the particular term(s) or condition(s) which differs must be analyzed or justified. When the proposed contract is substantially different from a designated contract market which is not dormant within the meaning of § 5.2 of this part, but an individual term(s) or condition(s) is the same as, or substantially the same as, a term or condition approved for any other designated contract market which is not dormant with the meaning of § 5.2 of this part, then the individual term(s) or condition(s) need not be analyzed and justified and need only be referenced to the original, approved term or condition.

(i) The justification submitted by a board of trade concerning significant contract terms shall include, when applicable, (a) evidence of conformity with the underlying cash market and (b) evidence that the term or condition will provide for a deliverable supply which will not be conducive to price manipulation or distortion and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash marketing channels. To the extent that a term or condition is not in conformity with prevailing cash market practices, the board of trade shall provide a reason for the variance and demonstrate that the term or condition is necessary or appropriate for the contract and will result in sufficiently available and saleable deliverable supplies.

(ii) For contracts which require delivery, the justification shall include a demonstration that the contract terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion, including when applicable the following:

(A) Complete specification and commodity characteristics for par and non-par delivery (such as grade, class, weight, issuer, maturity, rating) including the economic basis for the premiums and discounts, or lack thereof, for differing characteristics. For futures contracts based on debt securities, this shall include an economic justification of the formula to be used for the evaluation of non-par instruments;

(B) All delivery points, including, when applicable, for each point:

(*1*) The nature of the cash market at the delivery point (e.g., auction market, buying station or export terminal);

(*2*) A description of the composition of the market;

(*3*) The normal commercial practice for establishing cash market values and the availability of published cash prices reflecting the value of the deliverable commodity;

(*4*) The level of deliverable supplies normally available, including the seasonal distribution of such supplies; and

(*5*) Any locational differentials for delivery points, including the economic basis for discounts or premiums, or lack thereof, applying to delivery points;

(C) A description of the delivery facility (such as warehouse, depository, financial institution) including:

(*1*) The type(s) of delivery facility at each delivery point;

(*2*) The number and total capacity of facilities meeting contact requirements;

(*3*) The proportion of such capacity expected to be available for traders who may wish to make delivery and seasonal changes in such proportions; and

(*4*) The extent to which ownership and control of such facilities is dispersed or concentrated.

(iii) For contracts when cash settlements may serve as an alternative to, or substitute for, physical delivery, information submitted by the board of trade pursuant to this section must include evidence that the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and must also include:

(A) An analysis of the price series upon which such settlement will be based, including the series' reliability, acceptability, public availability and timeliness, and

(B) An analysis of the potential for manipulation or distortion of the cash-price series.

(iv) With regard to delivery months, the board of trade shall specify the delivery months and, when applicable, shall describe the relationship of each futures delivery month to cyclical variations in deliverable supplies, availability of warehouse space, transportation facilities, cash market activity, and any other factors which may affect the viability of delivery or ascertaining a cash settlement price in each such month. The board of trade's justification shall also consider the delivery months for existing contracts which draw on the same deliverable supply or cash settlement mechanism.

(v) For those contract markets required to have in effect speculative position limits under § 1.61 of this chapter, the board of trade shall include an analysis of the consistency of the speculative position limits proposed in the application with the criteria set forth in that section.

(3) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that, when applicable, the following terms and conditions of its proposed contract are consistent with prevailing cash market practices. For those terms and conditions which are contrary to such a stipulation, the board of trade shall provide a reason for the variance from prevailing cash market practices and demonstrate that the term or condition is necessary or appropriate for the contract. These terms and conditions include the following:

(i) The permissible delivery pack or composition of delivery units;

(ii) The size of contract unit;

(iii) The inspection and certification procedures for the verification of delivery eligibility and, for perishable commodities, the duration of the inspection certificate and any discounts applied to deliveries of a given age;

(iv) The delivery instrument (such as a warehouse receipt or depository receipt), and the conditions under which such instrument is negotiable;

(v) The transportation terms at point of delivery (such as FOB, CIF, or freight allowances);

(vi) The provisions for payment of costs in making and taking delivery, including a description of significant costs (such as inspection, assay, certification, warehouse charges or rail charges);

(vii) The minimum price change (tick); and

(viii) A separate stipulation that any restrictions on daily price movements (maximum price fluctuations), are not overly restrictive in relation to price movements in the cash market.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence relating to any of the

information, data or stipulations required by paragraph (a) of this Guideline. In addition, a board of trade shall submit any other evidence, information or data requested relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, including in particular, whether a proposed contract reasonably can be expected to be used for hedging and/or price basing on more than an occasional basis, and whether a designated contract has in fact been used for such purposes on more than an occasional basis, or any other requirement for designation under the Act or Commission rules.

(b) *For Designation of Contract Markets in Options on Futures*—(1) *Terms and Conditions.* A board of trade shall submit the terms and conditions of the proposed option and of the proposed or designated futures contract underlying the proposed option.

(2) *Option Designation Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Futures Contracts. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of that term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON FUTURES CONTRACTS

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as Section 1.61(g) of this Chapter or previously approved language.	
3. Reporting level	15.00(b)(2)	50 contracts or fewer	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic	
5. Option expiration	33.4(d)(1)	Options, except for options on cash-settled futures contracts, expire not less than one business day before the earlier of the last trading day or the first notice day of the underlying futures contract.	
6. Minimum tick	33.4(d)	Tick is equal to, or less than, the underlying futures tick	
7. Daily Price limit, if specified	33.4(d)	Price limit, if any, is equal to, or greater than, underlying futures price limit.	

(3) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) Any term or condition not meeting a criterion identified on the Option Designation Checklist identified in paragraph (b)(2) of this Guideline or any criterion of that Checklist which is not met by a particular term or condition of the option: *Provided, however,* That no such analysis or justification is required when such an individual contract term(s) or condition(s) is the same as, or substantially the same as, an identified term or condition approved for any other designated contract market which is not dormant within the meaning of § 5.2 of this part; and

(ii) Such other term(s) or condition(s) as requested.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter or any other requirement for designation under the Act or Commission rules.

(c) *For Designation of Contract Markets in Options on Physicals.*—(1) *Terms and Conditions.* A board of trade shall submit the terms and conditions of the proposed option.

(2) *Description of the Cash Market.* A board of trade shall submit a description of the cash market as provided under paragraph (a)(1) of this Guideline.

(3) *Justification of Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) The term(s) and conditions(s) identified in paragraph (a)(2) of this Guideline relevant to the option on a physical;

(ii) Any term or condition not meeting a criterion identified on the Option Designation Checklist contained in paragraph (c)(5) of this Guideline; and

(iii) Such other term(s) and condition(s) as requested.

(4) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that the terms and conditions listed in paragraph (a)(3) of this Guideline are consistent with prevailing cash market practices, or, for those which are not, a justification consistent with paragraph (a)(3) of this Guideline.

(5) *Option Desgination Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Physicals. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of the term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	If there is a futures contract in the same commodity on the same exchange, combined futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts..	
2. Aggregation rule	1.61(g)	Same as section 1.61(g) of this chapter or previously approved language..	
3. Reporting level	15.00(b)(2)	50 contracts or fewer.	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic.	

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS—Continued

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
5. Option expiration	33.4(d)(1)	Options expire not less than one business day before the earlier of the last trading day or the first notice day of any futures contract in the same or a related commodity, except for cash-settled futures contracts..	

(6) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter, or any other requirement for designation under the Act or Commission rules.

Issued in Washington, DC this 22nd day of January, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-1910 Filed 1-29-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 89N-0525]

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations regarding the status of certain over-the-counter (OTC) drug Category II and III active ingredients. This final rule makes nonsubstantive corrections to the final regulations that were published in the **Federal Register** of November 7, 1990 (55 FR 46914). That final rule listed the names of several active ingredients incorrectly. This document corrects those errors and provides clarification of the final rule for certain OTC drug products.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: This document amends the final rule concerning drug products containing certain active ingredients offered OTC for certain uses in 21 CFR part 310 (as set forth in the **Federal Register** of November 7, 1990 (55 FR 46914)). That final rule lists several active ingredients incorrectly. This final rule corrects those errors in the regulations. As noted above, these amendments institute changes that are nonsubstantive in nature. Because the amendments are not controversial and because, when effective, they provide clarification of a final rule for OTC drug products, FDA finds that the usual notice and comment procedures are unnecessary.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

§ 310.545 [Amended]

2. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended in paragraph (a)(1) by removing the entry "Chlorhydroxyquinoline" and alphabetically adding the entry "Cloxyquin"; by removing from paragraph (a)(2) the entry "Acidulated sodium phosphate"; by removing from paragraphs (a)(6)(i) and (a)(6)(ii) the entry "Thenyldiamine" and adding in their place the entry "Thenyldiamine hydrochloride"; by removing from paragraph (a)(7) the entries "Alkyl isoquinolinium", "Lauryl isoquinolinium", and "Methylbenzethonium" and adding in their place the entries "Alkyl isoquinolinium bromide", "Lauryl isoquinolinium bromide", and "Methylbenzethonium chloride", respectively; by removing from paragraph (a)(8) the entries "Dihydroxyaluminum", "Glutamic acid", and "Homatropine", and adding in their place the entries "Dihydroxyaluminum sodium carbonate", "Glutamic acid hydrochloride", and "Homatropine methylbromide", respectively; by removing from paragraph (a)(12)(iv) the entry "Prune concentrate" and adding in its place the entry "Prune concentrate dehydrate".

Dated: January 24, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-2229 File 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8394]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance as to when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds. When bond proceeds are "spent," they are no longer subject to arbitrage rebate, arbitrage yield limitations, and certain other limitations. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986.

The regulations provide guidance to issuers of tax exempt bonds.

DATES: The regulations are effective for bonds issued after March 2, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, 202-566-3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1226. The estimated average annual burden per recordkeeper is 2.4 hours. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC, 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On April 25, 1991, the Internal Revenue Service published a notice of proposed rulemaking to provide guidance under sections 103 and 150 of the Internal Revenue Code with respect to reimbursement bonds (56 FR 19046 (1991)). The proposed regulations reflected amendments to section 103 and the addition of sections 141 through 150 to the Code by the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2602). The notice of proposed rulemaking proposed to add to the Income Tax Regulations (26 CFR part 1) provisions for determining when the use of bond proceeds to reimburse a previously paid expenditure is treated as an expenditure of the bond proceeds for purposes of sections 103 and 141 through 150 of the Code.

Written comments were received on the proposed regulations, and a public hearing was held on August 8, 1991. These written and oral comments requested many changes, including simplification of the regulations generally. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Changes

A. General Purpose of the Regulations

These regulations provide rules for allocating proceeds of "reimbursement bonds." Reimbursement bonds are bonds the proceeds of which are allocated to reimburse expenditures paid prior to the date of issue of the bonds.

Proceeds of a bond generally cease to be treated as proceeds on the date they are spent. Moneys that cease to be treated as proceeds of a bond are no longer subject to arbitrage yield limitations, the arbitrage rebate requirement, and certain other restrictions imposed by sections 103 and 141-150 of the Code. Therefore, spending bond proceeds as soon as possible may reduce the amount of arbitrage rebate an issuer would otherwise pay and may free the issuer from complying with other significant requirements of the Code.

The early expenditure of bond proceeds as a means of avoiding or minimizing the amount of arbitrage rebate due the United States is encouraged by section 148(f)(4) of the Code, which generally treats an obligation as complying with the arbitrage rebate requirement if all gross proceeds of the obligation are spent within 6 months of the date of issue of the obligation (subject to certain exceptions) or in prescribed installments over a 2-year period (subject to certain exceptions and other requirements). Encouraging the early expenditure of bond proceeds furthers Federal tax policy by discouraging the issuance of bonds earlier than the bond proceeds are needed for governmental purposes. Deferring bond issuances reduces opportunities for earning arbitrage and lessens the burden on financial markets.

Because the applicability of many restrictions and requirements imposed by the Code ceases when bond proceeds are spent, proper administration of sections 103 and 141-150 requires a definition of what constitutes an expenditure of bond proceeds. In particular, it is important to define to what extent the allocation of bond proceeds to reimburse prior expenditures is considered an expenditure of the proceeds.

These regulations describe the circumstances in which an allocation of bond proceeds to reimburse a prior expenditure is treated as an expenditure of bond proceeds on the date of allocation. If reimbursements were not limited to expenditures made a reasonable period of time prior to issuance of bonds, issuers could generally avoid compliance with sections 103 and 141-150 by simply allocating bond proceeds to capital expenditures paid long before, and without reliance on, the issuance of the bonds. In addition, the intent of these regulations is to limit the treatment of reimbursement allocations as expenditures of bond proceeds to situations in which economic circumstances justify the reimbursement. These regulations are not intended to permit or condone the use of reimbursement allocations to avoid arbitrage yield limitations, arbitrage rebate, or other tax limitations or restrictions.

B. General Requirements

An allocation of proceeds of governmental bonds, qualified 501(c)(3) bonds, and certain other private activity bonds to a previously paid expenditure must comply with § 1.103-18 to be an expenditure of bond proceeds. If a bond meets the requirements of these regulations, bond proceeds are deemed to be spent when they are allocated to reimburse a prior expenditure.

In the case of a governmental bond, a qualified 501(c)(3) bond, or a private activity bond the proceeds of which are used to finance a governmentally owned facility, three general requirements must be met in order for a reimbursement allocation of proceeds of those bonds to qualify as an expenditure of bond proceeds:

(1) On or before the date the expenditure that is being reimbursed is paid, the issuer (which, as defined, includes the borrower from a conduit issuer) must declare a reasonable official intent to reimburse the expenditure (the "official intent requirement").

(2) The allocation of reimbursement bond proceeds to an expenditure must take place by a required time (the "reimbursement period requirement"). The allocation must generally occur on or before the later of the date 1 year after the expenditure was paid or the date 1 year after the property was placed in service. Allocation may not occur before the date on which the expenditure was paid.

(3) The reimbursed expenditure must be a capital expenditure (the "capital expenditure requirement").

Under the "official intent period" requirement contained in the proposed regulations, official intent had to be declared no earlier than the date 2 years prior to the date of the expenditure. This requirement was not included in these

final regulations in an effort to simplify the regulations and in response to comments that the requirement was unnecessary in light of other requirements applicable to reimbursement allocations.

If proceeds of a private activity bond (other than a qualified 501(c)(3) bond) are allocated to reimburse a previously paid expenditure of the issuer, the allocation can qualify as an expenditure of the bond proceeds only if the bond complies with the requirements of § 1.103–8(a)(5) and does not violate the anti-abuse rules of § 1.103–18(k) (1) and (3) (ii) and (iii).

C. Official Intent Requirement

The purposes of the official intent requirement are to provide evidence that, on or prior to the date of payment, the issuer intended to reimburse the expenditure and to ensure that the reimbursement is not a device to avoid requirements imposed by the Code with respect to tax exempt bonds. In order to ensure that an issuer will consider its current financial and budgetary circumstances in connection with any declaration of official intent and that the reimbursement will be consistent with the issuer's financial and budgetary circumstances, the regulations require that the declaration of official intent (1) state that the issuer reasonably expects to reimburse the expenditure with proceeds of its debt, (2) specifically state that it is intended to be a declaration of official intent under these regulations, (3) contain a general functional description of the property to which the reimbursement relates or an identification of the fund or account from which the expenditure is to be paid and a general functional description of the purposes of the fund or account, (4) indicate the maximum principal amount of debt expected to be issued for reimbursement, and (5) be reasonably available for public inspection. The issuer may designate any person to act on its behalf in declaring official intent.

Unlike the proposed regulations, which required that the declaration of official intent state the issuer's intent to issue taxable or tax exempt debt to reimburse the prior expenditure, these regulations require only that the issuer declare its intent to issue debt to reimburse the expenditure. This change was made in response to comments expressing confusion over the language in the proposed regulations. The requirement that the declaration of official intent state that it is a declaration of official intent under these regulations was added in order to ensure appropriate evidence of intent to reimburse the expenditure. Without this evidence, expenditure authorizations by issuers or conduit borrowers (which may also be legal authorizations to incur debt) are not treated as declarations of official intent for purposes of these regulations.

With respect to the proposed regulations, state and local financial officers commented that many larger issuers use a fund or account method to account for ongoing projects for which reimbursement financing may be used. These commentators pointed out that because of their use of fund accounting, the project-specific accounting requirements of the proposed regulations were burdensome. In response to these comments, these regulations permit declarations of official intent to describe identified funds or accounts in lieu of identified specific projects. Therefore, if a declaration of official intent both identifies the fund or account from which the expenditure to be reimbursed is paid and describes the general functional purpose of the fund or account, that declaration adequately describes the expenditure to be reimbursed for purposes of the official intent requirement.

Commentators requested clarification regarding the provision in the proposed regulations permitting "reasonable deviations" between the property described in the declaration of official intent and the actual property acquired. In response to these comments, these regulations permit reasonable deviations between the project described and the project acquired if "the actual project financed is reasonably related in function to the project described in the declaration of official intent." The intent of this change is to simplify compliance with the official intent requirement and to allow flexibility for changes within the same project.

In response to comments that the public availability requirement under the proposed regulations was burdensome, these regulations require only that the declaration of official intent be "reasonably available for public inspection within a reasonable period of time." Safe harbors are provided for declarations of official intent made available for public inspection in compliance with State or local law and for declarations of official intent made available within 30 days of the declaration of official intent. The intent of these changes is to simplify compliance with the public availability requirement while assuring that declarations of official intent are available for public inspection. Special rules continue to apply to public availability of declarations of official intent with respect to conduit financings such as qualified 501(c)(3) bonds and other private activity bonds.

A declaration of official intent must be reasonable. The reasonableness requirement is intended to curb abuses that may otherwise arise when bond proceeds are allocated to reimburse expenditures primarily for the purpose of avoiding tax restrictions or requirements. The reasonableness requirement does not impose a requirement on an issuer that all other funds be exhausted. Instead, the requirement ensures that reimbursement of an expenditure is motivated by an intent to finance, on a long-term basis, an expenditure originally paid with moneys that were not available to fund the expenditure on a long-term basis.

Commentators asked for clarification of the concept of "available moneys" in the proposed regulations. In response to this request, these regulations clarify that moneys are taken into account for purposes of determining consistency with an issuer's budgetary and financial circumstances if, at the time of the declaration of official intent, they are, or are reasonably expected to be, allocated on a long-term basis, reserved, or otherwise set aside with respect to the expenditure to be reimbursed by the issuer or by any member of the same controlled group as the issuer. The application of the controlled group concept for purposes of determining available moneys should be easier for issuers to comply with since not all members of a controlled group need to be identified if it is clear that none of them could have available moneys with respect to the expenditure to be reimbursed by the issuer. A controlled group of entities is a group of entities controlled by the same entity or entities and is defined in new § 1.150–1(f). Because of these changes to the reasonableness requirement, the examples contained in the proposed regulations illustrating this principal were not included in these final regulations.

The reasonableness requirement is not intended to preclude an issuer from avoiding or minimizing arbitrage rebate or arbitrage yield limitations by intentionally delaying the issuance of a bond. For example, prior to the issuance of the bond, an issuer may pay expenditures with respect to a project with moneys that are not available on a long-term basis to finance the project. By delaying the bond issue, the issuer is able to reimburse itself for the prior expenditures with bond proceeds that

will be spent within the relevant 6-month or 2-year time period, thereby meeting an exception to arbitrage rebate. Delaying the issuance of obligations for this purpose furthers Federal tax policy and is encouraged.

The reasonableness requirement will not be applied to question the soundness or appropriateness of an issuer's budget or financial practices; rather it is meant to ensure that any intent to reimburse is consistent with an issuer's established budgetary and financial practices (provided that those practices are not adopted for tax avoidance purposes). In order to ensure that an issuer's actions reasonably conform to the issuer's declarations of official intent, under the reasonableness requirement the issuer must reasonably expect to reimburse the expenditure with proceeds of a borrowing (the "reasonable expectations test"). The determination of whether an expectation to reimburse is reasonable is based on all of the relevant facts and circumstances. For purposes of this determination, one important factor is whether an issuer has failed to reimburse expenditures which it has actually paid and for which it has declared official intent. The reasonable expectations test replaces the "pattern of failing to reimburse" rules of the proposed regulations. This change was made in part in response to comments that the "pattern of failing to reimburse" rules were burdensome.

D. Reimbursement Period Requirement

The purpose of the reimbursement period requirement is to provide assurance that the money originally used to pay for the expenditure that is to be reimbursed is not available with respect to the expenditure on a long-term basis. If an expenditure is not reimbursed within a relatively short period of time after its payment or after completion of the project, it is more likely that the money used to pay the expenditure is available with respect to that expenditure on a long-term basis.

Some commentators have suggested that reimbursement allocations be permitted on an unrestricted basis with respect to all expenditures paid within a certain period of time. For example, some commentators have suggested permitting unlimited reimbursement of all expenditures paid during the 3 fiscal years preceding the date of issue of the reimbursement bonds. These commentators have argued that such a rule would be simple and that significant abuse (e.g., reimbursement of expenditures incurred many years ago) would be curbed because of the time limitation. This provision was not included in these regulations because of the potentially adverse effect that it would have on arbitrage rebate, arbitrage yield restriction, and other tax requirements and limitations applicable to tax exempt bonds. If reimbursement allocations were permitted for defined periods of time without further limitation, issuers could conceivably reimburse themselves for all expenditures paid during the defined time period whenever they issued debt regardless of their actual economic motivation for incurring the debt. Issuers could then use the proceeds of that reimbursement bond to pay for all or a portion of the project that they had not originally intended to finance with bond proceeds. By structuring the financing as a reimbursement bond rather than as a "new money" bond, the bond proceeds could be treated as "spent" and no longer subject to most tax limitations that would otherwise apply to a new money bond.

E. Capital Expenditure Requirement

The purpose of the capital expenditure requirement is to prohibit the reimbursement of day-to-day operating costs and similar "working capital" items. Comments on the proposed regulations requested clarification of the distinction between costs with a reasonably expected economic life of 1 year or more and those with a life of less than a year. In response to this request, the economic life requirement was changed to a capital expenditure requirement. For this purpose, a "capital expenditure" is defined in new § 1.150–1(h) as any cost of a type that is properly chargeable to capital account (or would be so chargeable with proper election such as an election under section 266) under general Federal income tax principles. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure.

For purposes of applying the "general Federal income tax principles" standard referred to in § 1.150–1(h), an issuer should generally be treated as if it were a corporation subject to taxation under subchapter C of chapter 1 of the Code. For example, costs that would be deducted as trade or business expenses under section 162 of the Code are expenditures for working capital and are not capital expenditures. On the other hand, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures under section 263 of the Code. Costs properly allocable to the issuance of the reimbursement bond are treated as capital expenditures.

F. Special Exception for Preliminary Expenditures and Abandonment Prior to Completion

Preliminary expenditures such as architectural, engineering, survey, reimbursement bond issuance, and similar costs (not exceeding in the aggregate 20 percent of the issue price of that portion of the issue that finances the project) generally are not subject to the official intent requirement. A separate exception also recognizes that projects may be abandoned prior to completion, and generally permits reimbursement of expenditures in this event. Under the proposed regulations, preliminary expenditures were excepted only from the official intent period requirement and were limited to 10 percent of the expected cost of the project. Changes to this provision were made in response to comments that the provision was insufficient to cover all ordinary preliminary expenditures.

G. Definition of Issuer

For purposes of these regulations, "issuer" means the actual issuer of an obligation. If the proceeds of a bond are loaned by the issuer to an entity (the "conduit borrower") that uses the bond proceeds to carry out the governmental purpose of the bond, "issuer" includes the conduit borrower. The actual issuer of the reimbursement bonds is not treated as the issuer with respect to proceeds loaned to a conduit borrower.

The proposed regulations defined issuer as including all entities that were members of the same controlled group. Comments were received indicating that application of the controlled group concept in all circumstances was burdensome. In response to these comments, the controlled group concept was deleted from the definition of issuer and was applied instead generally for purposes of determining available amounts under the reasonableness requirement.

H. Anti-Abuse Rule and Limitation on Scope of Reimbursement Regulations

In general, a reimbursement allocation is not treated as an expenditure of bond proceeds if any action or inaction of the issuer with respect to the allocation constitutes an artifice or device. This general anti-abuse rule was not contained in the proposed regulations and is added to these regulations to prevent abuse that may otherwise occur because of certain more liberal provisions contained in these regulations (e.g., more liberal definition

of issuer and a more narrow application of the reasonableness standard).

In addition to the general anti-abuse rule, a reimbursement allocation is not treated as an expenditure of bond proceeds if, absent that application, the bond proceeds are otherwise used directly or indirectly for one of the following prohibited uses: (1) Within 1 year of the allocation, to refund another issue of governmental obligations of the issuer within the meaning of section 148 of the Code, (2) within 1 year of the allocation, to create or increase the balance in a "sinking fund" (as defined in § 1.103-13(g)) with respect to any obligation of the issuer, or to replace funds that have been, are, or will be so used for sinking fund purposes, (3) within 1 year of the allocation, to create or increase the balance in a "reserve or replacement fund" (as defined in § 1.103-14(d)) with respect to any obligation of the issuer, or to replace funds that have been, are, or will be so used for reserve or replacement fund purposes, or (4) to reimburse any person (other than the issuer) for any expenditure or payment that was originally paid with proceeds of any obligation of the issuer. Any obligation that may arise when an issuer borrows from its own internal funds or from the funds of entities that are members of the same controlled group is not treated as an "obligation" as that term is used in subdivision (4) in the preceding sentence.

The purpose of the limitations on the use of reimbursement proceeds is to prohibit issuers from using a reimbursement allocation to earn otherwise prohibited arbitrage in certain transactions involving refundings, sinking funds, reserve and replacement funds, and previously-financed expenditures. Comments on the proposed regulations stated that the anti-abuse rule under the proposed regulations did not contain any time limit for "tracing" reimbursement bond proceeds to the prohibited uses, thereby making it difficult to determine when any use of moneys for the prohibited uses would be attributed to the reimbursement allocation. One-year time limitations were added to the prohibited use provisions in response to these comments. However, reimbursement proceeds intentionally used for these prohibited uses after the 1-year period are still subject to the general anti-abuse rule.

There are two exceptions to the limitations on uses of reimbursement proceeds. Under the first exception, the limitation does not apply if the issuer deposits the moneys from the reimbursement allocation in a bona fide debt service fund (as defined in § 1.103-13(b)(12)) or otherwise uses these moneys to pay current debt service on any obligation of the issuer (other than the reimbursement bonds). Under the second exception, the limitations with respect to refundings and expenditures originally paid with proceeds of a borrowing do not apply if the financing proceeds originally used to pay the expenditure were not reasonably expected to be used to finance that expenditure.

Because of confusion over the application of the proposed regulations to refunding bonds and reimbursements made with taxable debt, these regulations clarify the treatment of those transactions. In the case of a tax exempt refunding of a taxable bond, if proceeds of the taxable bond were allocated to reimburse a previously paid expenditure, the proceeds of the taxable bond are not deemed to have been spent unless the reimbursement allocation complied with the Federal tax law and regulations applicable to reimbursement allocations of proceeds of tax exempt issues in effect as of the date of issue of the taxable bond. If the proceeds of the taxable bond are deemed to be unspent by application of the preceding sentence, the proceeds of the taxable bond are subject to "transfer" to the tax exempt bond issued to refund the taxable bond (directly or indirectly in a series of refundings) and therefore may become proceeds of the refunding bond. For purposes of these regulations, proceeds of the taxable bond are deemed to remain unspent until a reimbursement allocation of those proceeds is made that complies with these regulations or the taxable bond proceeds are otherwise spent. The purpose of this provision is to prevent the use of a combination of taxable and tax exempt debt to circumvent the requirements of these allocation rules.

Effective Date

These regulations apply to bonds issued after March 2, 1992.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) since the regulations proposed in that notice and adopted by this Treasury decision are interpretive. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are David A. Walton, Office of Tax Legislative Counsel, Department of the Treasury, and formerly of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service and John J. Cross III, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.101-1—1.133-1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * *

Par. 2. New § 1.103-18 is added to read as follows:

§ 1.103.18 Proceeds of bonds used for reimbursement.

(a) *Table of contents.* This table of contents contains a listing of the headings of § 1.103-18 (a) through (l).

(a) Table of contents.
(b) Scope of application.
(c) Operating rules for governmental bonds and certain private activity bonds.
(1) Bonds subject to these operating rules.
(2) Operating rules.
(i) Official intent requirement.
(ii) Reimbursement period requirement.
(iii) Capital expenditure requirement.
(d) Operating rules for certain private activity bonds.
(e) Definitions of reimbursement bond and reimbursement allocation.
(1) Definition of reimbursement bond.
(2) Definition of reimbursement allocation.
(f) Procedure for declaring official intent.

(1) Form of official intent.
(2) General description of property to which reimbursement relates and maximum anticipated debt.
(i) In general.
(ii) Specificity of description.
(iii) Project.
(3) Public availability of official intent.
(i) Public availability requirement.
(ii) Safe harbors.
(A) Time and location safe harbors.
(B) Compliance with State or local law.
(4) Special rule for conduit and "on-behalf-of" borrowers.
(g) Reasonableness requirement for declaring official intent.
(1) General rule.
(2) Consistency with budgetary and financial circumstances.
(3) Reasonable expectation to reimburse.
(i) Factors to be considered.
(A) General rule.
(B) Examples.
(ii) Failure to reimburse.
(h) Issuance costs treated as capital expenditures.
(i) Special exceptions.
(1) Exception for official intent declared subsequent to the payment of certain unforeseeable expenditures.
(i) Extension of time.
(ii) Example.
(2) Special exception for preliminary expenditures.
(i) General rule.
(ii) Definition of preliminary expenditures.
(3) Special rule for abandonment prior to completion.
(j) Definition of issuer.
(k) Anti-abuse rules.
(1) General rule.
(2) Reimbursement allocations of proceeds of refunded bonds.
(i) Operating rule.
(ii) Example.
(3) Limitations on uses of reimbursement amounts.
(4) Exception for bona fide debt service funds.
(5) Exception for certain previously financed expenditures.
(6) Examples.
(l) Effective date.
(1) In general.
(2) Transitional rule for certain expenditures.

(b) *Scope of application.* This section applies only to reimbursement allocations (as defined in paragraph (e)(2) of this section) of proceeds of any reimbursement bond (as defined in paragraph (e)(1) of this section). Except as provided in paragraph (d) of this section, the anti-abuse rules contained in paragraph (k) of this section do not apply to private activity bonds described in paragraph (d) of this section.

(c) *Operating rules for governmental bonds and certain private activity bonds*—(1) *Bonds subject to these operating rules.* The operating rules provided in this paragraph apply only to bonds that are—

(i) Not private activity bonds described in section 141(a) (except as otherwise provided in paragraphs (c)(1)(ii) and (iii) of this section),

(ii) Qualified 501(c)(3) bonds described in section 145, or

(iii) Private activity bonds the proceeds of which are used to finance a facility that is owed by a governmental unit (within the meaning of section 142).

(2) *Operating rules.* Except as provided in paragraph (i) of this section (relating to certain unforeseeable expenditures and certain preliminary expenditures) and in paragraph (k) (relating to anti-abuse rules) of this section, for purposes of applying section 103 and 141–150, a reimbursement allocation is treated as an expenditure of proceeds of the reimbursement bond on the date of the reimbursement allocation if each of the following requirements is met—

(i) *Official intent requirement.* On or before the date the expenditure is paid by the issuer, the issuer declares a reasonable intention to reimburse the expenditure with proceeds of a borrowing.

(ii) *Reimbursement period requirement.* The reimbursement allocation occurs not earlier than the date on which the expenditure is paid and not later than 1 year after the later of—

(A) The date on which the expenditure is paid, or

(B) The date on which the property is placed in service.

(iii) *Capital expenditure requirement.* The expenditure to be reimbursed is a capital expenditure (as defined in § 1.150–1(b)).

(d) *Operating rules for certain private activity bonds.* In the case of a reimbursement allocation of proceeds of an exempt facility bond under section 141(e)(1)(A) or a qualified small issue bond under section 141(e)(1)(D), a reimbursement allocation is treated as an expenditure of proceeds of the reimbursement bond on the date of the reimbursement allocation for purposes of applying section 103 and 141–150 if the property financed meets the requirements imposed under § 1.103–8(a)(5) and the reimbursement allocation does not violate the anti-abuse rules of paragraphs (k)(1) and (k)(3)(ii)–(iii) of this section.

(e) *Definitions of reimbursement bond and reimbursement allocation*—(1) *Definition of reimbursement bond.* For purposes of this section, "reimbursement bond" means the portion of an issue allocated to reimburse an expenditure that was paid prior to the date of issue. Thus, "reimbursement bond" does not include that portion of an issue allocated to reimburse an expenditure that is paid on or after the date of issue of the bond issue.

(2) *Definition of reimbursement allocation.* For purposes of this section, the term "reimbursement allocation" means an allocation of proceeds of a reimbursement bond to pay an expenditure if—

(i) The allocation is evidenced by an entry on the books or records of the issuer maintained with respect to the bonds,

(ii) The allocation entry identifies either an actual prior expenditure to be reimbursed or, in the case of a reimbursement of a fund or an account, the fund or account from which the expenditure was paid, and

(iii) As a result of the allocation, the bond proceeds covered by the entry are relieved from any restrictions under the relevant legal documents and applicable state law that apply to unspent bond proceeds.

(f) *Procedure for declaring official intent*—(1) *Form of official intent.* For purposes of paragraph (c)(2)(i) of this section, an issuer declares an intention to reimburse an expenditure ("official intent") if—

(i) The issuer, or any person or entity designated by the issuer to declare official intent on behalf of the issuer, states that the issuer reasonably expects to reimburse the expenditure with proceeds of debt to be incurred by the issuer,

(ii) The statement of official intent specifically states that it is a declaration of official intent under this section,

(iii) The statement contains the other information required by paragraph (f)(2) of this section, and

(iv) The public availability requirements contained in paragraph (f)(3) of this section are satisfied.

(2) *General description of property to which reimbursement relates and maximum anticipated debt*—(i) *In general.* The declaration of official intent must contain, at minimum, a general functional description of the project (as defined in paragraph (f)(2)(iii) of this section) for which the expenditure to be reimbursed is paid (e.g., "highway capital improvement program," "hospital equipment acquisition," "school building renovation," etc.) and a statement of the maximum principal amount of debt expected to be issued for such purposes.

(ii) *Specificity of description.* A description of project is sufficient if it identifies the fund or account from which the expenditure to be reimbursed is paid and describes the general functional purpose of the fund or

account (e.g., "parks and recreation fund—recreational facility capital improvement program"). Reasonable deviations between a project described in a declaration of official intent and an actual project financed with a reimbursement bond do not invalidate an otherwise valid official intent if the actual project financed is reasonably related in function to the project described in the declaration of official intent. For example, reimbursement of an expenditure for hospital equipment is a reasonable deviation from a project described in a declaration of official intent as "hospital building improvements." In contrast, reimbursement of an expenditure for a rehabilitation of a city office building is not a reasonable deviation from a project described in the declaration of offical intent as "highway improvements".

(iii) *Project.* For purposes of this section, "project" means a property, project, or program.

(3) *Public availability of official intent*—(i) *Public availability requirement.* The declaration of official intent must be reasonably available for public inspection within a reasonable period of time after the declaration of official intent.

(ii) *Safe harbors.* A declaration of official intent satisfies the public availability requirement set forth in paragraph (f)(3)(i) of this section if—

(A) *Time and location safe harbor.* Within 30 days after the date of the declaration, it is made available for public inspection at the main administrative office of the issuer or at the customary location of records of the issuer that are available to the general public and it remains available for public inspection on a reasonable basis until the date of issue of the reimbursement bonds, or

(B) *Compliance with State or local law.* The issuer complies with applicable State or local law governing the public availability of records of official acts of the actual issuer other than a law that was adopted for a purpose of avoiding or minimizing the public availability requirement of this paragraph (f)(3).

(4) *Special rule for conduit and "on-behalf-of" borrowers.* If, under paragraph (j) of this section, a conduit borrower (rather than the actual issuer) is treated as the issuer of the reimbursement bonds, or if the actual issuer issues on behalf of another entity (the "on-behalf-of unit"), any of the requirements of this paragraph (f) may be met by the conduit borrower, the actual issuer, or the on-behalf-of unit. For example, a declaration of official intent made available for public inspection within 30 days after the date of the declaration either at the main administrative office of the conduit borrower or at the main administrative office or customary location of records of the governmental entity reasonably expected to issue the reimbursement bonds is reasonably available for public inspection for purposes of paragraph (f)(3)(ii)(A) of this section.

(g) *Reasonableness requirement for declaring official intent*—(1) *General rule.* A declaration of official intent to reimburse an expenditure is reasonable only if, as of the date of the declaration—

(i) It is consistent with the budgetary and financial circumstances of the issuer, and

(ii) The issuer reasonably expects to reimburse the expenditure with proceeds of a borrowing.

(2) *Consistency with budgetary and financial circumstances.* In general, a declaration of official intent is consistent with an issuer's budgetary and financial circumstances if no funds from sources other than the reimbursement bond issue are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the issuer or by any member of the same controlled group as the issuer pursuant to their budget or financial policies with respect to the expenditure to be reimbursed. See § 1.150–1(f) for a definition of controlled group.

(3) *Reasonable expectation to reimburse*—(i) *Factors to be considered*—(A) *General rule.* The determination of whether, at the time of the declaration of official intent, an issuer reasonably expects to reimburse an expenditure with proceeds of a borrowing is based on all the relevant facts and circumstances, including the issuer's purposes for declaring official intent, its history of actual reimbursement of other expenditures for which official intent was declared and which were actually paid, and its actions taken toward reimbursement of the expenditures. Declarations of official intent that are made as a matter of course or are made for amounts of expenditures substantially in excess of amounts reasonably necessary for a described project (e.g., "blanket" declarations of official intent) do not meet the reasonable expectation requirement.

(B) *Examples.* The operation of this paragraph (g)(3)(i) is illustrated by the following examples.

Example 1. In order to preserve the option of reimbursing expenditures, an issuer declares official intent with respect to all expenditures it pays from cash on hand. A declaration of official intent made under these circumstances does not meet the reasonable expectation requirement.

Example 2. An issuer is planning on making certain expenditures that it expects to reimburse only if an expected grant or other source of money is not received. There is a reasonable possibility that the grant or other source of money will not be received or will be received a significant period of time after the expenditure is paid. The issuer declares an official intent to reimburse the expenditures in the event the grant is not received or is substantially delayed. Under these circumstances, the declaration of official intent meets the reasonable expectation requirement.

(ii) *Failure to reimburse.* A pattern of failing to reimburse expenditures for which official intent was declared and that were actually paid by the issuer is one factor indicating that the issuer does not reasonably expect to reimburse the expenditure for which official intent is declared. To the extent that a failure to reimburse was due to extraordinary circumstances that were beyond the control of the issuer and that could not have been foreseen, failure to reimburse is not taken into account in determining the reasonable expectations of the issuer. Examples of extraordinary circumstances include unexpected significant increases in interest rates, unexpected reductions in creditworthiness of the issuer, unexpected judicial or legislative impediments that make the financing uneconomic or impractical, unexpected or emergency borrowing for other needs that cause the issuer to reach its borrowing limits, and unexpected significant increases in tax or other revenues (or significant reductions in expected expenditures) that make the reimbursement unnecessary because of the increase in available funds.

(h) *Issuance costs treated as capital expenditures.* For purposes of this section, costs of issuing a reimbursement bond paid out of proceeds of the issue that are properly allocable to the reimbursement are treated as capital expenditures.

(i) *Special exceptions*—(1) *Exception for official intent declared subsequent to the payment of certain unforeseeable expenditures*—(i) *Extension of time.* If an expenditure was not reasonably foreseeable at least 30 days before its payment, the date (described in paragraph (c)(2)(i) of this section) by which official intent must be declared is extended to the date 45 days after the payment was made.

(ii) *Example.* The operation of this paragraph (i)(1) is illustrated by the following example.

Example. On June 1, 1992, fire destroyed city *B*'s data processing system. On June 5, 1992, *B* purchased replacement data processing equipment with moneys on hand in its general operating fund. On June 25, 1992, *B* declared official intent to reimburse the cost of the equipment. Because *B* could not have reasonably foreseen the destruction of the equipment, for purposes of paragraph (c)(2)(i) of this section, the period for declaring official intent to reimburse the expenditure is extended to July 20, 1992, and therefore *B*'s intent was declared during the required period.

(2) *Special exception for preliminary expenditures*—(i) *General rule.* The official intent requirement of paragraph (c)(2)(i) of this section does not apply to preliminary expenditures (as defined in paragraph (i)(2)(ii) of this section) that are reimbursed with proceeds of a bond that finances all or a portion of the project with respect to which the preliminary expenses were incurred.

(ii) *Definition of preliminary expenditures.* For purposes of this paragraph, subject to the limitation in the following sentence, the term "preliminary expenditures" includes architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of construction, rehabilitation, or acquisition of a project, but does not include land acquisition, site preparation, and similar costs incident to commencement of construction. Preliminary expenditures include only amounts that do not exceed in the aggregate 20 percent of the issue price of that portion of the issue or issues that finance the project with respect to which the preliminary expenditures were incurred. For purposes of the preceding sentence, issue price is determined in the same manner as under § 1.148–6T(c).

(3) *Special rule for abandonment prior to completion.* For a project abandoned prior to completion, the reimbursement period requirement of paragraph (c)(2)(ii) of this section is satisfied with respect to expenditures paid with respect to the abandoned project only if the reimbursement allocation for those expenditures is made by the later of—

(i) The date that is 1 year after the date that the project is abandoned, or

(ii) The date 2 years after the last payment of an expenditure with respect to the abandoned project that is not less than the lesser of $25,000 or 5 percent of the cost of the project.

(j) *Definition of issuer.* For purposes of this section, "issuer" generally means the entity that actually issues the reimbursement bond (the "actual issuer"). If the proceeds of a reimbursement bond are provided to a conduit borrower (as defined in § 1.150–1(g)), the term issuer generally means the conduit borrower and does not include the actual issuer.

(k) *Anti-abuse rules*—(1) *General rules.* A purported reimbursement allocation of bond proceeds is not treated as an expenditure of the bond proceeds if any action or inaction of the issuer with respect to the allocation is an artifice or device under § 1.103–13(j) or § 1.148–9T(g) to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

(2) *Reimbursement allocations of proceeds of refunded bonds*—(i) *Operating rule.* Amounts allocable to a taxable issue of bonds are treated as unspent proceeds of the taxable bonds (and thus are subject to "transfer" to a refunding issue of tax exempt bonds) if—

(A) The proceeds of the taxable bonds are allocated by the issuer to reimburse an expenditure that was paid by or on behalf of the issuer prior to the date of issue of the taxable bonds,

(B) If the taxable bonds were an issue of tax exempt bonds, the purported reimbursement would not be treated for Federal income tax purposes as an expenditure of the bond proceeds,

(C) The taxable issue is refunded directly or indirectly in a series of refundings by the tax exempt refunding issue, and

(D) The refunding issue is issued on or after March 2, 1992.

(ii) *Example.* The operation of this paragraph (k)(2) is illustrated by the following example.

Example. In 1999, city issues its tax exempt series 1999 bonds to refund its taxable series 1997 bonds (issued in 1997). The series 1997 bonds refunded the city's taxable series 1995 "new money" bonds. The proceeds of the series 1995 bonds were used to reimburse expenditures paid by the city prior to the date of issue of the series 1995 bonds. The principles of this paragraph (k)(2) apply to the original issue the proceeds of which were used to reimburse prior expenditures (the series 1995 bonds) to the extent that the proceeds of the series 1995 bonds would be treated as proceeds of the series 1999 bonds had all the bonds in the series of refundings been tax exempt. These unspent proceeds remain unspent either until a reimbursement allocation is made that complies with the relevant requirements of this section or the bond proceeds are otherwise spent.

(3) *Limitations on uses of reimbursement amounts.* Except as otherwise provided in this section, an allocation of bond proceeds to reimburse a previously paid expenditure is not treated as an expenditure of the bond proceeds if, but for the allocation, the bond proceeds are used directly or indirectly—

(i) Within 1 year of the date of the reimbursement allocation, to "refund" an issue of governmental obligations within the meaning of section 148,

(ii) Within 1 year of the date of the reimbursement allocation, to create or increase the balance in a "sinking fund" (within the meaning of § 1.103–13(g)) with respect to any obligation of the issuer, or to replace funds that have been, are being, or will be so used for sinking fund purposes,

(iii) Within 1 year of the date of the reimbursement allocation, to create or increase the balance in a "reserve or replacement fund" (within the meaning of § 1.103–14(d)) with respect to any obligation of the issuer, or to replace funds that have been, are being, or will be so used for reserve or replacement fund purposes, or

(iv) To reimburse any person (other than the issuer) for any expenditure or payment that was originally paid with proceeds of any obligation of the issuer (other than a borrowing by the issuer from one of its own funds or the funds of a member of the same controlled group).

(4) *Exception for bona fide debt service funds.* Paragraph (k)(2) of this section does not apply (and thus does not prevent a reimbursement allocation from being treated as an expenditure of bond proceeds) if the issuer deposits the moneys from the reimbursement allocation in a bona fide debt service fund (as defined in § 1.103–13(b)(12)) or otherwise uses these moneys to pay current debt service coming due within the next succeeding 1-year period on any obligation of the issuer (other than the reimbursement bonds).

(5) *Exception for certain previously financed expenditures.* Paragraphs (k)(3)(i) and (iv) of this section do not apply (and thus do not prevent a reimbursement allocation from being treated as an expenditure of bond proceeds) if, as of the date of issue of the bond originally used to pay the expenditure for which a reimbursement allocation is made (the "original financing"), the issuer did not reasonably expect to finance the expenditure with the proceeds of the original financing.

(6) *Examples.* The operation of this paragraph (k) is illustrated by the following examples.

Example 1. (i) City *C* issues $10,000,000 principal amount of its taxable bonds on April 20, 1992 (the 1992 taxable bonds), and allocates all of the proceeds to reimburse expenditures it paid on March 1, 1988, for property that was immediately placed in service by *C*. The expenditures do not constitute preliminary expenditures as defined in paragraph (i) of this section. The

reimbursement allocation of the 1992 taxable bond proceeds is not treated as an expenditure of the 1992 taxable bond proceeds under this section because the allocation violates the reimbursement period requirement of paragraph (c)(2)(ii) of this section.

(ii) On November 12, 1992, *C* issues $10,000,000 principal amount of its tax exempt refunding bonds and uses the proceeds to immediately redeem all of the outstanding 1992 taxable bonds. Because the reimbursement allocation of the 1992 taxable bond proceeds does not comply with the requirements of this section, under paragraph (k)(2) of this section, the proceeds of the 1992 taxable bonds are deemed to be unspent.

Example 2. County *D* issues reimbursement bonds with a yield of 7 percent per annum and reimburses a previously paid expenditure. *D* immediately uses the proceeds of the reimbursement bond to create a sinking fund with respect to an issue of its outstanding tax exempt bonds. The outstanding tax exempt bonds have a yield of 9 percent per annum. As a sinking fund of the outstanding 9 percent bonds, the reimbursement moneys are restricted to a yield of 9 percent per annum. If *D* had issued bonds to advance refund the outstanding 9 percent bonds and the advance refunding bonds had a yield of 7 percent per annum, the refunding escrow created with the proceeds of the advance refunding bonds would be restricted to a yield of 7 percent per annum. Thus, *D*'s use of the reimbursement proceeds is the equivalent of a refunding for purposes of section 148 of the Code, and the creation of a sinking fund violates § 1.103–18(k)(3)(ii). In addition, this transaction violates the arbitrage yield limitations imposed by section 148(a).

Example 3. On April 20, 1992, City *E* borrows $30,000 from a bank (tax exempt) and immediately purchases 2 police cars with the loan proceeds. On September 12, 1992, *E* issues general obligation bonds and proposes to use $30,000 of the bond proceeds to reimburse itself for the police cars. Because the police cars were financed with proceeds of an obligation incurred for the purpose of financing the police cars, the allocation of bond proceeds to reimburse the expenditure for the police cars is not treated as an expenditure of the bond proceeds. Even if the $30,000 bank loan were not outstanding at the time of *E*'s issuance of the general obligation bonds on September 12, 1992, the results of this example would be the same.

Example 4. The facts are the same as in *Example 3* except that instead of borrowing $30,000 from the bank, *E* finances the purchase of the police cars by using $30,000 of proceeds of its tax exempt general obligation bonds issued on February 5, 1992. On February 5, 1992, *E* reasonably expects to use the proceeds of the general obligation bonds to finance the renovation of city hall and not to finance police cars. The $30,000 expenditure is eligible for a reimbursement allocation if it meets the other relevant requirements of this section.

(l) *Effective date*—(1) *In general.* The provisions of this section apply to all allocations of proceeds of reimbursement bonds issued after March 2, 1992.

(2) *Transitional rule for certain expenditures.* The requirement of paragraph (c)(2)(i) of this section (concerning official intent) with respect to an expenditure paid by the issuer does not apply if—

(i) The expenditure was paid by the issuer after September 8, 1989, and before March 2, 1992,

(ii) There is objective evidence that, at the time the expenditure was paid, the issuer expected to reimburse the expenditure with proceeds of a borrowing (taxable or tax exempt), and

(iii) That expectation was reasonable as defined in paragraph (g) of this section.

Par. 3. The following new section 1.150–1 is added to read as follows:

§ 1.150–1 Definitions and special rules relating to tax exempt bond requirements in general.

(a) through (e) [Reserved]

(f) *Controlled group.* A controlled group of entities is a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of paragraphs (f)(1) or (f)(2) of this section.

(1) *Direct control.* The determination of direct control is made on the basis of all the relevant facts and circumstances. However, generally one entity or group of entities (the "controlling entity") controls another entity or group of entities (the "controlled entity") for purposes of this paragraph if the controlling entity possesses simultaneously at least two of the following rights or powers and the rights or powers are discretionary and non-ministerial—

(i) The right or power to remove or cause to be removed without cause a controlling portion of the governing body of the controlled entity,

(ii) The right or power to select, approve of, or disapprove of a controlling portion of the governing body of the controlled entity,

(iii) The right or power to determine the budget of the controlled entity or to require the use of funds or assets of the controlled entity for any purpose of the controlling entity, or

(iv) The right or power to approve, disapprove, or prevent the issuance of debt obligations by the controlled entity.

(2) *Indirect control.* If a controlling entity controls a controlled entity under the test in paragraph (f)(1) of this section, then the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities.

(3) *Example.* The operation of this paragraph (f) is illustrated by the following example.

Example. State law prohibits authority *A* from issuing bonds unless city *C* approves the issue. *C*, however, is required by state law to approve *A*'s bond issues if the bonds meet certain objective criteria. *C* does not control, directly or indirectly, the establishment of the bond approval criteria. *C* possesses a purely ministerial or non-discretionary right or power with respect to *A*.

(g) *Conduit borrower.* The term "conduit borrower" means the obligor on a purpose investment (as defined in § 1.148–8T(e)(10)). For example, if an issuer invests proceeds in a purpose investment in the form of a loan, lease, installment sale obligation or similar obligation, to another entity (the obligor on the purpose investment) and the obligor uses the proceeds to carry out the governmental purpose of the issue, the obligor is a conduit borrower.

(h) *Capital expenditure.* The term "capital expenditure" means any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election) under general Federal income tax principles. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures. Capital expenditures do not include expenditures for items of current operating expense that are not properly chargeable to capital account (so called "working capital items").

(1) *Effective date*—(1) [Reserved]

(2) *Effective dates for definitions of control, conduit borrower, and capital expenditure.* The definitions contained in § 1.150–1 (f), (g), and (h) apply to bonds issued after March 2, 1992.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding the following entry in the table:

"§ 1.103–18.....1545–1226".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92–2023 Filed 1–27–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[T.D. 8392]

RIN 1545–AM75

Civil Cause of Action for Unauthorized Collection Actions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 (the "Code") for certain unauthorized collection actions. The cause of action for unauthorized collection actions was created by section 6241 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective with respect to actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202–535–9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The regulations reflect the addition of section 7433 to the Internal Revenue Code by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on May 25, 1991 [26 FR 28842], providing rules under section 7433 of the Code. The final regulations adopt the rules contained in the notice of proposed rulemaking without change.

Section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) added section 7433 to the Code. Section 7433 gives taxpayers the right to bring an action for damages in federal district court if, in connection with the collection of a federal tax, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7433 is the lesser of $100,000, or the sum of (i) the actual, direct economic damages sustained as a proximate result in the internal revenue officer's or employee's wrongful conduct, and (ii) costs of the action. No action may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by a taxpayer as a proximate result of reckless or intentional actions of an internal revenue officer or employee. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages. Litigation and administrative costs are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7433 does provide for the recovery of certain costs, recovery is limited specifically to costs of the civil action in federal district court. The final regulations thus define costs of the action recoverable under section 7433(b)(2) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term "costs of the action" in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorney's fees (generally limited to $75 per hour), not recoverable under section 7433 may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under section 7433.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7433, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative

costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988).

The regulations provide that an action may not be maintained in federal district court under section 7433 unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of Chief, Special Procedures Function) of the district in which the taxpayer currently resides. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) the grounds, in detail, for the claim; (3) a description of the damages incurred by the taxpayer; (4) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (5) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. A taxpayer, however, must file an action in federal district court within two years after a cause of action accrues. Thus, if an administrative claim is filed in the last six months before the two-year limitation period expires, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7433(a).

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

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

Par. 2. Section 301.7433–1 is added under "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of $100,000, or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or international actions of the officer or employee; and

(2) Costs of the action. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see* paragraph (h) of this section) or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under

paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(d) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (d)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $100,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpaper.

(f) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*— (1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (e) of this section, are not recoverable under section 7430.

(i) *Effective date.* This section applies with respect to civil actions under section 7433 filed after January 30, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 31, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2024 Filed 1-29-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8393]

RIN 1545-AM63

Civil Cause of Action for Failure to Release a Lien Under I.R.C. Section 6325

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7432 of the Internal Revenue Code of 1986 (the "Code") for the knowing or negligent failure to release a lien under section 6325 of the Code. The cause of action for the failure to release a lien was created by section 6240 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute, provide procedures for a taxpayer to notify the Internal Revenue Service of the failure to release a lien and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create

an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective for actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7432 of the Internal Revenue Code. The regulations reflect the amendment of section 7432 by section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on June 25, 1991 (56 FR 28839), providing rules under section 7432 of the Code. The final regulations adopt the rules contained in the notice of proposed rulemaking without change.

Section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 7432 of the Code as section 7433 and added a new section 7432. New section 7432 gives taxpayers the right to bring an action for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release, in accordance with section 6325 of the Code, a federal tax lien on property of the taxpayer. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7432 is the sum of (i) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the officer or the employee of the Internal Revenue Service, would not have been sustained, and (ii) costs of the action. No action for damages may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

Section 6325 requires the Secretary to release a lien not later than 30 days after the day on which: (1) The Secretary finds that the underlying liability has been fully satisfied or has become legally unenforceable; or (2) the Secretary accepts a bond that is conditioned upon full payment of the underlying liability.

The regulations provide that, for purposes of section 7432, a finding that the underlying liability has been fully satisfied or has become legally unenforceable is treated as made on the earlier of (1) the date the district director finds full satisfaction or legal unenforceability or (2) the date the district director receives a request for a certificate of release under § 401.6325-1(f) of the Income Tax Regulations, together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release, in accordance with section 6325, a lien on property of the taxpayer. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual, pecuniary damages. Litigation and administrative costs incurred in seeking relief, through litigation or administrative processes, from the failure to release a lien are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by the parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7432 does provide for the recovery of certain costs, the recovery is specifically limited to costs of the civil action in federal district court. The final regulations define costs of the action recoverable as damages under section 7432(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term costs of the action in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorneys fees (generally limited to $75 per hour), not recoverable under section 7432 may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorneys fees and other reasonable litigation costs not recoverable under section 7432.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7432, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988). An action under section 7432 is a collection action for these purposes.

The regulations provide that an action may not be maintained in federal district court under section 7432 unless the taxpayer first files an administrative

claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) a copy of the notice of lien affecting the taxpayer's property, if available; (3) a copy of the request for release of lien under section 401.6325–1(f), if applicable; (4) the grounds for the claim; (5) a description of the damages incurred by the taxpayer; (6) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (7) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earliers of (1) The time a decision is rendered on the claim or (2) 30 days from the date the administrative claim is filed. A taxpayer, however, must file an action with the federal district court within two years after the cause of the action accures. Thus, if an administrative claim is filed in the last 30 days before the two-year limitation period expires, a taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7432(a).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an ititial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * * § 301.7432 also issued under 26 U.S.C. 7432(e).

Par. 2. Section 301.7432–1 is added under "Proceedings By Taxpayers and Third Parties" to read as follows:

§ 301.7432–1 Civil cause of action for failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action. The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325–1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see* paragraph (j) of this section) or, solely to the extent described in paragraph (d) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any

costs incurred pursuing litigation for relief from the failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(e) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (e)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the taxpayer may file an action in federal district court anytime after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325–1(f) of the Code of Federal Regulations, if applicable;

(iv) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(v) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(vi) The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(vii) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(g) *Notice of failure to release lien*—An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim*—No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(i) *Period of limitations*—(1) *Time of filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Cause of action accrues.* A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *Recovery of costs under section 7430*—Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of the paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date*—This section applies with respect to civil actions under section 7432 filed in federal district court after January 30, 1992.

Approved: December 31, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2025 Filed 1-29-92; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 102

[DoD Directive 1215.6]

Uniform Reserve, Training and Retirement Categories

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 102 and establishes new policies and procedures consistent with recent changes in law and development of revised Defense Department Policy. The revision provides increased flexibility to the Military Departments for the management and training of Reserve component personnel within established Reserve training and retirement categories. It clarifies and simplifies existing policies, and ensures consistency with recent Dod policy directives affecting Reserve component manpower. This part outlines new and existing policies and consolidates categories for reporting and managing the Reserve components.

DATES: This part is effective December 18, 1990. Written comments on this final rule must be received by March 2, 1992.

ADDRESSES: Forward comments to the Office of Assistant Secretary of Defense, (Reserve Affairs/M&P), room 2D517, Pentagon, Washington, DC 20301-1500.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Spruell at (703) 695-7429.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 102

Armed forces reserves.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

Accordingly, 32 CFR part 102 is revised to read as follows:

PART 102—UNIFORM RESERVE, TRAINING AND RETIREMENT CATEGORIES

Sec.
102.1 Purpose.
102.2 Applicability.
102.3 Definitions.
102.4 Policy.
102.5 Responsibilities.
102.6 Procedures.
Appendix A to Part 102—Uniform Reserve, Training and Retirement Categories.
Appendix B to Part 102—Members Participating in Approved Programs Outside the Department of Defense.
Appendix C to Part 102—Definitions Explained.
Appendix D to Part 102—Authorized Reserve, Training and Retirement Categories.

Authority: 10 U.S.C. 136.

§ 102.1 Purpose.

This revises 32 CFR part 102 to:

(a) Update DoD policy and assign responsibilities for implementing recent changes in law.

(b) Establish DoD policy guidance for maintaining and reporting personnel data in accordance with (IAW) DoD Directive 1205.17 [1] and DoD Instruction 7730.54.[2]

(c) Designate uniform Reserve component (RC) categories (RCCs) and training and retired categories (TRCs) for the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces under 10 U.S.C. 268, 270, 271, 273, 274, 1376, 2001, and 6017.

(d) Establish minimal training criteria for each category of the RCs.

(e) Provide DoD uniform planning policies and procedures on training.

(f) Establish DoD Policy guidance for participation in Selective Service System (SSS) activities, civil defense activities, and continental United States (CONUS) Defense programs by members of the Ready and Standby Reserve.

§ 102.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments and their Reserve components (RCs); the Chairman, Joint Chiefs of Staff and Joint Staff; the U.S. Coast Guard (USCG) and its Reserve Component (RC) with the concurrence of the Department of Transportation (DoT); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 102.1(a).

§ 102.3 Definitions.

Uniform Reserve, training and retirement categories used in this part are defined in appendix A to this part. Other terms used in this part are defined in appendices B and C to this part.

§ 102.4 Policy.

It is DoD policy to:

(a) *Establish Authorized RCCs and TRCs.* Appendix D to this part establishes authorized RCCs and TRCs in the RCs for training and accountability purposes. Each unit and member of the RCs not counted in active duty (AD) end strengths, IAW 10 U.S.C. 115(b)(1)(B), shall be placed in one of the RCCs and TRCs so identified.

(b) *Establish Criteria.* To ensure that trained and qualified RC units and individuals are available for AD in time of war or national emergency, and that funds appropriated annually for RC training are adequate for meeting mobilization requirements, the Secretary concerned shall establish necessary criteria and procedures to do the following:

(1) Place all RC members in an RCC and TRC IAW the uniform Reserve, training and retirement categories described in appendices A and D of this part. Individuals shall be assigned to RCCs and TRCs based on their mobilization obligations and training requirements.

(2) Ensure that all RC members receive training IAW mobilization assignments and required readiness levels. All members of the Ready Reserve, except members of the Army National Guard (ARNG) of the United States and the Air National Guard (ANG) of the United States, may be required to serve on AD training (ADT) up to 30 days a year (section 270(a)(2) of title 10, U.S.C.) There is no statutory maximum annual limit on required training for members of the National Guard. Training for the Individual Ready Reserve (IRR), Standby Reserve, and Retired Reserve may be accomplished voluntarily IAW DoD procedures in § 102.6.

(3) Approve any additional inactive duty training (IDT), as necessary and consistent with law. Authorizing and utilizing additional training is subject to the categories, limitations, and controls in § 102.4(c).

(c) *Provide Consideration for Establishing Criteria.* (1) Training programs shall provide for the minimal number of IDT periods, annual training (AT), and ADT required for attaining the prescribed unit readiness status and maintaining individual proficiency.

(2) Paid IDT periods shall not be less than 4 hours. No more than two IDT periods may be performed in any calendar day. Service Secretaries shall prescribe minimum standards for IDT, IAW 37 U.S.C. 206.

(3) IDT periods for points only (without pay) shall not be less than 2-hours duration with a maximum of two points authorized in any 1 calendar day (one point in any 1 calendar day for attendance at professional or trade conventions) (DoD Instruction 1215.7.[3])

(4) Where practical, multiple IDT periods (MIDTPs) shall be used to maximize training effectiveness.

(d) *Provide Additional IDT Periods.* Additional IDT periods are intended to improve readiness by providing for individuals and units to receive required and necessary training for attaining and maintaining designated readiness levels. The Secretary concerned shall establish guidance for and approve use of additional IDT periods IAW limits in paragraphs (d)(1) through (d)(3) of this section.

(1) Those training periods are intended for the principal use of non-technician drilling Reservists. The RC shall identify additional IDT periods separately from normal unit or individual training periods in budget documents and in internal records so that training period costs and training support costs for each type of additional training clearly may be identified, justified, and audited. Those additional IDT periods used by technicians shall be identified separately in budget documents to monitor compliance with DoD policy.

(2) Three categories of additional IDT periods are, as follows:

(i) Additional training periods (ATPs) for units, subunits, and individuals are for accomplishing additional required training, as defined by a unit's postmobilization mission. The number of those training periods shall not exceed 12 each fiscal year (FY) for any member.

(ii) Additional flying and flight training periods (AFTPs) are authorized for primary aircrew members for conducting aircrew training and combat crew qualification training to attain and maintain aircrew flying proficiency and sustain mobilization readiness. AFTPs shall not be in addition to the ATPs in paragraph (d)(2)(i) of this section. The number of those training periods shall not exceed 48 each FY for any aircrew member, unless specifically authorized by the Secretary concerned.

(iii) Readiness management periods (RMPs) are used to support the ongoing day-to-day operation of the unit, accomplishing unit administration, training preparation, support activities, and maintenance functions. The number of RMPs shall not exceed 24 each FY for any member. Those training periods shall be used only where sufficient full-time support (FTS) personnel are not available to accomplish those duties. RMPs shall not be performed on the same day another training period (IDT, ATP, or AFTP) is being performed and not more than one RMP shall be performed by an individual in 1 calendar day.

(3) Notwithstanding the limitations in paragraphs (d)(2)(i) and (d)(2)(iii) of this section, the Service Secretary may authorize ATPs or RMPs in excess of those specified on an exception basis. Exception shall be strictly limited to specific skills and missions requiring training in excess of that authorized in paragraphs (d)(2)(i) and (d)(2)(iii) of this section. In no case shall ATPs or RMPs exceed 30 each year for each person. Those training periods shall not be used for augmenting missions or functions, but must provide bona fide training opportunities required to meet readiness levels. That authority may not be delegated below the Service Secretary.

(e) *Provide AD.* At any time, an authority designated by the Secretary concerned may order a member of the RC under his or her jurisdiction to AD or retain him or her on AD with the consent of the member under the authority of 10 U.S.C. 672(d). However, a member of the ARNG of the United States or the ANG of the United States may not be ordered to AD under that authority without the consent of the governor or other appropriate authority of the State or territory, the Commonwealth of Puerto Rico, or the District of Columbia. Five categories of AD for RC members serving with RC are, as follows:

(1) Initial AD training (IADT), which includes basic military training and technical skill training, is required for all enlisted accessions. For nonprior service (NPS) male enlistees who are between the ages of 18½ and 26 years, that IADT shall be for a period of not less than 12 weeks to commence, insofar as practical, within 270 days after the date of enlistment. For all other enlistees, the period of IADT shall be as prescribed by the Secretary concerned to commence, insofar as practical, within 360 days after entry into Service, except that in time of war or national emergency declared by Congress or the President basic training (or its equivalent) shall be for a period of not less than 12 weeks. Enlisted members receiving stipends under the Armed Forces Health Professions (AFHP) Stipend Program for Reserve Service (the Stipend Program) are not required to participate in Ready Reserve training until they have completed their educational training (10 U.S.C. 511(b), 511(d), 671(b), and 2128).

(2) AT may be required for all members of the Ready Reserve. By DoD policy, members of the Selected Reserve shall perform AT. For all members of Selected Reserve units, except for those in the National Guard, that training shall be for not less than 14 days (exclusive of travel time) each year (10 U.S.C. 270(a)(1)). National Guard units are required to perform full-time military training (in AD or full-time National Guard duty status) for at least 15 days each year including travel time (32 U.S.C. 502).

(3) ADT is authorized to provide for full-time attendance at organized and planned specialized skill training, flight training, combat crew training, unit conversion training, refresher and proficiency training, officer acquisition training, professional development education programs, etc., for providing RC members with necessary skills and disciplines supporting RC missions. Authorized ADT must provide a primary training content to the recipient. Authorization for ADT shall be managed IAW DoD Directives established by the Secretaries concerned. Nontechnician personnel shall receive priority consideration for such training.

(4) AD for special work (ADSW) is authorized for personnel from applicable military or Reserve personnel appropriations for projects supporting active or RC programs, such as annual screening, operation of training camps, training ships, and unit conversions to new weapons systems, when such duties are essential to the organization. Projects supporting study groups, training site and exercises, short-term mission projects, and administrative support functions also are included. Authorization of ADSW shall be managed IAW DoD Directives established by the Secretary concerned. ADSW tours exceeding 180 days are accountable against AD strengths (regular, or RC AD end strengths, consistent with pay appropriations) IAW 10 U.S.C. 115(b)(1)(B). By DoD policy, those tours normally are limited to 139 days, or less, in 1 FY. Exceptions to the 139-day limit may be granted on an individual basis for specific mission requirements. Nontechnician personnel shall receive priority consideration for those tours. Short breaks in tours; i.e., 30 days or less, to circumvent that requirement, are not authorized.

[3] See footnote 1 to § 102.1(a).

(5) AD, other than for training or ADSW, including full-time National Guard duty, is authorized in support of RC missions, under 10 U.S.C. 265, 672(d), 678, 715, 3019, 3033, 3496, 8019, 8033, and 8496 and 32 U.S.C. 708. Personnel performing such duty are included in the FTS numbers for each RC under the collective title of Active Guard or Reserve (AGR), including Navy training and administration of Reserves (TARs) and all statutory tour personnel.

(f) *Provide for Muster Duty (MD).* (1) To meet the annual screening requirement established by § 102.6(b)(1), an authority designated by the Secretary concerned may order a member of the IRR to MD (established by 10 U.S.C. 687). MD shall include a minimum of 2 hours at the muster site and may not include more than 1 day, including travel, each calendar year. An allowance for MD shall be paid IAW 37 U.S.C. 433 and DoD Instruction 1215.7 at the rate determined by the DoD Per Diem Committee and included in the "DoD Military Pay and Allowances Entitlement Manual."

(2) In cases where a total of more than 1 day is required to meet the annual screening requirement, or in other specific circumstances approved under regulations issued by the Secretary concerned, ADT may be used instead of MD.

(g) *Restrict Assignment Outside United States.* A member of the RCs may not be assigned to AD on land outside the United States, its territories and possessions, until the member has completed the basic training requirements of the member's Armed Forces (10 U.S.C. 671(a)).

(h) *Require Training Participation.* The Secretaries concerned shall establish minimal standards for satisfactory participation at required training periods, which shall include the number and percentages of training periods for meeting the minimal standards. Individuals attending IDT periods are required to meet those minimal training standards. Those standards shall contain procedures for accounting for absences and excused drills, as necessary. Individuals voluntarily may attend extra IDT periods for points, IAW DoD Directive 1215.13.[4]

§ 102.5 Responsibilities.

(a) The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall:

(1) Establish DoD policy and provide guidance for RC training and retirement categories.

(2) Establish policy guidance for the minimal training criteria and the AD requirements associated with each category.

(b) The Secretaries of the Military Departments and the Commandant of the United States Coast Guard (USCG) shall:

(1) Place all RC members in a RCC and TRC IAW criteria established in appendices A and D of this part.

(2) Ensure that plans and policies for the management of RCCs are consistent with this part.

(3) Ensure that RC members receive training and serve on AD IAW the minimum criteria established for each RCC in § 102.4(c).

§ 102.6 Procedures.

(a) *Selected Reserve*—(1) *IDT.* Except as specifically provided in paragraph (b) of this section, members of the Ready Reserve shall participate in 48 scheduled training periods each year. By DoD policy, that requirement applies to all members of Selected Reserve units (10 U.S.C. 270(a)(1) and 32 U.S.C. 502).

(2) *AT.* Except as specifically provided in paragraph (b) of this section, AT is required for all members of the Ready Reserve. By DoD policy, that requirement is limited to members of the Selected Reserve. For members of the Reserves, that training shall be for not less than 14 days (exclusive of travel time) each year except, as in paragraph (a)(2) of this section. Units of the National Guard are required to perform full-time military training for at least 15 days each year, including travel time.

(i) AT tours for individual mobilization augmentees (IMAs) or other Reservists assigned as an individual to any training categories ordered to AT at Headquarters, support organizations, or to activities not operating on Saturday, Sunday, or Federal holidays, normally are limited by DoD policy to 12 days excluding travel time; i.e., from Monday of the first week through Friday of the second week.

(ii) When required, members may be ordered to AT for longer periods than 12 days (excluding travel time), up to a maximum of 30 days each FY, for activities that enhance readiness, such as participating in mobilization exercises. Training may begin on days other than Monday, when special activities begin during the week.

(iii) AT normally is performed during one consecutive period. Split tours may be authorized for selected units or individuals, if required to meet training missions. Any additional costs must be justified fully. Authorization for variations in AT lengths shall be managed IAW DoD Directives established by the Secretaries concerned.

(3) *Short Periods of AD Performed by Members of the Selected Reserve.* Under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500, that AD may not be substituted for training required by 10 U.S.C. 270 and by paragraph (a)(2) of this section, unless in the judgement of the Secretary concerned:

(i) AD service performed under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500 is equivalent to the training that might have been performed under the authority of 10 U.S.C. 270 and paragraph (a)(2) of this section.

(ii) AD service under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500, when combined with training required by 10 U.S.C. 270 and paragraph (a)(2) of this section constitutes an undue personal hardship.

(4) *NPS Personnel.* (i) Those personnel enlisted directly into an Armed Force who have not completed the basic training (IADT) requirements of that Armed Force. During war, the period of required basic training (or its equivalent) may not be less than 12 weeks. Exceptions for personnel with civilian-acquired skills may be authorized, as specified in the implementing regulations of the Military Departments.

(ii) The Secretaries concerned may require members enlisted for service in the Selected Reserve to participate in IDT periods before completing IADT. Those training periods may be with or without pay.

(iii) IADT, which includes basic military training and technical skill training, is required for all enlisted accessions. For NPS male enlistees who are between ages of 18½ and 26 years, that IADT shall be for a period of not less than 12 weeks to commence, insofar as practical, within 270 days after the date of enlistment. For all other enlistees and inductees, IADT shall be for a period prescribed by the Secretary concerned to commence, insofar as practical, within 360 days after entry into Service, except that, during war or national emergency declared by Congress or the President, the period of basic training (or its equivalent) shall be for a period of not less than 12 weeks. Individuals receiving stipends under the AFHP Stipend Program for Reserve Service are not required to participate in Ready Reserve training, until they have completed their educational training (10 U.S.C. 511(b), 511(d), 671(b), and 2128).

(iv) Individual Reservists are exempt from participating in AT or ADT during the last 120 days before completing their Military Service obligation (MSO) if

[4] See footnote 1 to § 102.1(a).

they have served on AD for 1 year, or longer. (See 10 U.S.C. 270(a)).

(b) *IRR*—(1) *IRR Screening.* Members of the IRR, not scheduled for mandatory or voluntary training, are required to serve at least 1 day of MD or AD each year to accomplish annual screening requirements IAW 10 U.S.C. 271(a), 275(a), 652, and 1004. Exemptions from IRR screening during 1 FY are authorized for members who served on AD during the FY; who are scheduled for discharge from the Military Service during the FY; who reside outside geographical limitations established by the Secretaries of the Military Departments; who are in the grade of O-4, or higher, and have no remaining MSO; or, who were successfully screened in the preceding FY. Under no circumstances should a member serve an initial period in the IRR of more than 18 months without participating in a screening either during an annual muster or during a period of training. The Services are required to maintain the current status of each member's physical condition, dependency status, military qualification, civilian occupational skills, availability for service, to include current address, and other information, as prescribed.

(2) *IRR Members.* Those members, including individuals enlisting directly into the IRR, may participate voluntarily in IDT for points only IAW the regulations of the Military Services.

(c) *Standby Reserve.* The Standby Reserve consists of personnel who maintain their military affiliation without being in the Ready Reserve IAW 10 U.S.C. 267, 272, and 273 and DoD Directive 1235.9.[5]

(1) *Active Status Listing.* The following members of the Standby Reserve are in an active status. By DoD policy, members of the Standby Reserve in an active status may participate voluntarily without pay in RC training for retirement points only. Those following members may receive promotion credit, be considered for promotion, and if selected, be promoted:

(i) Personnel who have not fulfilled their statutory MSO.

(ii) Personnel temporarily assigned for hardship, or other cogent reason, who intend returning to the Ready Reserve.

(iii) Personnel retained in an active RC status under 10 U.S.C. 1006.

(iv) Members transferred from the Ready Reserve to the Standby Reserve, after being designated as "key personnel" by their employers, may volunteer for assignment to the Standby Reserve Active Status List for the period they remain designated as key personnel. Individuals desiring to be transferred shall apply directly to the RC concerned.

(2) *Inactive Status List.* The following members of the Standby Reserve are in an inactive status (they may not participate for points, pay, or promotion credit and may not be considered for promotion, or promoted):

(i) Members transferred to the Inactive Status List instead of separating IAW 10 U.S.C. 1209.

(ii) All other members transferred to the Inactive Status List IAW DoD Directive 1235.9. Personnel enrolled in a military school course, including correspondence courses, when transferred from the Ready Reserve to the Standby Reserve Inactive Status List may continue voluntarily participating in the course until completion. Those personnel shall not be entitled to pay and allowances, travel and transportation, or to earn promotion and retirement points for that training.

(d) *Retired Reserve.* Consists of all personnel transferred to the Retired Reserve and subject to mobilization IAW DoD Directive 1352.1.[6] Retired Reservists voluntarily may train (with or without pay) with a unit where they have premobilization orders. Suitable arrangements with the unit are required. The Retired Reserve consists of the following categories:

(1) Reserve members in receipt of retired pay under 10 U.S.C. chapter 67.

(2) Reserve members who have transferred to the Retired Reserve after completing 20 qualifying years creditable for retired pay under 10 U.S.C. chapter 67, but who are not yet 60 years of age, or are age 60 and have not applied for retired pay.

(3) Reserve members retired for physical disability under 10 U.S.C. 1201, 1202, 1204, or 1205. Members have completed 20 years of Military Service creditable for retired pay, under 10 U.S.C. chapter 67 or are more than 30-percent disabled.

(4) Reserve officers and enlisted members who have retired after completion of 20, or more, years of active Military Service. That does not include Regular enlisted members of the Army, the Navy, the Air Force, or the Marine Corps, with 20 to 30 years of Military Service who are assigned to the Retired Reserve or transferred to the Fleet Reserve (Navy) or the Fleet Marine Corps Reserve.

(5) Reserve personnel drawing retired pay based on retirement for reasons other than age, Service requirements, or physical disability. That category is restricted to those who are retired under special conditions, as authorized by the ASD(RA) under legislation.

(e) *Voluntary Training.* Members of the RCs, not subject to mandatory training, shall be encouraged to participate in order to maintain their mobilization readiness. The opportunity to participate voluntarily without pay in training shall be limited by the manpower and resources authorized by the Secretary.

(f) *Funds.* Funds for personnel in uniform Reserve, training and retirement categories shall be IAW DoD 7110.1-M.[7] The Secretary concerned is authorized to include in the budget for the active component (AC) funds providing AD tours for Reserves on temporary duty (TDY) in support of AC and RC programs.

Appendix A to Part 102—Uniform Reserve, Training and Retirement Categories

There are three RCCs. They are the Ready Reserve, The Standby Reserve, and the Retired Reserve. Each member of the National Guard and Reserve is assigned within one of those categories. (All National Guard members, including those in the Inactive National Guard (ING), are in the Ready Reserve.)

A. Ready Reserve Categories

The Ready Reserve is comprised of military members of the Reserve and National Guard, organized in units or as individuals, and liable for order to AD in time of war or national emergency under 10 U.S.C. 672 and 673 (reference (d)). The Ready Reserve consists of three subcategories: the Selected Reserve, the IRR, and the ING.

1. *Selected Reserve.* The Selected Reserve consists of those units and individuals in the Ready Reserve designated by their respective Services and approved by the Chairman, Joint Chiefs of Staff (CJCS), as so essential to initial wartime missions that they have priority over all other Reserves. All Selected Reservists are in an active status. The Selected Reserve includes the following:

a. *Selected Reserve Units.* Units manned and equipped to serve and/or train either as operational or as augmentation units. Operational units train and serve as units. Augmentation units train together, but when mobilized, lose their unit identity and become part

[5] See footnote 1 to § 102.1(a).

[6] See footnote 1 to § 102.1(a).

[7] Distribution is maintained by the Office of the Comptroller, DoD, room 3A862, The Pentagon, Washington, DC 20301-1100.

of AC unit or activity. Selected Reserve units include:

(1) *Drilling Unit Reservists.* Trained unit members participating in unit training activities on a part-time basis shall have the RCC and TRC designator of "SA".

(2) *Unit FTS Personnel*—(a) *AGR.* Guard or Reserve members of the Selected Reserve serving on AD or full-time National Guard duty (includes Navy TAR personnel for organizing, administering, recruiting, instructing, or training RC units. All unit AGR members must be assigned against or attached to an authorized mobilization position in the unit they support. They shall have the RCC and TRC designator of "SG."

(b) *Military Technicians (MTs).* Drilling Reservists who are also Federal civilian employees providing FTS for administration, training, and maintenance in a Selected Reserve unit. MTS must maintain their status as drilling Reservists in the same unit they support as civilian employees. All dual status MTs must be in mobilizable positions. They are dual status in that they are both civilian employees and drilling Reservists of a Guard or Reserve unit, and are accountable under the TRC designator of "SA."

(c) *AC.* AD members paid from military personnel appropriations assigned or attached to National Guard or Reserve units to provide advice, liaison, management, administration, training, and/or maintenance support in the category of FTS. Those members are not part of the Selected Reserve, but shall deploy with their assigned unit, should it mobilize. AC members performing FTS are counted as part of trained strength in units, but not in the Selected Reserve strengths.

(d) *Civil Service Employees (CIV).* Those personnel are hired under 5 U.S.C. 3101 and 32 U.S.C. 709 to provide administrative support to the RCs. They are in the category of FTS to the RCs, but are not part of the Selected Reserve.

b. *Selected Reserve IMAs.* Individual members of the Selected Reserve assigned to an AC organization. Trained individuals preassigned to an AC, a SSS, or a FEMA billet that must be filled on, or shortly after, mobilization. IMAs participate in training activities on a part-time basis with an AC unit preparing for active service in a mobilization. The amount of training required is determined by DoD policy and may vary from 0 to 48 IDT periods a year. All IMAs must perform a minimum of 12 days of AT each year and have the RCC and TRC designator of "TB."

c. *Training Pipeline.* Selected Reserve enlisted members who have not yet completed IADT and officers who are in training for professional categories or in undergraduate flying training. IAW 10 U.S.C. 671, all Ready Reservists shall receive training commensurate with their intended wartime assignments, and must complete the basic training requirements of the member's Service before assignment on land outside the United States. The training pipeline is synonymous with the term "nondeployable account." Personnel in the training pipeline may be mobilized, but may not always be available for deployment with their units. It is DoD policy that, if otherwise eligible for mobilization and deployment, they shall be considered as mobilizable assets. Training pipeline personnel are accounted for separately in the following training categories:

(1) *Enlisted Members Currently on IADT.* Includes the second part of split IADT, which has the RCC and TRC designator of "TF."

(2) *Enlisted Members Awaiting Second Part of Split IADT.* Those members shall have the RCC and TRC designator of "UQ."

(3) *Enlisted Members Awaiting IADT.* Includes members in the Selected Reserve serving with or without pay. NPS males between the ages of 18½ and 26 years enlisting under 10 U.S.C. 511(d) shall enter IADT, insofar as practicable, within 270 days after the date of that enlistment. All other enlisted members shall perform IADT, insofar as practicable, within 360 days of their enlistment.

(a) *Members Not Authorized To Perform IDT.* Service performed by members while in that status is not creditable toward computation of basic pay and shall have the RCC TRC designator "UL."

(b) *Members Authorized To Perform IDT.* Service performed by members while in that status is creditable toward computation of basic pay and shall have the RCC TRC designator of "UP."

(4) *Other Selected Reserve Untrained Personnel in Training Programs.* Includes chaplain candidates, health profession students, and early commissioning program participants with the RCC and TRC designator of "UX."

(5) *AGR Enlisted Members Currently on, or Awaiting, IADT.* Includes NPS AGR personnel (Navy TARs and ADSW) and has the RCC and TRC designator of "US."

(6) *Individuals in a Simultaneous Membership Program.* Senior Reserve Officer Training Corps (ROTC) Cadets, Selected Reserve enlisted members in officer candidate programs, and Marine Corps Platoon Leader Class students who are also permitted to be members of a Selected Reserve unit and have the RCC and TRC designator of "UT."

2. *IRR and ING.* The IRR (together with the ING) consists of those Ready Reservists not in the Selected Reserve. The IRR consists of Reservists in the following categories:

a. IRR is a manpower pool comprised principally of individuals having had training, having served previously in the AC or in the Selected Reserve, and having some period of their MSO remaining. There are some voluntary individuals in the IRR for hardship or special nonpay programs providing a variety of professional assignments and opportunities for earning retirement points and military benefits. Those personnel all have an obligation to complete either MSO or another contractual commitment. Members voluntarily may participate in training for retirement points and promotion with or without pay. IRR members may be (but are not presently) required to meet the same training requirements as Selected Reservists. Required training (involuntary) may not exceed 30 days a year under 10 U.S.C. 270(a)(2).

b. The IRR also includes some personnel participating in officer training programs or in the AFHP Stipend Program. Members in that stipend program are required to perform 45 days of AD for training a year IAW 10 U.S.C. 2121(c). The RCC and TRC designator "PJ" is used for officers not in the Selected Reserve participating in officer training programs, or the RCC and TRC designator "PK" is used for officers not in the Selected Reserve participating in the Stipend Program.)

c. The IRR also includes members of the Delayed Entry Program (DEP) enlisted under 10 U.S.C. 513. (Currently, there is no requirement to account for those untrained members of the IRR in the RCCPDS.)

d. The ING consists of National Guard personnel in an inactive status in the Ready Reserve, not in the Selected Reserve, attached to a specific National Guard unit. To remain ING members, members must muster once a year with their assigned unit, but they do not participate in training activities. On mobilization, ING members mobilize with their units. Similar to other IRR, some ING members have legal and contractual obiligations. ING members may not train for points or pay and are not eligible for promotion. Currently, the ING category is used only by the ARNG and has the RCC and TRC designator of "II".

B. Standby Reserve Categories

The Standby Reserve consists of personnel maintaining their military affiliation without being in the Ready Reserve, having been designated key civilian employees, or who have a temporary hardship or disability. Those individuals are not required to perform training and are not part of units. The Standby Reserve is a pool of trained individuals who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of the following training categories:

1. *Active Status List.* The following members of the Standby Reserve are in an active status:

a. Members designated as key employees IAW DoD Directive 1200.7,[1] and transferred from the Ready Reserve to the Standby Reserve Active Status List for the period they remain designated as key personnel. Individuals desiring to be transferred shall apply directly to the DoD Component concerned. Key employees may participate voluntarily without pay in RC training for retirement points only and may be considered for promotion. While there is no statutory prohibition against paying active status Standby Reservists for IDT or AD, by DoD policy members of the Standby Reserve who have been screened out of the Ready Reserve as key employees may not be paid for training. They have the RCC and TRC designator of "YC."

b. Personnel not having fulfilled their statutory MSO, or temporarily assigned for hardship reason intending to return to the Ready Reserve, or retained by an RC in an active status under 10 U.S.C. 1006. Those members may participate voluntarily with or without pay and may receive credit for, and be considered for, promotion. They have the RCC and TRC designator of "YD."

2. *Inactive Status List.* The following members of the Standby Reserve are in an inactive status. They may not participate for points or pay and may not receive credit for or be considered for promotion:

a. Members transferred to the Standby Reserve Inactive Status List under 10 U.S.C. 1209 instead of separating. They have the RCC TRC designator of "YL."

b. All other members transferred to the Standby Reserve Inactive Status List IAW DoD Directive 1235.9. They have the RCC TRC designator of "YN."

[1] See footnote 1 to § 102.1(a).

C. Retired Reserve Categories

1. Consists of all personnel transferred to the Retired Reserve. Retired Reservists voluntarily may train, with or without pay, with a unit where they have premobilization orders. Suitable arrangements with the unit are required. The Retired Reserve consists of the following retired categories:

a. Reserve members who have completed 20 qualifying years creditable for retired pay and are in receipt of retired pay (at, or after, age 60) under 10 U.S.C. chapter 67. Those members shall be assigned the RCC and TRC designator of "V1."

b. Reserve members who have completed 20 qualifying years creditable for retired pay and are not yet 60 years of age, or are age 60 and have not applied for retirement pay. Those members shall be assigned the RCC and TRC designator of "V2."

c. Reserve members retired for physical disability under 10 U.S.C. 1201, 1202, 1204, or 1205. Members have completed 20 years of service creditable for retired pay or are more than 30-percent disabled. Those members shall be assigned the RCC and TRC designator of "V3."

d. Reserve enlisted members who have completed 20, or more, years of active service and are receiving retired or retainer pay. Regular enlisted personnel of the Army, the Navy, the Air Force, and the Marine Corps with 20 to 30 years of active Military Service who are transferred to the Reserve or the Fleet Naval Reserve on retirement until they have completed 30 years of total active and retired or retainer service, are NOT included in that category. That includes Regular (but not Reserve) Navy and Marine Corps retirees who are transferred to the Fleet Reserve and the Fleet Mairne Corps Reserve, respectively. Those personnel shall be assigned the RCC and TRC designator of "V4".

e. Reserve personnel drawing retired pay under other than age, service requirements, or physical disability. That category is restricted for retirement under special conditions, as authorized by the Office of the ASD(RA) (OASD(RA)) under legislation. Those personnel shall be assigned the RCC and TRC designator of "V5."

2. All members retired having completed at least 20 years of active service (Regular or Reserve), regardless of the retired list where assigned, may be ordered to AD when required by the Secretary of the Military Department concerned, IAW 10 U.S.C. 688.

3. Retired Reserve members may be ordered to AD in their status as Retired Reserve members. It is not necessary to place the member in the Ready Reserve for that purpose.

4. Former members having completed 20 satisfactory years service creditable for retirement, but electing to be discharged from the RCs, are not a part of the Retired Reserve nor Military Service members.

Appendix B to Part 102—Members Participating in Approved Programs Outside The Department of Defense

A. SSS

The SSS administers the Military Selective Service Act (MSSA), which authorizes the Director of Selective Service, by delegation from the President, "* * * to order to active duty with their consent and to assign to the Selective Service System such officers of the selective-service section of the State headquarters and headquarters detachments and such other officers of the federally recognized National Guard of the United States or other armed forces personnel (including personnel of the reserve components thereof), as may be necessary for the administration of the national and of the several State headquarters of the Selective Service System."

1. *AD.* Requests for assignment to the SSS and an AD status must be approved IAW DoD Directive 1000.17.[1] Costs for those members shall be reimbursed to the Department of Defense. Members shall not be assigned to a RCC or TRC, shall not be counted against RC strengths, and shall not be included in the RCCPDS files.

2. *Inactive Duty.* The Department of Defense and the Office of the Director of Selective Service shall agree annually on the number of RC members assigned as IMAs to the SSS. The SSS shall reimburse the Department of Defense for IDT and AT for those members.

B. Civil Defense Activities and CONUS Defense Programs

1. The U.S. civil defense and CONUS defense program are an integral part of U.S. national security. Support of civil defense may be provided through RC members participating with Federal, State, and local civil agencies only when clearly furthering specifically identifiable DoD interest. Participation shall be in an IDT or ADT status and on a reimbursable basis, except when the primary basis for participating is to meet a DoD program requirement. Subject to priorities and guidance in DoD Directive 3025.10,[2] military support of those

[1] See footnote 1 to § 102.1(a).

[2] See footnote 1 to § 102.1(a).

activities is a proper mission for DoD Components. Military planning and liaison may be provided by RC members at selected civil government and military headquarters and includes such tasks and responsibilities as mutual support to civil authorities for civil defense, CONUS defense, physical security of key assets, and disaster relief operations.

2. Programs involving RC members in civil defense activities directly supporting the FEMA or State and local government under a FEMA program must be approved jointly by the FEMA and the Department of Defense. Assigning members in an AD (other than for training) status supporting of civil defense outside the Department of Defense must be approved IAW DoD Directive 1000.17. The following programs are approved for such participation:

a. *Federal Liaison Officers.* Those are Reserve officers serving as IMAs performing planning and liaison responsibilities between DoD Components and Federal regional Headquarters, including interface with the civil sector, as directed by their DoD Component through the Military Service planning agent. Federal liaison officers function primarily in support of DoD missions. All costs are paid by the DoD Components. Each Military Department is authorized to assign one or more Federal liaison officers (other than flag or general officer rank) at each FEMA region and at FEMA national Headquarters.

b. *State Liaison Officers.* Those are reserve officers serving as IMAs performing planning and liaison responsibilities betwen their DoD Components and State or U.S. Territory Civil Defense or Emergency Service Headquarters for interfacing with the civil sector, as directed by their DoD Component through the Military Service planning agent. State liaison officers function primarily in support of DoD missions. All costs are paid by the DoD Component. Each Military Department is authorized to assign one or more State liaison officers (other than flag or general officer rank) at each State or U.S. territorial Headquarters and shall assign or attach such officers to functions supervised by the State Area Command (STARC).

c. *Regional Military Emergency Coordinators (RMECs).* Those are Reserve officers serving as IMAs and performing resource claimancy tasks for their DoD Components while participating in resource management of emergency preparedness and crisis operations under DoD Directive 5030.45.[3] RMEC officers function primarily in support of DoD missions. All costs are paid by the DoD Component. Each Military Department is authorized to assign one or more officers (other than flag or general officer rank) to the DoD RMEC team.

d. *Civil Preparedness Support Detachments (CPSD).* Those are Selected Reserve units of the U.S. Army Reserve (USAR), whose missions are to augment the communications and security capabilities of FEMA emergency operations centers.

e. *FEMA IMAs.* Those are IMAs assigned to responsibilities supporting civil defense planning at FEMA Headquarters and regions, and at State and local civil defense activities. FEMA IMAs perform 2 weeks of annual ADT, and the FEMA reimburses the Department of Defense for those training costs.

3. Members of the IRR and Standby Reserve Active Status List, voluntarily participating in approved civil defense activities, may receive retirement points IAW DoD Instruction 1215.7.

4. IRR members participating in civil defense activities may request ADT to attend civil defense courses. If so ordered, those Reservists shall be entitled to pay and allowance including travel allowances for such training.

Appendix C to Part 102—Definitions Explained

1. *Active Duty (AD).* Full-time duty in the active Military Service of the United States. A general term applied to all active Military Service, but not including full-time National Guard duty.

2. *Active Guard Reserve (AGR).* RC members of the Selected Reserve ordered to AD or full-time National Guard duty with their consent and consent of the Governor for the purpose of organizing, administering, recruiting, instructing, or training RC units. The two major categories are statutory tour officer and/or enlisted members and unit personnel.

3. *Active Status.* Status of all Reserves, except those on an inactive status list or in the Retired Reserve. Reservists in an active status may train with or without pay, earn retirement points, and may earn credit for and be considered for promotion.

4. *AD for Special Work (ADSW).* A tour of AD for Reserve personnel authorized from military or Reserve personnel appropriations for work on AC or RC programs. That includes annual screening, training camp operation, training ship operation, and unit conversions to new weapons systems when such duties are essential. ADSW may also be authorized to support study groups, training sites and exercises, short-term projects, and administrative or support functions. By policy, ADSW tours are normally limited to 139 days, or less, in 1 FY. Tours exceeding 180 days are accountable against AD or AGR end strength.

5. *AD for Training (ADT).* AD that is used for training members of the RCs to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. The member is under orders that provide for return to inactive status when the period of ADT is completed. ADT includes AT, special tours of ADT, school tours, and the initial duty for training performed by NPS enlistees.

6. *Annual Screening.* One-day ADT or MD required each year for IRR members so the Armed Forces can keep current on each member's physical condition, dependency status, military qualifications, civilian occupation skills, availability for service, and other information.

7. *Annual Training (AT).* The minimal period of training Reserve members must perform each year to satisfy the training requirements associated with their RC's assignment.

8. *IMA Detachments.* An administrative unit organized to assist in training and to manage IMAs.

9. *Inactive Duty Training (IDT).* Authorized training performed by a member of a RC not on AD, or ADT and consisting of regularly scheduled unit training periods, ATPs, or equivalent training, and performed by them in connection with the prescribed activities of the RC of which they are a member.

10. *Inactive Status.* Status of Reserve members on an inactive status list of RC or assigned to the ING. Those in an inactive status may not train for retirement points or pay, and may not receive credit for or be considered for promotion or be promoted.

11. *Individual Mobilization Augmentees (IMAs).* An individual Selected Reservist who receives training and is preassigned to an AC organization, a SSS or a FEMA billet that must be filled on, or shortly after, mobilization. IMAs train with those organizations preparing for mobilization. The IDT requirement for IMAs is decided by DoD Component policy and can vary from 0 to 48 drills a year. A minimum of 12 days AT is required of all IMAs.

[3] See footnote 1 to § 102.1(a).

12. *Initial ADT (IADT).* Basic military training and technical skill training required for all enlisted accessions. For NPS male enlistees beween the ages of 18½ and 26 years, that IADT shall be not less than 12 weeks and start, insofar as practical, within 270 days after enlistment. IADT for all other enlistees and inductees shall begin within 360 days after entry into Service. Military members may not be assigned to AD on land outside the United States or its territories and possessions until basic training or its equivalent has been completed.

13. *Key Employee.* Any Reservist identified by his or her employer, private or public, as filling a key position.

14. *Key Position.* A civilian position, public or private (designated by the employer IAW DoD Directive 1200.7) that cannot be vacated during war or national emergency.

15. *Multiple IDT Periods (MIDTPS).* Two scheduled IDT periods performed in 1 calendar day, each at least 4 hours in duration. No more than two IDT periods may be performed in 1 day.

16. *Nondeployable Account.* An account where Reservists (officer and enlisted) either in units or as individuals are assigned to a RCC or a TRC, when the individual has not completed IADT or its equivalent. Reservists in a nondeployable account are not considered as trained strength assigned to units or mobilization positions and are not deployable overseas on land with those units or mobilization positions. See also "training pipeline," definition 25., below.

17. *Nonprior Service (NPS) Personnel.* Individuals without any prior Military Service, who have not completed IADT or its equivalent, and who receive a commission or warrant in, or enlist directly into, a U.S. Armed Force.

18. *Qualifying Years Creditable for Retired Pay.* The time Guardsman or Reservist must serve to be eligible for retired pay at age 60 years. Individuals must have at least 20 years of service in which they received at least 50 retirement points, and the last 8 years of years of service must have been served in a RC.

19. *Reserve Component (RC) Category (ROC).* The category that identifies an individual's status in a RC. The three RCCs are Ready Reserve, Standby Reserve, and Retired Reserve. Each Reservist is identified by a specific RCC designation.

20. *Reserve Components (RCs).* RCs of the U.S. Armed Forces are, as follows:

a. The ARNG of the United States.

b. The USAR.

c. The U.S Naval Reserve (USNR).

d. The U.S. Marine Corps Reserve (USMCR).

e. The ANG of the United States.

f. The U.S. Air Force Reserve (USAFR).

g. The U.S. Coast Guard Reserve (USCGR).

21. *Secretary of Military Department.* The Secretaries of the Army, the Navy, and the Air Force; or the Secretary of Transportation, when the Coast Guard is operating as a DoT Agency.

22. *Trained Strength in Units.* Those personnel (Reservists, AGR, and AC) assigned to units who, in the case of enlisted members, have completed IADT of 12 weeks, or its equivalent, and are eligible for deployment overseas on land when mobilized under proper authority. Excludes personnel in nondeployable accounts or a training pipeline.

23. *Training and Retired Category (TRC).* The category identifying (by specific TRC designator) a Reservist's training or retirement status in a RCC and a RC.

24. *Training Period.* An authorized and scheduled regular IDT period. A training period must be at least 4 hours. Previously used interchangeably with other common terms such as drills, drill period, assemblies, or periods of instructions, etc.

25. *Training Pipeline.* An RCC designation that identifies officers in professional or flying training and untrained enlisted personnel who have not completed IADT of 12 weeks, or its equivalent. See also "nondeployable account," definition 16., above.

26. *Training Unit.* A unit established to provide military training to individual Reservists or to RC units.

27. *Unit.* For an RC of the Armed Forces, denotes a Selected Reserve unit organized, equipped, and trained for mobilization to serve on AD as a unit or that augments or shall be augmented by another unit. Headquarters and support functions without wartime missions are not considered units for accounting for units and individuals in the Selected Reserve.

28. *Voluntary Training.* Training in a nonpay status for IRRs and active status Standby Reservists. Participation in voluntary training is for retirement points only and may be achieved by training with Selected Reserve or voluntary training units; by ADT; by completion of authorized military correspondence courses; by attendance at designated courses of instruction; by performing equivalent duty; by participating in special military and professional events designated by the Military Department; or by participating in authorized civil defense activities. Retirees may voluntarily train with organizations to which they are properly preassigned by orders for recall to AD in a national emergency or declaration of war. Such training shall be limited to that training made available within the resources authorized by the Secretary concerned.

29. *Voluntary Training Unit or Reinforcement Training Unit.* A unit formed by volunteers to provide RC training in a nonpay status for IRRs and active status standby Reservists attached under competent orders and participating in such unit for retirement points. Also called "reinforcement training unit."

APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES

RCC	RC sub-category	RCC designator	TRC designator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
Ready reserve.	Selected reserve.	S—trained in units	A	Individuals in units	48	Reserve, 14 days (exclude travel)	10 U.S.C. 270(a) (1) (reference (d)) requires 14 days.		X	X	X		X	X
						Guard, 15 days (include travel)	32 U.S.C. 502 (reference (g)) requires 15 days.	X				X		
			G	AGR	N/A		AGR may be required to attend drills. (Includes Navy Tars and ADSW, USCGR TEMAC and special active duty for training (SADT), Marine Corps FTS and all statutory tours.)	X	X	X	X	X	X	X
		T—trained individuals, nonunit.	B	IMAs	IDT varies between 0 and 48 days each year, as determined by service policy.	Reserve–12 to 14 days (exclude travel).	Unless training can be accomplished on weekends, at is limited to 12 days by policy. Replaces previous TRCs A, B, C, and D for IMAs		X	X	X		X	X
		U—training pipeline, non-deployable account.	F	Personnel currently on IADT.	0	N/A	Enlisted. Includes second part of split training and Army one-station unit training (applies to TRCs F, Q, and P)	X	X	X	X	X	X	X
			L	Personnel awaiting IADT.	Not authorized to perform IDT.	N/A		X	X	X	X	X	X	X
			P	Personnel awaiting IADT and authorized to perform IDT.	Minimum IDT to be determined by DoD component policy.	N/A	Includes personnel with or without pay.	X	X	X	X	X	X	X
			Q	Personnel awaiting second part of IADT.	48	N/A		X	X	X	X	X	X	X
			S	AGR currently on, or awaiting IADT.	Determined by DoD component policy.	N/A	Includes NPS AGR (Navy tar personnel.			X				
			T	Individuals in a simultaneous membership.	48	Same as TRC A	Senior ROTC cadets or Marine Corps platoon leader class members who are also permited to be members of a selected reserve unit.	X	X		X	X	X	

APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES—Continued

RCC	RC sub-category	RCC designator	TRC designator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
			X	Personnel in other training programs.	48	Same as TRC A	Selected reserve untrained member in other training programs including chaplains, medical, health professional stipend, and early commissioning. Must meet the same training requirements as TRC A reservists.	X	X		X			
	IRR and ING.	R—IRR	E	Individual members of the ready reserve not in selected reserve (includes officers awaiting AD or selected reserve assignment).	N/A	1	IRR members may voluntarily participate in training for retirement points and promotion with or without pay. Required training may not exceed 30 days each year (10 U.S.C. 270(a)(2), reference (d)).		X	X	X		X	X
			H	Untrained members of the IRR. (DEP) section 513 of reference (d).					X	X	X		X	X
		P—ready reserve training.	J	Personnel not in the selected reserve participating in officer training programs.	0	As required by specific program.	Chaplain and judge advocate general (JAG) schooling, education delay, ROTC assignment delay, Army early commissioning program, Coast Guard direct commission candidates, Marine platoon leader class.		X	X	X		X	X
			K	Personnel not in the selected reserve participating in AFHP stipend programs.	0	45 days	AFHP stipend programs. Requires 45 days AD annually. Section 2121(c) of reference (d) and DoD directive 1215.4 (reference (s)).		X	X			X	

		I—ING	I	ING	0	1	Must meet annual muster with assigned unit. May not train for points or pay and are not eligible for promotion.	X						
Standby reserve.		Y—standby	C	Active status list	0	0	Key employees, only, per DoD *directive 1200.7* (reference (n)). Active standby members may voluntarily train for points without pay and are eligible for promotion.		X	X	X		X	X
			D	Active status list	0	0	Other active status members.		X	X	X		X	X
			L	Inactive status list	0	0	Members transferred to inactive status list instead of separation under 10 U.S.C. 1209, chapter 61 (reference (d)). Inactive standby members may not train for points with or without pay and are not eligible for promotion.		X	X	X		X	X
			N	Inactive status list	0	0	Other inactive status members.		X	X	X		X	X
Retired reserve.		V—retired	1	Drawing reserve retired pay under 10 U.S.C. 1331 (reference (d)).	N/A	N/A	Reserve members who have completed 20 qualifying years creditable for retired pay, are 60 years, or more, of age, and are drawing retired pay.		X	X	X		X	X
			2	Not drawing retired pay, but eligible at age 60, under section 1331 of reference (d).	N/A	N/A	Reserve members who have completed 20 qualifying years creditable for retired pay, but are not yet 60 years of age, or are age 60 and have not applied for pay.		X	X	X		X	X

APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES—Continued

RCC	RC sub-category	RCC designator	TRC designator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
			3	Reserve members retired for physical disability.	N/A	N/A	Reserve members retired for physical disability under sections 1201, 1202, 1204, or 1205 of reference (d). Member who have 20 years of service creditable for retired pay or are more than 30-percent disabled.		X	X	X		X	X
		V—retired reserve	4	Reserve members who have completed 20, or more, years of AD.	N/A	N/A	Reserve members who have completed 20, or more, years of AD service and retired under 10 U.S.C. 3911, 3914, 6323, 6330, 8911, or 8913 (reference (d)). Does not include regular Army and Air Force enlisted personnel with between 20 and 30 years of military service; and regular and reserve Navy and Marine Corps enlisted personnel in the fleet reserve (Navy) and fleet Marine Corps reserve with between 20 and 30 years of service.		X	X	X		X	X
			5	Drawing reserve retired pay under other than section 1331 of reference (d), or other than reasons of physical disability.	N/A	N/A	Reserve personnel drawing retirement pay based on retirement for reasons other than age, service requirement or physical disability, as authorized by the ASD(RA).		X	X	X		X	X

[FR Doc 92-2197 Filed 1-29-92; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 20

Implementation of Express Mail International Olympic Service

AGENCY: Postal Service.

ACTION: Temporary rule.

SUMMARY: Express Mail International Olympic Service (Olympic Service) is a new type of Express Mail International Service (EMS) that will be offered, on a temporary basis, from January 27, 1992, through August 31, 1992. Olympic Service will be available only to the United States Olympic Committee, the Postal Service's fellow official Olympic corporate sponsors, and their agents when they mail EMS shipments weighing more than two pounds to addresses within France, Switzerland, and Spain. Olympic Service will be equivalent to existing Express Mail International On Demand Service except that (1) mailers will be required to provide at least 24 hours' advance notice of any planned Olympic Service mailing, and (2) Olympic Service rates will be 15 percent lower than the corresponding Express Mail International On Demand Service rates to France, Switzerland, and Spain.

EFFECTIVE DATE: The temporary regulations will be in effect from January 27, 1992, through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: George Shipman, (202) 268-6095.

SUPPLEMENTARY INFORMATION: Express Mail International Service (EMS) is a reliable high-speed mail service available to certain countries. The Postal Service currently offers two types of EMS: (1) Custom Designed Service, which is available only pursuant to a service agreement between the Postal Service and the mailer; and (2) On Demand Service, which is available at designated postal facilities for nonscheduled expedited services to addresses located in countries as shown in the Individual Country Listings of the International Mail Manual (IMM). At present, EMS is available to all addresses in France and Switzerland and to most addresses in Spain, including Barcelona postal codes 08001 through 08099.

In addition to the Postal Service, the United States Olympic Committee has designated 46 other U.S. companies as official corporate sponsors of the 1992 Olympic Games. Although all of these companies have substantial international operations, none uses EMS on a regular basis for shipments of merchandise. The Postal Service understands that these companies' reluctance to use EMS is due primarily to its higher cost. The Postal Service's competitors offer volume-based and other types of discounts. As a result of that discounting, the rates charged by those competitors to large companies such as the other Olympic sponsors are typically lower than the published EMS rates.

In order to encourage the other Olympic sponsors to use EMS for their international merchandise shipments, the Postal Service is establishing a new type of EMS, Express Mail International Olympic Service (Olympic Service). Rates for Olympic Service will be 15 percent lower than the corresponding Express Mail International On Demand Service rates. As a service directly related to the Postal Service's sponsorship of the 1992 Olympic Games, Olympic Service will be limited in terms of its availability, scope, and duration. Further, to facilitate the Postal Service's operations, a user of the service will be required to notify the Postal Service at least 24 hours prior to the date of a planned Olympic Service mailing and to provide information about the origin, destination, and contents of the mailing. In all other respects, Olympic Service will be equivalent to existing Express Mail International On Demand Service.

Olympic Service will be available only to the United States Olympic Committee (USOC), to companies that have been designated as official corporate sponsors of the 1992 Olympic Games by the USOC, and to agents mailing on behalf of the USOC or a sponsor. In order to qualify for the service, a mailer must satisfy two additional requirements. First, it must provide the Postal Service with the following information about the mailer's anticipated Olympic Service mailings: (1) The name of the person responsible for the mailings and his or her telephone number; (2) the anticipated origin addresses; (3) the anticipated mailing dates; (4) the anticipated destination addresses; (5) the anticipated volumes; and (6) the anticipated weights. The Postal Service will evaluate this information solely to make sure that the mailer's anticipated Olympic Service mailings meet the weight, size, preparation, and destination requirements for the service. Second, once approved, the mailer must establish an Express Mail corporate account with the Postal Service, at which time it will receive a unique Olympic Service account number that must be used for all Olympic Service mailings.

The service will be available only to addresses located in France, Switzerland, and Spain. Albertville, France, the site of the 1992 Winter Olympic Games, is situated near the French-Swiss border; the nearest large city to Albertville is Geneva, Switzerland. As Olympic sponsors plan to locate employees and operations in both France and Switzerland in connection with the Winter Games, the Postal Service will offer Olympic Service to those two countries. Additionally, since Barcelona is the site of the 1992 Summer Olympic Games, the Postal Service will offer the service to Spain. All EMS items sent to other countries will be subject to postage at the regular EMS rates.

Further, since Olympic Service is intended to attract merchandise shipments, the service will be available only for items weighing more than two pounds. EMS items weighing two pounds or less may be included in an Olympic Service mailing, but will be subject to postage at the regular EMS rates.

The Postal Service will offer Olympic Service only from January 27, 1992, through August 31, 1992. This seven-month time frame includes the dates of the Winter Olympic Games (February 8 to 23, 1992) and of the Summer Olympic Games (July 25 to August 9, 1992), as well as other periods during which the USOC and sponsors can be expected to send Olympic-related mail to France, Switzerland, and Spain. Olympic Service will terminate automatically on August 31, 1992. All EMS items mailed after that date will be subject to postage at the regular EMS rates.

In setting international postage rates, the Postal Service must ensure that such rates (1) do not apportion the costs of the service so as to impair the overall value of the service to the users; (2) apportion the costs of all postal operations to all users on a fair and equitable basis; (3) are fair and reasonable; and (4) are not unduly or unreasonably discriminatory or preferential. The Olympic Service rates announced herein satisfy these criteria.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new section 215 to read as follows:

CHAPTER 2—CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

215 Olympic Service

215.1 Description

215.11 General. Express Mail International Olympic Service is available only for items sent by or on behalf of the United States Olympic Committee (USOC) and companies that have been designated as official corporate sponsors of the 1992 Olympic Games by the USOC, for expedited services to all addresses located in France and Switzerland and to addresses in Spain as shown in the IMM Individual Country Listing for that country. Olympic Service items may be sent from any point in the United States agreed upon by the Postal Service and the mailer. There is no service guarantee for Olympic Service.

215.12 Effective Dates. Olympic Service is available from January 27, 1992, through August 31, 1992.

215.13 Insurance and Indemnity. See IMM 211.4.

215.14 Return Receipt Service. Return Receipt service is available for Olympic Service items sent to Switzerland and Spain at no additional charge. See IMM 340 for preparation procedures.

215.2 Postage and Fees

215.21 Rates. Olympic Service rates are as shown in Exhibit 215.21. Olympic Service rates can also be determined by subtracting 15 percent from the Express Mail International On Demand Service rates set forth in the IMM Individual Country Listings for France, Switzerland, and Spain, as applicable.

215.22 Payment. Postage for Olympic Service items must be paid through the use of an Express Mail corporate account.

215.23 Pickup Service. The pickup charge, if applicable, is $4.50 per pickup stop regardless of the number of items picked up.

215.3 Weight and Size Limits

215.31 Weight Limits. Olympic Service items must weigh over 2 pounds. Olympic Service items may not weigh more than 33 pounds if sent to Switzerland, more than 44 pounds if sent to Spain, or more than 66 pounds if sent to France.

215.32 Size Limits. Maximum length: 36 inches. Maximum length and girth combined: 79 inches.

215.4 Application for Olympic Service

215.41 Responsibilities of Applicant. A mailer interested in qualifying for Olympic Service must contact its International Account Representative (IAR) or, in the absence of an IAR, one of the following offices at Postal Service Headquarters: Program Manager, Olympic Marketing, at (202) 268–6687; or Group Product Manager, Olympic Marketing, at (202) 268–2947. At that time, the applicant must provide the following information about its anticipated Olympic Service mailings: (1) The name and telephone number of the person responsible for the mailings; (2) the anticipated origin addresses; (3) the anticipated mailing dates; (4) the anticipated destination addresses; (5) the anticipated volumes; and (6) the anticipated weights. The applicant also must establish an Express Mail corporate account.

215.42 Responsibilities of IAR. The IAR determines eligibility for Olympic Service by verifying (1) that the applicant is the USOC, an official Olympic sponsor, or an agent mailing on behalf of the USOC or an official Olympic sponsor; and (2) that the applicant's anticipated mailings meet the requirements for Olympic Service. The IAR is also responsible for transmitting the information provided by the applicant about anticipated mailings to the International & Military Mail Operations Division and for establishing the applicant's Express Mail corporate account.

215.5 Pre-Mailing Notification

215.51 Responsibilities of Mailer. A mailer that has qualified to use Olympic Service must notify the Postal Service at least 24 hours prior to any planned Olympic Service mailing. At that time, the mailer must provide the following information about the mailing in question: (1) The origin address or addresses; (2) the destination address or addresses; (3) the number of items, their sizes, and their weights; and (4) the intended date and approximate time of mailing.

215.6 Preparation Requirements

215.61 Preparation by Mailer. The preparation requirements for Olympic Service are the same as those for Express Mail International on Demand Service. See IMM 214.21. The address label must show the mailer's unique Olympic Service account number.

215.62 Preparation by Acceptance Employee. The preparation requirements for Olympic Service are the same as those for Express Mail International On Demand Service. See IMM 214.22.

215.63 Customs Forms Required. Olympic Service mailers are responsible for determining customs requirements and complying with them. For additional information see the IMM Individual Country Listings for France, Switzerland, and Spain, as applicable.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

EXHIBIT 215.21.—RATES FOR EXPRESS MAIL INTERNATIONAL OLYMPIC SERVICE

Weight not over lbs.[1]	Switzerland	Spain	France
3	22.95	25.50	22.95
4	28.90	30.18	28.90
5	33.24	35.40	33.24
6	37.40	40.63	37.40
7	41.57	45.86	41.57
8	45.73	51.09	45.73
9	49.90	56.31	49.90
10	54.06	61.54	54.06
11	58.23	66.77	58.23
12	62.39	72.00	62.39
13	66.56	77.22	66.56
14	70.72	82.45	70.72
15	74.89	87.68	74.89
16	79.05	92.91	79.05
17	83.22	98.13	83.22
18	87.38	103.36	87.38
19	91.55	108.59	91.55
20	95.71	113.82	95.71
21	99.88	119.04	99.88
22	104.04	124.27	104.04
23	108.21	129.50	108.21
24	112.37	134.73	112.37
25	116.54	139.95	116.54
26	120.70	145.18	120.70
27	124.87	150.41	124.87
28	129.03	155.63	129.03
29	133.20	160.86	133.20
30	137.36	166.09	137.36
31	141.52	171.32	141.52
32	145.69	176.54	145.69
33	[2] 149.85	181.77	149.85
34		187.00	154.02
35		192.23	158.18
36		197.45	162.35
37		202.68	166.51
38		207.91	170.68
39		213.14	174.84
40		218.36	179.01
41		223.59	183.17
42		228.82	187.34
43		234.05	191.50
44		[2] 239.27	195.67
45			199.83
46			204.00
47			208.16

EXHIBIT 215.21.—RATES FOR EXPRESS MAIL INTERNATIONAL OLYMPIC SERVICE—Continued

Weight not over lbs.[1]	Switzerland	Spain	France
48			212.33
49			216.49
50			220.66
51			224.82
52			228.99
53			233.15
54			237.32
55			241.48
56			245.65
57			249.81
58			253.98
59			258.14
60			262.31
61			266.47
62			270.64
63			274.80
64			278.97
65			283.13
66			[2] 287.30

[1] Olympic service items must weigh over 2 pounds.
[2] Maximum weight for Switzerland: 33 lbs.; for Spain: 44 lbs; for France: 66 lbs.

[FR Doc. 92-2293 Filed 1-29-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7533]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column of the table in § 64.6.

FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the FEDERAL REGISTER. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

* * * * *

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York:				
Henrietta, Town of, Monroe County	360419	Mar. 23, 1973, Emerg.; Nov. 5, 1980, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Feb. 5, 1992.
Manlius, Town of, Onondaga County	360584	Nov. 8, 1973, Emerg.; Dec. 15, 1982, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Barker, Town of, Broome County	360037	July 22, 1975, Emerg.; Jan. 6, 1984, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region III				
West Virginia: Shinnston, City of, Harrison County	540060	May 13, 1975, Emerg.; Mar. 16, 1988, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region IV				
Tennessee: Spring City, Town of, Rhea County	475448	Feb. 25, 1972, Emerg.; Dec. 22, 1972, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Kentucky: Cumberland, City of, Harlan County	210100	Nov. 5, 1971, Emerg.; Mar. 15, 1977, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region V				
Michigan:				
Wyoming, City of, Kent County	260111	Apr. 11, 1973, Emerg.; Sept. 2, 1982, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Georgetown, Charter, Township of, Ottawa County	260589	Dec. 16, 1975, Emerg.; July 18, 1985, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Clare, City of, Township of	260629	Aug. 26, 1975, Emerg.; Feb. 5, 1992, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region VI				
Oklahoma: Payne County, Unincorporated Areas	400493	Apr. 7, 1987, Emerg.; Nov. 19, 1987, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region IX				
California: San Clemente, City of, Orange County	060230	July 9, 1975, Emerg.; Dec. 4, 1979, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region V				
Minnesota: St. Louis County, Unincorporated Areas	270416	Apr. 23, 1974, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Feb. 19, 1992.
Region VI				
Oklahoma:				
Comanche County, Unincorporated Areas	400489	Sept. 26, 1991, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.
Lawton, City of, Comanche County	400049	Nov. 15, 1973, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.
Region VII				
Iowa: LeGrand, City of, Marshall County	190606	Dec. 5, 1977, Emerg.; Sept. 1, 1987, Reg.; Feb. 19, 1992, Susp.	Sept. 1, 1987	Do.
Region VIII				
Colorado: Arvada, City of, Adams and Jefferson Counties.	085072	Apr. 30, 1971, Emerg.; June 23, 1972, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: January 24, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-2150 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 572, and 587

[Docket No. 88-06; Notice 15]

RIN 2127-AE05

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Response to petitions for reconsideration.

SUMMARY: On October 30, 1990, NHTSA published in the **Federal Register** a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier (MDB) to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phase-in of the new requirements (55 FR 45768).

NHTSA received four petitions for reconsideration of these final rules. The petitions requested that NHTSA allow carry-forward credits during the phase-in of the dynamic test requirements, establish additional procedures and details concerning the dynamic crash test, make changes to address variability in the dynamic crash test, and adopt an alternative dynamic crash test.

This notice provides NHTSA's response to the petitions for reconsideration. The agency has concluded that it is not appropriate to adopt most of the changes requested in the petitions for reconsideration and is therefore, for the most part, denying the petitions. However, NHTSA is granting the petitions with respect to requests for certain changes in specifications concerning the axle length of the MDB in the crabbed mode and the wheel hub of the MDB. The agency plans to issue a separate final rule concerning those issues shortly.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4924).

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA's safety standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214. On October 30, 1990, NHTSA published in the Federal Register a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are applicable to passenger cars and are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test procedure (55 FR 45768). (In this notice, NHTSA refers to the four final rules collectively as "the final side impact rules" or "the final rules.") NHTSA received petitions for reconsideration of these final rules from (1) the Motor Vehicle Manufacturers Association (MVMA), (2) the Ford Motor Company (Ford), (3) the Association of International Automobile Manufacturers (AIAM), and (4) the International Standards Organization (ISO).

II. Summary of Petitions for Reconsideration

MVMA petitioned for changes in the rules (1) to allow carry-forward credits during the phase-in of the dynamic test requirements, (2) to establish additional procedures and details concerning the dynamic crash test, and (3) to address variability in the dynamic crash test. Ford joined in the petition filed by MVMA. AIAM petitioned NHTSA to allow carry-forward credits during the phase-in. The ISO petitioned for NHTSA to review the draft ISO standard dealing with a dynamic side impact test procedure "with the thought to substitute it or using it as an alternative for the test procedure specified by NHTSA in the final rule." The issues raised by the petitioners are discussed more fully below.

III. Discussion of Issues Raised by Petitioners

A. Carry-Forward Credits

As discussed above, the new dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. The October 30, 1990 final rule established two alternative compliance schedules. Each manufacturer must comply with either alternative, at its discretion. Under the first schedule, each manufacturer will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles it manufactures during the 12 month period beginning September 1, 1993;

25 percent of automobiles it manufactures during the 12 month period beginning September 1, 1994;

40 percent of automobiles it manufactures during the 12 month period beginning September 1, 1995; and

All automobiles it manufactures on or after September 1, 1996.

Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

NHTSA did not include any provisions for carry-forward credits for early compliance in the October 30, 1990 final rule. For the Standard No. 208 passenger car automatic restraint phase-in, the agency decided that it would be appropriate to permit manufacturers that exceeded the minimum phase-in requirements in earlier years to "count" those extra vehicles toward meeting the minimum percentage requirements of later years. The agency concluded that such a credit would encourage the early introduction of larger numbers of automatic restraints.

However, as explained in the preamble to the October 30, 1990 final rule establishing the dynamic side impact test, there is a major difference between the Standard No. 208 phase-in and the side impact phase-in. Almost all cars needed the addition of automatic belts or air bags to meet Standard No. 208, while some vehicles do not need any changes to meet the new side impact requirements. If carry-forward credit provisions were established for the side impact phase-in, manufacturers might be able to build up credits during the first year of the phase-in by using cars which already meet the requirements. With this approach, those manufacturers could avoid making changes to meet the percentage requirements in the second and third years of the phase-in. Under this scenario, allowing carry-forward credits could have the effect of slowing manufacturer's efforts to improve side impact protection. Therefore, for the final side impact rules, the agency concluded that carry-forward credit provisions would be inappropriate.

As discussed above, MVMA, Ford, and AIAM petitioned for carry-forward credits. The petitioners argued that NHTSA had underestimated the number of vehicles that require design changes. They further asserted that NHTSA had based its decision against allowing carry-forward credits, in part, on this alleged underestimate. The petitioners stated that NHTSA's estimate of how many current production models already meet the requirements was based on single crash test results of individual production cars. The petitioners asserted that the results from other tests would fall both above and below the results of any given test. They further stated that, therefore, manufacturers cannot base their certification of compliance with a safety standard on comparisons of single test scores with the level set by the standard. The petitioners stated that the average score of a particular model certified by a manufacturer needs to be far enough below the level set by the standard to assure compliance of all such vehicles. MVMA asserted that vehicles comprising less than 10 percent of the current fleet would be able to test at a low enough level to assure compliance with the standard.

MVMA further argued that manufacturers have formulated product engineering plans in reliance on the assumption that the final side impact

rule would include carry-forward credits. MVMA urged NHTSA to adopt carry-forward credits, in part, because of this reliance. MVMA also asserted that interested parties were not given notice in the proposed rule of NHTSA's decision not to include carry-forward credits. MVMA further asserted that the public was, thus, effectively denied the opportunity to comment on the effects of not permitting such credits.

Finally, MVMA argued that allowing carry-forward credits would encourage the early availability of complying vehicles and help avoid excessive tooling costs that would be associated with bringing vehicles into compliance ahead of normal scheduled design changes. NHTSA's analysis of these arguments appears below.

In the Final Regulatory Impact Analysis for the side impact rule, NHTSA estimated that 36.4 percent of front seat positions and 47.8 percent of rear seat positions in the current fleet would meet the requirements of the final side impact rule without any changes. NHTSA based the estimate on test data on production vehicles from 1984 and later model years that were available to the agency. NHTSA used the actual test data, without adjustment. As also discussed in the Final Regulatory Impact Analysis, NHTSA estimates that about 32 percent of today's fleet would test at a Thoracic Trauma Index (dummy) (TTI(d)) level of 80 g's or lower. This is 10 g's below the performance requirements for two-door cars and 5 g's below the performance requirement for four-door cars.

NHTSA recognizes that manufacturers may not be willing to base a certification of compliance with the dynamic test requirements of Standard No. 214 on the results of a single test. This would be particularly true if that test indicates compliance by only a narrow margin. NHTSA agrees with MVMA's assertion that a manufacturer's certification of compliance with safety standards should reflect a high degree of confidence that the vehicles do indeed comply. However, the petitioners did not provide any information indicating the performance level that they believe is necessary for certification. A manufacturer's confidence of compliance will depend upon a variety of factors, including the manufacturer's build tolerances, production methods, and quality control. Taking this into account, NHTSA is unable to agree with the assertion that vehicles comprising less than 10 percent of the fleet will be able to test at a low enough TTI(d) level to assure compliance with the standard.

NHTSA concludes that at least some manufacturers will be able to exceed the 10 percent requirement during the first year of the phase-in without applying any new measures. Some manufacturers may even be able to meet the 25 percent requirement for the second year without improvements in side impact protection. With carry-forward provisions, these manufacturers would be able to delay improvements quite far into the future. Therefore, NHTSA concludes that carry-forward credits could cause a delay in achieving the safety benefits of the final side impact rules.

The petitioners also asserted that interested parties were not given notice in the proposed rule of NHTSA's decision not to include carry-forward credits. They further asserted that the public was, thus, effectively denied the opportunity to comment on the effects of not permitting such credits. The NPRM did not discuss the issue of carry-forward credits. While the petitioners are correct that the NPRM did not specifically state that NHTSA was not planning to adopt carry-forward credits, neither did it state that NHTSA was planning to adopt them. The agency does not agree that this silence provided any basis for manufacturers to assume that such credits would be permitted.

Further, many commenters addressed the phase-in issue. However, no manufacturer stated that its compliance was premised on the availability of carry-forward credits.

The petitioners further asserted that manufacturers have formulated product engineering plans in reliance on the assumption that the final side impact rule would include carry-forward credits. They urged in their petitions that NHTSA adopt carry-forward credits, in part, because of this reliance. However, the manufacturers' unjustified reliance does not provide a basis for NHTSA to change an otherwise valid rule. All aspects of a proposal are subject to change upon issuance of a final rule. This is the case even if some manufacturers have, notwithstanding the potential for change, developed engineering plans based on the proposal. Further, as discussed above, the manufacturers developed their plans based on a matter that was not specifically addressed in the proposal.

In conclusion, NHTSA has decided not to allow for carry-forward credits in connection with the phase-in. NHTSA has concluded that such credits could have a negative impact on motor vehicle safety by slowing the increase in the number of passenger cars meeting the dynamic test requirements of the final side impact rules.

B. Additional Procedures and Details Concerning Dynamic Crash Test

MVMA petitioned NHTSA to establish additional procedures and details concerning the dynamic crash test. Ford supported the MVMA position in its own petition. MVMA was concerned that if a NHTSA compliance test (generally conducted by a contractor) appears to indicate that a vehicle is not in compliance with the rule, insufficient data will be available to indicate whether the compliance test was run according to NHTSA specifications. In particular, the petitioner was concerned about objective post-crash determination of:

1. The crush strength of the barrier face in the compliance test,

2. Lateral barrier-to-vehicle impact point relative to the ± 2 inch tolerance set forth in the specification,

3. Vertical barrier-to-impact point relative to the 13 inches ground-to-MDB bumper dimension, and

4. The perpendicularity of the vehicle centerline relative to the MDB centerline.

MVMA suggested that the above issues be resolved by "(1) providing a means for objective post-crash determination of the lateral and vertical impact point and the vehicle-to-MDB angle; (2) positive identification of the barrier face used, such as, for example, showing the test number on the barrier face in a manner which can be identified in crash films; and (3) preservation and custodial protection of the vehicle, barrier face, and test data for a period of time after the crash sufficient to allow NHTSA and the manufacturer an opportunity for inspection of the vehicle and barrier face and testing of material samples."

NHTSA agrees with the petitioners that their recommended procedures are generally desirable. In fact, NHTSA contractors currently use many of the recommended procedures during crash tests conducted to determine compliance with other safety standards. However, NHTSA does not consider it necessary to include these detailed procedures in Standard No. 214. NHTSA has not included this level of detail in other safety standards involving crash tests. Instead, NHTSA will adopt the MVMA suggestions, as appropriate, in the agency's Laboratory Test Procedure for the standard. This document will describe in detail how a NHTSA contractor is to conduct compliance testing with Standard No. 214. As an exercise of agency discretion, NHTSA allowed the public an opportunity to comment on a draft of this document.

NHTSA believes that this document will satisfy the concerns expressed by MVMA.

C. Variability in Test Results

MVMA also recommended changes in the final rule to address variability in dynamic crash test results. MVMA recommended changes to address what it considered to be problems with (1) barrier honeycomb crush strength variability and dummy response, (2) test dummy positioning variability, (3) test dummy calibration corridor width, and (4) the MDB track width. NHTSA analyzes these issues below.

1. Barrier Honeycomb Crush Strength Variability and Dummy Response

MVMA stated that its member companies had found that manufacturing variations produce significant crush strength differences in the aluminum honeycomb structure of the MDB. MVMA asserted that these differences have the potential for contributing to unpredictability in test dummy responses and results. MVMA stated that a series of tests conducted by Ford showed that the overwhelming majority of barrier faces tested did not meet the crush strength of 45 ± 2.5 psi specified in the final side impact rules. MVMA stated that some of the barriers furnished by Hexcel Corporation (Hexcel) may not meet the crush strength requirements of the final rules.

MVMA asserted that deviations from the crush strength specifications can significantly affect both certification and compliance test results. MVMA submitted data from 13 dynamic crash tests and concluded that front seat test dummy pelvic acceleration changed an average of 1–89 g's for each single psi change in barrier crush strength.

MVMA urged NHTSA to establish a certification procedure which would require barrier face manufacturers to (1) conduct a preassembly crush test of each barrier face and (2) provide the purchaser of each barrier face copies of all test documentation related to the certification of the barrier face. MVMA estimated that the honeycomb would need to be pre-crushed two inches under their proposed procedure.

NHTSA personnel have discussed possible barrier face variability with personnel from Hexcel. Hexcel determined the crush strength of barrier faces using a different procedure than that recommended by NHTSA. Some of the barrier faces certified by Hexcel (using their certification test procedure) as meeting the crush strength specified in the final side impact rules may actually have been outside the specifications (using the procedure for determining crush strength recommended by NHTSA).

However, NHTSA has not seen the variability claimed by MVMA in its analysis of data from various sources on crash test repeatability. Further, NHTSA is convinced, based on strong assurances from Hexcel, that Hexcel will be able to manufacture and supply barrier faces which meet the specified crush strength, as determined by the NHTSA procedure. Further, another company (Plascore, Inc.) has notified NHTSA that it is able to manufacture barrier faces that meet the specifications of the final rules.

Thus, NHTSA concludes that it is possible to manufacture barrier faces that meet the crush strength specifications of the final rules. NHTSA further concludes that passenger car manufacturers can request a manufacturer of barrier faces to "certify" that its product meets the NHTSA specifications, using the certification test procedure recommended by NHTSA. However, such a certification would be a private contractual matter. NHTSA does not have the authority to require such certification by a barrier face manufacturer as part of a safety standard. Safety standards apply only to manufacturers (and importers) of motor vehicles and motor vehicle equipment. Safety standards do not apply to manufacturers of test devices used in compliance tests. Therefore, NHTSA does not believe that the change requested by petitioners is necessary or appropriate.

2. Test Dummy Positioning Variability

In its petition, MVMA stated that variations in test dummy position can significantly affect test dummy responses in all forms of crash testing, including side impacts. MVMA recognized that NHTSA's present positioning procedures are the result of a substantial effort by the agency to minimize the variations in positioning. However, MVMA asserted that the procedures still lack sufficient objectivity, because manufacturers and NHTSA compliance contractors could unknowingly locate test dummies in different positions and those different positions could significantly affect test results.

MVMA submitted test data which it asserted showed that the response measurement for rear seat test dummy pelvic acceleration was directly related to the test dummy's lateral distance from the interior door trim. MVMA also submitted the results of a Ford study on dummy positioning in a 1990 Lincoln Continental. MVMA asserted that the Ford study identified lateral dummy position spread of up to 3.2 inches using the test dummy seating procedure specified in the final rules.

MVMA urged NHTSA to adopt a different dummy positioning procedure. MVMA recommended that NHTSA specify that the midsagittal plane of the test dummy be positioned on the longitudinal centerline of the manufacturer's Designated Seating Position, with a lateral tolerance of ±0.5 inches. According to MVMA, this location in the test vehicle can be determined by measuring from the vehicle centerline to the midsagittal plane. MVMA states that dimensions identifying the centerline of the DSP for individual vehicle models would be required from each manufacturer.

NHTSA agrees that pelvic readings on a test dummy would be affected by changes in lateral distance from the side surface of the struck car in a crash test. It is for this reason that NHTSA does not believe that it is appropriate to adopt the dummy positioning procedure suggested by MVMA. Under the MVMA approach, a manufacturer would be free to designate a seating position far away from the side surface of the car. As acknowledged by MVMA, a greater distance from the side surface of the car would lower pelvic readings on the test dummy during a crash test. However, actual passengers in such a car model may sit closer to the car's side surface, rather than in the designated seating position adopted by the vehicle's manufacturer. This would be particularly true for bench seats. Thus, the MVMA procedure might yield results that would not reflect actual sitting positions of many vehicle occupants. In addition, it would result in less stringent requirements for side impact protection.

Further, NHTSA believes that with the seating procedure specified in the final rules, there would be no noticeable variation in the position of the dummy in different cars of the same model, unless the vehicles have appreciable discrepancies in their dimensions. It is possible that the variability found in the data submitted by MVMA could be due to incorrect use of the prescribed seating procedures.

Therefore, NHTSA has decided to retain the dummy seating procedure specified in the final rules. NHTSA has concluded that this seating procedure is preferable to one recommended by MVMA and will not result in significant variability in dummy test results.

3. Test Dummy Calibration Corridor Width

MVMA also petitioned for a change in the pelvic acceleration calibration corridor width established in the final rules. Below, NHTSA discusses this aspect of the MVMA petition after explaining the concept of calibration corridors.

The final side impact rules set detailed specifications concerning the side impact dummy (SID) used for the dynamic side impact test. Before a test dummy can be used in a vehicle crash test, it must be examined to ensure that it conforms to all specifications set for the SID (including the blueprints of the SID, which are incorporated by reference in the final rules). In addition, the dummy must be carefully examined to make sure that it has been correctly assembled. Finally, the test dummy must pass a series of calibration tests, which are alo referred to as qualification tests. As stated in the preamble to the final rule establishing requirements for the SID, calibration tests are not the primary means for ensuring repeatability and reproducibility in full scale testing. The calibration tests serve as a final check on uniformity of construction, assembly, and instrumentation of the dummy and the proper functioning of the dummy as a system test device. They also help indicate if a dummy has been damaged in a prior test.

The final side impact rules established a SID pelvic acceleration calibration corridor of 40 to 60 g's, a width of 20 g's. MVMA recommended a narrower pelvic acceleration calibration corridor of 10 g's. MVMA agreed with NHTSA that the test dummy calibration corridor in the final rules would help reduce the risk of calibration failures. However, MVMA asserted that the benefits of fewer calibration failures "are vastly outweighed by the greater risk of unacceptably wide variation in test results that are produced by the wide calibration corridor." MVMA further asserted that the SID pelvic acceleration calibration corridor is "of itself a contributor to test-to-test variability." MVMA attached a regression analysis of Ford test data for the Taurus, which MVMA asserted indicated that pelvic acceleration could vary as much as 50 g's in crash tests, even if the test dummy responses were within the permissible calibration range. MVMA asserted that variations of this magnitude could produce "unmanageable and unpredictable crash test results."

NHTSA does not agree with MVMA that the calibration corridors established in the final rules will lead to excessive variability in vehicle crash test results, using the SID. As discussed more fully in Section III A of the Final Regulatory Impact Analysis for the final side impact rules, the variability for TTI(d) and pelvic acceleration observed by NHTSA in crash tests was less than 10 percent, far less than that cited by MVMA. In addition, there is inherent variability in crash tests. MVMA has no basis to ascribe all of this variability to the width of the dummy calibration corridors.

Further, as discussed above, calibration corridors are established to ensure that dummy system components are functioning properly in a laboratory environment. NHTSA believes that the agency has very thoroughly specified the various aspects of the SID. NHTSA is sufficiently confident about the tight specifications for the SID, that the agency concluded that a calibration corridor width of 20 g's would not cause unacceptable variation in dummy test results. As discussed more fully in the Final Regulatory Impact Analysis, NHTSA based this conclusion, in part, on an analysis of the side impact sled tests that had been conducted. After reviewing the material submitted by MVMA, NHTSA reaffirms this conclusion.

4. MDB Track Width and Other MDB Specifications

In its petition, MVMA stated that the regulatory text of the final side impact rules specify the MDB track width as 63 inches. MVMA asserted that drawing DSL-1287, which is incorporated by reference in the final rules, specifies 61.44 inches for the crabbed axle. MVMA stated that the addition of 6.6 inches for the wheel mounting plate and wheel produces a crabbed track width of 68.04 inches. MVMA concluded that there was a mistake in the MDB drawings and requested that the alleged discrepancies be corrected. MVMA also stated that the MDB drawings specify old American Motors Corporation (AMC) wheel hubs. MVMA requested that more readily available components be specified to facilitate maintenance and repair.

NHTSA has reviewed the drawing cited by MVMA and could not find the dimension cited by MVMA. The axle length for the crabbed barrier is 67.49 inches. Adding the wheel hub and tires increases the track width for the crabbed configuration to 74.0 inches. NHTSA believes that MVMA may have used the barrier track width of 63.0 inches for the straight configuration to calculate the axle length for the crabbed configuration. This mistake is understandable since the axle length for the crabbed configuration can be obtained only by adding several other dimensions in different parts of the MDB drawings. Therefore, NHTSA plans to amend the rule concerning the MDB to alleviate confusion concerning barrier specifications, including stating explicitly the MDB track width in the crabbed configuration.

In addition, NHTSA plans to amend the same rule to replace the specifications of the AMC wheel hubs that are not readily available with a generic specification.

D. Alternative Test Procedure

The ISO petitioned for NHTSA to review the draft ISO standard dealing with dynamic side impact test procedure "with the thought to substitute it or using it as an alternative for the test procedure specified by NHTSA in the final rule." The ISO thought that this would be in "the spirit of international harmonization." The ISO procedure specifies (1) a side impact test procedure, (2) test devices, and (3) the measurements to be made. However, the ISO procedure specifies no performance limits. According to the petitioner, the specification of performance limits is outside the charter of the ISO. The ISO procedure is only a draft one that has not yet officially been adopted by the ISO since the procedure has not been approved by the ISO members.

NHTSA received a comment on the NPRM from the ISO, which discussed similar issues. NHTSA explained why the agency did not adopt an approach like the draft ISO procedure in the preambles to the final side impact rules. The issue is also discussed at length in the Final Regulatory Impact Analysis. Briefly, NHTSA concluded that the barrier specified in the draft ISO procedure is not representative of the striking vehicle in side impact crashes in the United States. The barrier must be representative of striking vehicles to ensure that the dynamic crash test requirements result in safety measures that will reduce fatalities and injuries in actual crashes.

After reconsidering the issues, NHTSA reaffirms the earlier agency decision. However, NHTSA remains committed to international harmonization, where practical. As European and other nations develop their side impact standards, NHTSA will consider whether further rulemaking is appropriate.

In conclusion, based on the foregoing discussion, NHTSA is denying the petitions for reconsideration, except with respect to requests for certain changes in specifications concerning the

axle length of the MDB in the crabbed mode and the wheel hub of the MDB. The agency plans to issue a separate final rule concerning those issues shortly.

Issued on January 24, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-2217 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-66-89]

RIN 1545-AO14

Allocation and Accounting Rules on Tax Exempt Bonds for Arbitrage Rebate Purposes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to arbitrage rebate requirements applicable to tax exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Act of 1988, and the Revenue Reconciliation Act of 1990. The proposed regulations affect issuers of tax exempt bonds and provide guidance on general allocation and accounting rules applicable for purposes of the arbitrage rebate requirement.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing must be received by March 30, 1992. A notice of public hearing on these regulations will be published in the near future in the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-66-89), Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William P. Cejudo, 202-566-3283 (not a toll-free number). Concerning the public hearing, Carol Savage of the Regulations Unit, 202-566-3935.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Income Tax Regulations (26 CFR part 1) under section 148(f) of the Internal Revenue Code to provide general allocation and accounting rules for arbitrage rebate purposes. The Tax Reform Act of 1986 added section 148(f) to the Code. The Technical and Miscellaneous Act of 1988 and the Revenue Reconciliation Act of 1990 amended this section. The proposed regulations propose to amend the provisions of the temporary and proposed regulations §§ 1.148-0T through 1.148-8T published in the **Federal Register** for May 15, 1989 (54 FR 20787), as modified by temporary and proposed regulations published in the **Federal Register** for April 25, 1991 (56 FR 19045).

Explanation of Provisions

I. Background and Scope of Regulations

A. Background on Arbitrage Rebate Requirement and Need for Accounting Guidance

Code section 148(f), enacted in 1986, extended the requirement that issuers of tax exempt bonds rebate to the Federal government certain arbitrage derived from investing proceeds of the bonds at a yield in excess of bond yield. On May 15, 1989, temporary regulations were published under section 148(f) at §§ 1.148-0T through 1.148-8T (the "arbitrage rebate regulations"). On April 25, 1991, simplifying amendments to the arbitrage rebate regulations were published. Guidance on general allocation and accounting rules for purposes of the arbitrage rebate requirement was reserved in the arbitrage rebate regulations. The purpose of these proposed regulations is to provide those allocation and accounting rules.

In the legislative history to recent tax acts, Congress has encouraged the adoption of simplified general accounting regulations for arbitrage rebate purposes. The statutory arbitrage rebate requirement itself, however, generally requires precise computations of yields on tax exempt bonds and investments of bond proceeds. The proposed regulations provide simplified general arbitrage rebate accounting rules to the extent possible to provide issuers with maximum flexibility in accounting methods. The proposed regulations provide specific accounting rules to the extent necessary to implement the arbitrage rebate requirement and to prevent abuse.

B. Scope and Prospective Effective Date of Regulations

The proposed regulations provide general allocations and accounting rules with respect to the arbitrage rebate requirement for all purposes of section 148(f). The proposed regulations apply to methods used to account for investments and expenditures of gross proceeds of tax exempt bond issues.

The regulations are proposed to apply to tax exempt bonds issued after the date that is 30 days after publication of final regulations in the **Federal Register.**

C. Anticipated Extension of the Proposed Regulations to Other Tax Exempt Bond Provisions

The proposed regulations apply only for purposes of the arbitrage rebate requirement (i.e., section 148(f)). Existing §§ 1.103-13 to 1.103-15 continue to apply for general arbitrage yield restriction purposes under section 148. The purposes of the general arbitrage yield restrictions under section 148 and the arbitrage rebate requirement under section 148(f) are similar in many respects. Although both of these restrictions have the same general objective of controlling inappropriate arbitrage investments of tax-exempt bond proceeds, the existing regulatory guidance implementing these restrictions is inconsistent in many respects. For example, different definitions of tax exempt bond "proceeds" apply.

The Service intends to simplify this area by issuing more integrated rules. In particular, the Service is considering the adoption of the allocation and accounting concepts contained in these proposed regulations for purposes of section 148 generally.The Service is considering the adoption of unified definitions of "proceeds" for all purposes of section 148 and the withdrawal of existing regulatory guidance under section 148 to the extent that it is inconsistent with the proposed regulations. Provisions that may be withdrawn include §§ 1.103-13(c)(1)(iii)(B) ("market price" rules for refundings), § 1.103-13(f) (allocation and accounting rules for arbitrage yield restriction purposes), § 1.103-13(g)(6)

(sinking fund allocation rules), and § 1.103–14(c) (tax and revenue anticipation notes). The Service solicits comments on these proposals.

II. Description of Allocation and Accounting Rules

A. General Rule Permitting Reasonable, Consistently Applied Accounting Methods.

The proposed regulations generally permit an issuer to use any reasonable, consistently applied accounting method for arbitrage rebate purposes, except to the extent that a specific accounting method is mandated. Of primary importance under this general rule is the consistency requirement. The proposed regulations also contain a broad, general anti-abuse rule that prohibits use of any accounting method as an artifice or device to avoid the arbitrage rebate requirements.

B. Allocation of Gross Proceeds to an Issue

The proposed regulations generally require allocations of gross proceeds to an issue in the manner required by the definition of gross proceeds under the existing arbitrage rebate regulations. Moneys generally are allocable to only one issue at a time as gross proceeds. For example, moneys that otherwise might be treated as gross proceeds of more than one bond issue (under the general definition of gross proceeds) are allocated to only one issue under a special ordering rule for different kinds of gross proceeds (e.g., original proceeds, transferred proceeds, or replacement proceeds). Moneys are allocated to certain kinds of gross proceeds before others. For example, if moneys would be both original proceeds of issue A and replacement proceeds of issue B, the ordering rule requires that the moneys be treated only as original proceeds of issue A. These provisions generally continue principles of existing law.

The proposed regulations also contain a new "universal cap" rule that limits the amount of invested gross proceeds allocable to a bond issue. The universal cap provides generally that the amount of invested gross proceeds of a bond subject to arbitrage rebate is limited to the amount of the bonds outstanding. The universal cap generally clarifies the outside limit on amounts treated as invested gross proceeds allocated to an issue and subject to arbitrage rebate.

C. Allocation of Gross Proceeds to Investments

The proposed regulations provide generally that gross proceeds may not be allocated to the purchase of an investment in an amount greater than, or to the sale of an investment in an amount less than, fair market value. The Service is aware of abuses involving investment of gross proceeds in securities or contracts that provide a guaranteed rate of return (commonly referred to as "guaranteed investment contracts"). To prevent abuses such as "yield-burning" involving these investment contracts, the proposed regulations provide special requirements for any allocations of gross proceeds to the purchase of these investment contracts.

The proposed regulations provide a safe harbor for a fair market value purchase of a certificate of deposit. Under this safe harbor, if an issuer purchases a certificate of deposit in compliance with a prescribed "three-bid" procedure, the purchase is deemed to be at fair market value. It is anticipated that comparable safe harbors for other standardized financial investments will be provided in the future. The Service solicits comments on other appropriate safe harbors.

D. Allocation of Gross Proceeds to Expenditures

1. *General allocation rules for expenditures.* The proposed regulations contain a general, cash-based expenditure rule for gross proceeds. Any expenditure of gross proceeds generally must involve a reasonably current outlay of cash (normally within five banking days) and carry out a governmental purpose of an issue. Investment in a nonpurpose investment is not an expenditure of gross proceeds for purposes of the arbitrage rebate requirement.

Consistent with existing treatment of conduit finanacings, the proposed regulations generally treat gross proceeds lent to a conduit borrower as unspent for arbitrage rebate purposes until the conduit borrower spends the gross proceeds for the governmental purpose of the bond issue. A special rule permits an isssuer to treat tax exempt bonds used to finance single-family housing and student loans as spent when the issuer makes or purchases the qualifying loans.

2. *Special allocation rules for working capital expenditures.* The proposed regulations provide needed guidance on allocations of gross proceeds to working capital expenditures. The proposed regulations define a "working capital expenditure" to mean any cost of a type that does not constitute a capital expenditure (as defined in § 1.150–1(b)). This definition of working capital expenditure was chosen because the capital expenditure standard is a known Federal tax standard. Abuses have occurred involving the allocation of gross proceeds to working capital expenditures. For example, in an effort to avoid the arbitrage rebate requirements, some issuers have engaged in the practice of allocating gross proceeds to working capital expenditures on a "specific tracing" basis (without regard to other funds available to pay the working capital expenditures). This practice raises concerns under the replacement rule of section 148(a).

Existing regulations with respect to "tax and revenue anticipation notes" ("TRANs") under § 1.103–14(c) provide a temporary period and a maximum principal amount rule for TRANs. Consistent with the approach of the statutory rebate safe harbor for TRANs under section 148(f)(4)(B)(iii), the proposed regulations reformulate the § 1.103–14(c) TRANs temporary period and sizing rule into a more properly focused working capital expenditure rule. In addition, existing § 1.103–14(c) is deficient because it addresses only short-term TRANs financings and fails to provide any regulatory guidance for long-term working capital financings. The proposed regulations provide rules applicable for all allocations of gross proceeds to working capital expenditures regardless of the maturity of the bond issue.

The proposed regulations generally permit allocation of proceeds of tax exempt bonds to working capital expenditures only after all other "available amounts" are spent for working capital purposes. This is in essence a "gross-proceeds-spent-last" allocation rule similar to that found in the TRANs rules under § 1.103–14(c). The definition of "available amounts" is generally the same as in § 1.103–14(c), with certain modifications. These modifications include a rule that permits an issuer to treat a reasonable working capital reserve as unavailable and an anti-abuse rule that ignores actions taken to make amounts unavailable for a purpose of avoiding arbitrage restrictions. The proposed regulations also provide a special rule that permits an issuer to spend certain limited amounts of gross proceeds on working capital associated with a "start-up" project without regard to the general "gross-proceeds-spent-last" rule. In addition, the proposed regulations clafify the treatment of working capital expenditures for purposes of the bond maturity limitation under section 147(b).

3. *Special allocation rules for grant expenditures.* Consistent with the

general treatment of conduit financings, the proposed regulations generally treat gross proceeds used to make a "grant" as spent only when the grantee spends the grant moneys for the ultimate governmental purpose of the grant. The "making of grants" in itself is not an ultimate governmental purpose. The proposed regulations define the term "grant" strictly to mean unconditional payments from the grantor to the grantee without any direct or indirect repayment obligation on the part of the grantee (other than repayment when the grantee fails to carry out the purpose of the grant).

Many States use tax exempt bonds to finance broad-based grant programs for their local governments, especially smaller governmental units. The Service recognizes that arbitrage rebate tracking of disbursed grant funds may be administratively burdensome for these issuers. The proposed regulations, therefore, contain a special rule that treats certain eligible grants of proceeds of bonds to uncontrolled grantees for prescribed uses as spent on the date the grantor gives the grant moneys to the grantee. This special rule is not available for grants expected to be used for working capital expenditures or for private business uses.

Grants of bond proceeds may not be used as an artifice or device to avoid arbitrage and other tax exempt bond restrictions. The governmental purpose of a grant is not the making of the grant itself but the ultimate use of the grant proceeds by the grantee. For example, if a grantee uses grant proceeds for a private business use under section 141, the grantor is treated as having used the grant proceeds for a private business use.

E. Special Allocation Rules for Commingled Funds

Many issuers routinely commingle gross proceeds of an issue with other funds for investment purposes in order to make more efficient investments at higher yields. In recognition of this common commingling practice, the proposed regulations generally permit issuers to commingle gross proceeds with other funds. The proposed regulations provide certain minimum special allocation and accounting rules for commingled funds to assure that allocations of earnings from these funds do not result in distortions for arbitrage rebate purposes. A "commingled fund" is any fund that contains both gross proceeds of an issue and other amounts. The commingled fund accounting rules apply to both internal commingled funds (e.g., an issuer's general fund) and external commingled funds (e.g., a State investment pool for local governments).

In order for an accounting method used by a commingled fund to be reasonable under the proposed regulations, the commingled fund must follow the general accounting requirements that apply to all gross proceeds of bonds and must follow certain special accounting requirements applicable to commingled funds. First, fund earnings, gains, and losses must be allocated among investors on the basis of a consistently applied, reasonable ratable allocation method. Specific tracing of high-yielding investments in a commingled fund to unrestricted-yield sources and low-yielding investments in the fund to tax exempt sources is not a reasonable method.

Second, a commingled fund must compute and allocate accrued earnings, realized gains and losses, and expenditures at least quarterly.

Third, a commingled fund must account for unrealized gains and losses by either limiting its average investment portfolio maturity to one year or marking its investment portfolio to fair market value at least annually. The purpose of this requirement is to prohibit the timing of sales of investments resulting in realized gains or losses in a manner that would minimize arbitrage earnings allocable to gross proceeds in the commingled fund. The Service solicits comments on other reasonable methods of accounting for unrealized gains and losses on investments in commingled funds that would prevent the abuse described in the preceding sentence.

Fourth, the proposed regulations permit commingled funds to take into account certain qualified administrative costs for arbitrage rebate purposes. This provision simplifies commingled fund accounting by permitting commingled funds to pass through net income to investors without "grossing up" income to reflect qualified administrative costs of the commingled fund. The proposed regulations limit qualified administrative costs to .25 percent of the average daily balance of amounts invested in the commingled fund for the fiscal year up to an average daily balance of $10,000,000 and .125 percent of the average daily balance in excess of $10,000,000. This provision applies only to commingled funds and does not apply to other investments of gross proceeds. Administrative costs of a commingled fund in excess of the amounts specified above do not reduce the earnings of the commingled fund that are passed through to its investors.

F. Special Commingled Investment Earnings Exception to the Arbitrage Rebate Requirement

The proposed regulations provide a modified commingled investment earnings exception for arbitrage rebate purposes similar to the exception contained in § 1.103–13(b)(2)(ii). Under § 1.103–13(b)(2)(ii), certain earnings on invested bond proceeds cease to be treated as proceeds of the bond subject to arbitrage yield restrictions upon reinvestment if the amounts are commingled within one year of receipt "with substantial tax or other substantial revenues from operations by a State or local government." The proposed regulations provide a commingled earnings exception that treats certain investment earnings of eligible governmental bonds as spent on the date of deposit in an eligible commingled fund if the earnings are reasonably expected to be spent within six months. The purpose of this exception is to simplify accounting for gross proceeds.

The six-month reasonably expected expenditure test has no mandatory verification requirements beyond reasonable expectations. One alternative considered was a longer expected expenditure period for this exception (e.g., 1 year) with more verification requirements to assure prompt expenditure of commingled earnings under a reasonable accounting method. For example, if a one-year expected expenditure period were adopted, a verification requirement requiring issuers to assume expenditure of commingled earnings on a "first-in, first-out" basis from the commingled fund to establish reasonable expectations might also be adopted. Another alternative considered was a "look-back" verification requirement that would require issuers to take into account their actual rate of expenditure of commingled earnings in the previous fiscal year. The six-month reasonable expectations expenditure test was chosen because it has relatively easy qualification requirements for issuers and it has a relatively immaterial impact on arbitrage. The Service solicits comments on various approaches to a commingled investment earnings exception.

Effective Date

These regulations are proposed to apply to bonds issued 30 days after the date of publication of final regulations in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (perferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A notice of public hearing on these proposed regulations will be published in the near future in the **Federal Register.**

Drafting Information

The principal authors of these proposed regulations are John J. Cross III, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, and David A. Walton, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the Service and Treatury Department participated in their development.

List of Subjects in 26 CFR 1.148–9T Through 1.150–1T

Bonds, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Note: The section numbers cited in the instructional paragraphs below as proposed sections reflect the section numbers as they would appear in the final rule (example: § 1.148–4). They do not reflect the "T" suffix currently found in the temporary rule version (example: § 1.148–4T).

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

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

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.148–0 through 1.148–9 also issued under 26 U.S.C. 148 (f) and (i).

Par. 2. Proposed § 1.148–0 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice of proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing temporary regulations published the same day (56 FR 19023), is amended as follows:

1. The introductory text of paragraph (d) of § 1.148–0 is revised as set forth below.

2. The § 1.148–4 entries are removed.

3. New § 1.148–4 entries are added as set forth below.

§ 1.148–0 Scope and effective date of restrictions on arbitrage (temporary).

* * * * *

(d) *List of subjects.* This paragraph (d) lists the captioned paragraphs contained in the temporary and final regulations in §§ 1.148–1T through 1.148–9T.

* * * * *

§ 1.148–4 Allocation and accounting rules.

(a) In general.
(1) Reasonable accounting methods required.
(2) Anti-abuse rule for accounting methods.
(3) Application of rules to conduit borrowers.
(4) Certain definitions.
Accounting method.
Commingled fund.
Consistently applied.
Grant.
Working capital expenditure.
(b) Allocation of gross proceeds to an issue.
(1) In general.
(2) "One-issue" rule and general ordering rules.
(3) Universal cap on value of nonpurpose investments allocated to an issue.
(i) Universal cap in general.
(ii) Certain nonpurpose investments allocated to an issue despite the universal cap limitation.
(iii) When the universal cap is computed and applied.
(iv) Valuation for purposes of universal cap.
(v) Allocations of amounts in excess of the universal cap.
(vi) Consequences of certain failures to do computations.
(c) Allocations of gross proceeds to investments.
(1) In general.
(2) Fair market value limit on allocations to nonpurpose investments.
(3) Requirements for purchase of an investment contract.
(i) In general.
(ii) Requirements for a qualifying bid.
(4) Safe harbor for purchase of a certificate of deposit.
(i) In general.
(ii) Requirements for a qualifying bid.
(d) Allocations of gross proceeds to expenditures.
(1) Expenditures in general.
(i) General rule.
(ii) General limitation.
(iii) Deviations from general accounting method.
(2) Expenditures of gross proceeds invested in purpose investments.
(i) In general.
(ii) Exception for qualified owner-occupied residence loans and qualified student loans.
(3) Expenditures for working capital purposes.
(i) In general.
(ii) De minimis exception for start-up projects.
(iii) Definition of available amount.
(iv) Other rules relating to working capital expenditures.
(4) Expenditures for grants.
(i) In general.
(ii) Special exception for certain grants.
(iii) Characterization of repayments of grants.
(5) Expenditures for reimbursement purposes.
(e) Special rules for commingled funds.
(1) In general.
(2) Investments held by a commingled fund.
(i) In general.
(ii) Permitted ratable allocation methods.
(iii) Definition of investor.
(iv) Definition of average daily balance.
(3) Certain expenditures involving a commingled fund.
(4) Computation periods.
(5) Unrealized gains and losses on investments of a commingled fund.
(i) Commingled funds with shorter-term investment portfolios.
(ii) Market-to-market requirement for commingled funds with longer-term investment portfolios.
(iii) Definition of weighted average maturity.
(6) Administrative costs of a commingled fund.
(i) In general.
(ii) Exception for qualified administrative costs.
(7) Allocations among issues of commingled funds serving as common reserve funds or sinking funds.
(i) Permitted ratable allocation methods.
(ii) Frequency of allocations.
(8) Expenditures of certain commingled investment proceeds of governmental issues.
(i) Commingled with certain governmental revenues.
(ii) Reasonably expected to be spent within six months.
(f) Consequences of certain failures to use permitted accounting methods.

* * * * *

Par. 3. Proposed § 1.148–4 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice or proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing

temporary regulations published the same day (56 FR 19023), is revised to read as follows:

§ 1.148-4. Allocation and accounting rules.

(a) *In general*—(1) *Reasonable accounting methods required.* Except as otherwise provided in section 148, this section, or another regulation under section 148, an issuer may use any reasonable, consistently applied accounting method to account for gross proceeds of an issue for purposes of section 148(f). The determination of the reasonableness of any accounting method is based on all the facts and circumstances.

(2) *Anti-abuse rule for accounting methods.* For purposes of this section, an accounting method is not reasonable if it is employed as an artifice or device under § 1.148-9T(g) to avoid, in whole or in part, the arbitrage rebate requirements.

(3) *Application of rules to conduit borrowers.* Except as otherwise provided in this section, the allocation and accounting rules of this section apply to a conduit borrower (as defined in § 1.150-1(g)) of gross proceeds of an issue to the same extent as they apply to the issuer. Accordingly, a conduit borrower must comply with this section to account for any gross proceeds of an issue received by it under a purpose investment.

(4) *Certain definitions.* For purposes of this section, the following definitions apply:

Accounting method. "Accounting method" means both the overall method used to account for gross proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing).

Commingled fund. "Commingled fund" means any fund or account that contains both gross proceeds of an issue and amounts that are not gross proceeds of that issue.

Consistently applied. With reference to an accounting method, "consistently applied" means that the method accounts uniformly for:

(A) Gross proceeds of an issue in a commingled fund and any other amounts in the same commingled fund containing those gross proceeds;

(B) Gross proceeds of an issue for each fiscal year or interim fiscal period therein during which the issue is outstanding; and

(C) Gross proceeds of an issue and all other funds of an issuer not contained in a commingled fund with those gross proceeds. (For purposes of this paragraph (C) of this definition, an accounting method does not fail to be consistently applied solely because the issuer uses a different accounting method to account for a particular amount, provided that this use of a different accounting method is for a bona fide purpose and is not an artifice or device under § 1.148-9T(g) to avoid, in whole or in part, the arbitrage rebate requirements.)

Grant. Grant means a transfer of money or property by a grantor to a grantee that accomplishes a governmental purpose of the grantor and that, except as expressly permitted by this definition, imposes no obligation or condition on the grantee:

(A) To repay the grant directly or indirectly with money, property, or services furnished;

(B) To satisfy any obligation of the grantor; or

(C) To provide any other consideration whatsoever for the benefit of the grantor.

Whether a grantor imposes an obligation or condition is determined on the basis of all the facts and circumstances. Conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent an otherwise eligible transfer from being a grant, unless the governmental purpose of the transfer is the satisfaction of an obligation of the grantor. For example, if a transferee is required to repay the transferred amount for failure to satisfy conditions that are described in the preceding sentence, this requirement does not disqualify an otherwise qualifying transfer as a grant. See paragraph (d)(4)(iii) of this section for characterization of repayments of grants.

Working capital expenditure. The term *working capital expenditure* means any cost of a type that does not constitute a capital expenditure (as defined in § 1.150-1(h)). For example, working capital expenditures generally include current operating expenses. See paragraph (d)(3)(iv)(B) of this section for the deemed economic life of working capital expenditures for certain purposes.

(b) *Allocation of gross proceeds to an issue*—(1) *In general.* Except as otherwise provided in this section or in applicable regulations on refunding issues under section 148, amounts are allocable to an issue as gross proceeds in the manner required by the definition of gross proceeds under § 1.148-8T. Transferred proceeds and proceeds of a refunding issue are allocable to an issue based on the requirements of any applicable regulations on refunding issues under section 148.

(2) *"One-issue" rule and general ordering rules.* Except as otherwise provided in this section, amounts are allocable to only one issue at a time as gross proceeds. Except as otherwise provided in this section, amounts that are original proceeds or transferred proceeds allocable to an issue must be so allocated to that issue and may not be allocated instead as replacement proceeds to another issue. Amounts cease to be original proceeds or transferred proceeds allocated to an issue only when they are properly allocated to an expenditure for a governmental purpose of that issue, when they become transferred proceeds of another issue, or when they cease to be allocated to that issue by operation of the limitation under paragraph (b)(3) of this section.

(3) *Universal cap on value of nonpurpose investments allocated to an issue*—(i) *Universal cap in general.* Except as otherwise provided in paragraph (b)(3)(ii) of this section, nonpurpose investments of gross proceeds of an issue are allocated (and remain allocated) to the issue only to the extent that the value (as defined in paragraph (b)(3)(iv)(B) of this section) of these nonpurpose investments does not exceed the value (as defined in paragraph (b)(3)(iv)(A) of this section) of all outstanding bonds of the issue. (The value of all outstanding bonds of the issue is referred to as the "universal cap.") Paragraphs (b)(3) (ii) through (v) of this section provide rules on exceptions, frequency of computations, valuation, and reallocations for purposes of this rule.

(ii) *Certain nonpurpose investments allocated to an issue despite the universal cap limitation*—(A) *In general.* Nonpurpose investments of gross proceeds described in paragraph (b)(3)(ii)(B) or (b)(3)(ii)(C) of this section are allocated to an issue in any event and are not subject to the limitations imposed by the universal cap under paragraph (b)(3)(i) of this section. Thus, the value of these nonpurpose investments does not reduce the aggregate value of nonpurpose investments proceeds that may be allocated to the issue under the universal cap.

(B) *Invested amounts during first year of initial temporary period.* Amounts (other than gross proceeds of a refunding issue) are described in this paragraph (b)(3)(ii)(B) if they are invested in nonpurpose investments

during the 1-year period following the date of issue and they qualify for an initial temporary period for unrestricted investment under section 148(c).

(C) *Invested amounts exempt from arbitrage rebate.* Amounts are described in this paragraph (b)(3)(ii)(C) if they are invested in nonpurpose investments of gross proceeds of an issue during any period to the extent that they qualify for an exception to the arbitrage rebate requirement under section 148(f). For example, notwithstanding their value and regardless of the universal cap, if nonpurpose investments of gross proceeds of an issue are held in a bona fide debt service fund that qualifies for an exception to the arbitrage rebate requirement under section 148(f)(4), those nonpurpose investments are allocated to an issue.

(iii) *When the universal cap is computed and applied*—(A) *Computation.* For purposes of paragraph (b)(3)(i) of this section, the values of the universal cap and the nonpurpose investments must be computed as of the date of issue and as of the first day of each bond year thereafter. In addition, in the case of a refunding issue and a refunded issue, these values must be computed as of each date that, without regard to the limitations in this paragraph (b)(3), proceeds of the refunded issue would become transferred proceeds of the refunding issue under applicable regulations on refunding issues under section 148.

(B) *Application.* The rule of paragraph (b)(3)(i) applies continuously. Between required dates of computation of the universal cap under paragraph (b)(3)(A) of this section, nonpurpose investments cease to be allocated to an issue to the extent that they are expended on a governmental purpose of the issue or otherwise cease to be allocated to the issue under the rules of paragraphs (b)(1) and (b)(2) of this section. To the extent that nonpurpose investments cease to be allocated to the issue, other nonpurpose investments of gross proceeds are allocated to the issue up to the amount of the unused universal cap. Allocations of nonpurpose investments under this paragraph (b)(3)(iii)(B) must be done not less frequently than quarterly. To the extent that nonpurpose investments do not cease to be allocated to the issue under this paragraph (b)(3)(iii)(B) at any time, their values continue to be their values as of the most recent date that these values were computed under paragraph (b)(3)(iii)(A) of this section.

(iv) *Valuation for purposes of universal cap.* For purposes of paragraph (b)(3)(i) of this section, the values of outstanding bonds and nonpurpose investments are computed as follows—

(A) *Value of outstanding bonds.* The value of all outstanding bonds of a fixed yield issue is equal to the present value of those bonds computed using the yield (as defined in § 1.148–3T(c)(1)) on the issue as the discount rate. The value of all outstanding bonds of a variable-yield issue is equal to the present value of those bonds determined under § 1.148–3T. See § 1.148–3T(b)(8) (i) and (iii), § 1.148–3T(b)(9), and § 1.148–3T(d)(4), *Examples 1* and *2.*

(B) *Value of nonpurpose investments.* The value of a nonpurpose investment on a date is equal to the receipt that would be taken into account on that date under § 1.148–2T(b)(2)(iii) if that date were a rebate installment computation date.

(v) *Allocations of amounts in excess of the universal cap*—(A) *General ordering rule.* If, on a date specified in paragraph (b)(3)(iii) of this section, nonpurpose investments of gross proceeds allocated to an issue have a value in excess of the universal cap, an amount of those investments necessary to eliminate that excess cease to be allocated to the issue. Nonpurpose investments cease to be allocated to gross proceeds of the issue in the following order—

(*1*) First, nonpurpose investments of replacement proceeds of the issue;

(*2*) Second, nonpurpose investments of transferred proceeds of the issue; and

(*3*) Third, nonpurpose investments of original proceeds of the issue.

(B) *Re-allocation after ordering.* If nonpurpose investments of gross proceeds of an issue exceed the universal cap and therefore cease to be allocable to an issue, they become eligible for allocation to another issue. For example, they may be allocated to another issue as replacement proceeds in accordance with the rules governing replacement proceeds. If nonpurpose investments of transferred proceeds of an issue exceed the universal cap and therefore cease to be gross proceeds of that issue, the nonpurpose investments are treated as proceeds of the issue from which they transferred to the extent of the unused universal cap on that issue.

(vi) *Consequences of certain failures to do computations.* A failure to do any computation under this paragraph (b)(3) does not violate this section if, in the absence of that failure, the issue nevertheless would have satisfied paragraph (b)(3)(i) of this section.

(c) *Allocations of gross proceeds to investments*—(1) *In general.* Except as otherwise provided in this section, gross proceeds of an issue may be allocated to investments pursuant to any reasonable, consistently applied accounting method.

(2) *Fair market value limit on allocations to nonpurpose investments.* Gross proceeds of an issue are not allocated to a payment for a nonpurpose investment in an amount greater than, or to a receipt from the sale or other disposition of a nonpurpose investment in an amount less than, the fair market value (as defined in § 1.148–2T(d)) of the nonpurpose investment.

(3) *Requirements for purchase of an investment contract*—(i) *In general.* For purposes of this section, any allocation of gross proceeds of an issue to a payment for the purchase of an investment contract is reasonable only if the following requirements are satisfied:

(A) In response to a solicitation for a specified investment contract, the issuer receives qualifying bids (as defined in paragraph (c)(3)(ii) of this section) from at least three separate financial institutions that have no material financial interest in the issue.

(B) The issuer purchases the highest-yielding investment contract for which a qualifying bid is made.

(ii) *Requirements for a qualifying bid.* For purposes of this paragraph (c)(3)(ii), a bid for an investment contract is a qualifying bid only if it satisfies the following requirements:

(A) The bidder is a reasonably competitive provider of investment contracts of the type solicited.

(B) Except for provisions on drawdowns for short-term reinvestment of float funds or reasonably required reserve and replacement funds, the investment contract under the bid generally restricts drawdowns prior to the time at which the issuer reasonably expects to need the gross proceeds for the governmental purpose of the issue (e.g., no unlimited liquidity contracts). If invested proceeds are to be used for construction or similar purposes, the reasonably expected drawdown schedule must be certified by a licensed engineer or architect. If those proceeds are to be used for other governmental purposes (e.g., single-family housing loans), the reasonably expected drawdown schedule must be certified by any qualified expert, based on the facts and circumstances.

(C) The collateral security requirements for the investment contract under the bid are reasonable, based on all the facts and circumstances.

(D) The bidder certifies all expenses reasonably expected to be incurred directly or indirectly in connection with the investment contract.

(E) The bidder undertakes to furnish an independent audited financial

statement reflecting direct expenses relating to the investment contract within a reasonable period of time after termination of the investment contract if the bid is accepted.

(F) The yield on the investment contract under the bid is not directly related to the yield on the issue.

(G) The yield on the investment contract under the bid is not less than the yield then currently available from the bidder on reasonably comparable investment contracts offered to other persons, if any.

(H) The yield on the investment contract under the bid is not less than the yield on reasonably comparable direct obligations of the United States (or, if lower, the yield on direct obligations of the United States that mature in approximately five years after the date of the bid).

(4) *Safe harbor for purchase of a certificate of deposit*—(i) *In general.* For purposes of paragraph (c)(2) of this section, the fair market value of a certificate of deposit at the time it is purchased is considered to be its purchase price if the issuer satisfies the following requirements:

(A) In response to a solicitation for a certificate of deposit specifying a fixed principal amount and fixed maturity, the issuer receives qualifying bids (as defined in paragraph (c)(4)(ii) of this section) from at least three separate financial institutions that have no material financial interest in the issue.

(B) The issuer purchases the highest-yielding certificate of deposit for which a qualifying bid is made.

(ii) *Requirements for a qualifying bid.* For purposes of this paragraph (c)(4)(ii), a bid for a certificate of deposit is a qualifying bid only if it satisfies the following requirements:

(A) The yield on the certificate of deposit under the bid is not less than the yield then currently available from the bidder on comparable certificates of deposit offered to other persons.

(B) The yield on the certificate of deposit under the bid is not less than the yield on reasonably comparable direct obligations of the United States (or, if lower, the yield on direct obligations of the United States that mature in approximately five years).

(d) *Allocation of gross proceeds to expenditures*—(1) *Expenditures in general*—(i) *General rule.* Except as otherwise provided in this section, gross proceeds of an issue may be allocated to expenditures pursuant to any reasonable, consistently applied accounting method. Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods applied consistently: a "specific tracing" method, a "gross-proceeds-spent-first" method, a "first-in, first-out" method, or a ratable allocation method. See the special rules for working capital expenditures in paragraph (d)(3) of this section and for commingled fund expenditures in paragraph (e) of this section.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a reasonably current outlay of cash and must carry out a governmental purpose of the issue. Thus, an investment in a nonpurpose investment is not an expenditure. A "reasonably current outlay of cash" means an outlay, by check mailed, or available funds advanced, that is reasonably expected to occur not later than 5 banking days after the allocation of gross proceeds to the expenditure.

(iii) *Deviations from general accounting method.* For purposes of paragraph (d)(1) of this section, a general accounting method for expenditures does not fail to be a reasonable, consistently applied accounting method because the issuer uses a different accounting method to account for a particular expenditure, provided that this use of a different accounting method is for a bona fide purpose and is not an artifice or device under § 1.148-9T(g) to avoid, in whole or in part, the arbitrage rebate requirements. For example, a reason that may justify an issuer's deviation from its general accounting method for expenditures in appropriate circumstances is to avoid forfeiture of a grant.

(2) *Expenditures of gross proceeds invested in purpose investments*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment expends the proceeds to carry out the governmental purpose of the issue. For example, if an issuer lends the gross proceeds of an issue to a conduit borrower under a purpose investment to carry out the governmental purpose of providing an exempt facility under section 142, the gross proceeds are allocated to an expenditure on the date on which the conduit borrower expends the gross proceeds on costs of the exempt facility.

(ii) *Exception for qualifed owner-occupied residence loans and qualified student loans.* If gross proceeds of an issue are invested in a purpose investment that is a qualified loan for an owner-occupied residence under section 143 or a qualified student loan under section 144(b), those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer invests gross proceeds in that purpose investment.

(3) *Expenditures for working capital purposes*—(i) *In general.* Except as provided in paragraph (d)(3)(ii) of this section, gross proceeds of an issue and available amounts (as defined in paragraph (d)(3)(iii) of this section) may be allocated to working capital expenditures only under a consistently applied "gross-proceeds-spent-last" method. Gross proceeds may be allocated to working capital expenditures as of any date only to the extent that working capital expenditures exceed available amounts calculated as of that date.

(ii) *De minimis exception for start-up projects*—(A) *Qualifed working capital expenditures.* Gross proceeds of an issue may be allocated to qualified working capital expenditures described in this paragraph (d)(3)(ii) under any reasonable, consistently applied accounting method, without regard to other available amounts (e.g., a "gross-proceeds-spent-first" method or a "specific-tracing" method). Working capital expenditures are qualified working capital expenditures only if they directly relate to a project described in paragraph (d)(3)(ii)(B) and they do not exceed the amount specified in paragraph (d)(3)(ii)(C).

(B) *Definition of project.* For purposes of paragraph (d)(3)(ii)(A) of this section, "project" means a newly-constructed or reconstructed operating facility that consists of real property or tangible personal property and that is reasonably expected, after an initial start-up period, to produce sufficient operating revenues to pay substantially all costs of operating the project, including maintenance, other working capital costs, and debt service.

(c) *Amount limitation.* Amounts are qualified working capital expenditures only if they do not exceed the lesser of the following amounts—

(*1*) The amount reasonably expected to be required to operate the project during the one-year period after it is placed in service; or

(*2*) 5 percent of the reasonably expected cost of the project.

(iii) *Definition of available amount*—(A) *In general.* For purposes of this paragraph (d)(3), "available amount" means any amount available to an issuer for working capital expenditure purposes (as defined in paragraph (a)(4) of this section), as further specified in

this paragraph (d)(3)(iii), but the term does not include gross proceeds of the issue. "Available amount" includes cash, investments, and other amounts held in accounts or otherwise by the issuer or any member of the same controlled group (as defined in § 1.150–1(f)) as the issuer if those amounts may be used by the issuer for working capital expenditures without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Permitted working capital reserve.* In determining whether an amount is available, a reasonable working capital reserve is treated as not available. The determination of whether a working capital reserve is reasonable is based on all the facts and circumstances regarding the issuer's operations and working capital expenditure needs. Absent extraordinary circumstances, a reasonable working capital reserve generally should not exceed an amount equal to 10 percent of the issuer's actual working capital expenditures in the previous fiscal year.

(C) *Attempts to keep amounts from being available.* In determining whether an amount is available to an issuer, any requirement that the issuer reimburse the amount and any action or lack of action by or on behalf of the issuer is disregarded if that requirement, action, or lack of action is an artifice or device under § 1.148–9T(g) to prevent amounts from being available for working capital expenditures for purposes of this paragraph (d)(3).

(iv) *Other rules related to working capital expenditures*—(A) *Statutory safe harbor for tax and revenue anticipation bond expenditures.* For purposes of section 148(f)(4)(B)(iii)(II), "amount available" has the same meaning as in paragraph (d)(3)(iii) of this section, except that the determination is made without regard to the otherwise-permitted reasonable working capital reserve.

(B) *Deemed economic life of working capital expenditures.* For purposes of section 147(b), all working capital expenditures are deemed to have an economic life of 364 days.

(4) *Expenditures for grants*—(i) *In general.* Except as provided in paragraph (d)(4)(ii) of this section, gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grantee allocates the grant moneys to an expenditure to carry out the governmental purpose for which the grant was made. For purposes of this paragraph (d)(4)(i), the allocation and accounting rules of this section apply to a grantee of gross proceeds of an issue to the same extent as they apply to the issuer. Accordingly, a grantee must comply with this section to account for any gross proceeds of an issue received by it under a grant.

(ii) *Special exception for certain grants.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure for the governmental purpose of the issue on the date on which the grantor transfers the grant moneys to the grantee if—

(A) The grantor and the grantee are not members of the same controlled group (as defined in § 1.150–1(f));

(B) The grantee reasonably expects to use the grant moneys for expenditures other than working capital expenditures;

(C) The grantee reasonably expects to use at least 90 percent of the grant moneys for uses other than any private business use (as defined in section 141(b)(6)); and

(D) The grant is not made as an artifice or device under § 1.148–9T(g) to avoid, in whole or in part, the arbitrage rebate requirements or otherwise to avoid the effect of any other limitations under sections 103 and 141–150.

(iii) *Characterization of repayments of grants.* If, for any reason, any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the amount of the repayment is treated as unspent sale proceeds (as defined in § 1.148–8T(d)(4)) of the issue as of the date of the repayment.

(5) *Expenditures for reimbursement purposes.* Section 1.103–18 applies for purposes of allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.103–18)), to certain expenditures.

(e) *Special rules for commingled funds*—(1) *In general.* For purposes of this section, an accounting method used by a commingled fund to account for gross proceeds of an issue in a commingled fund is reasonable only if the accounting method satisfies all other requirements of this section and the special accounting requirements of this paragraph (e).

(2) *Investments held by a commingled fund*—(i) *In general.* All payments and receipts with respect to investments held by a commingled fund must be—

(A) Computed pursuant to a reasonable, consistently applied accounting method that complies with paragraph (c) of this section, and

(B) Allocated among the different investors (as defined in paragraph (e)(2)(iii) of this section) in the fund in accordance with a consistently applied, reasonable ratable allocation method.

(ii) *Permitted ratable allocation methods.* Reasonable ratable allocation methods for allocating payments and receipts with respect to investments held by a commingled fund among its different investors include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances (as defined in paragraph (e)(2)(iii) of this section) of the amounts in the commingled fund from different investors during a computation period (as prescribed by paragraph (e)(3) of this section) (e.g., average daily balances during a daily, weekly, monthly, or quarterly computation period), or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a computation period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term "investor" means each different source of funds invested in a commingled fund. The same person is treated as a different investor with respect to each different source of funds invested in the commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as a different investor with respect to these two different sources of funds invested in the commingled fund.

(iv) *Definition of average daily balance.* For any period of time, the average daily balance of an amount in a commingled fund from a particular investor is the sum of the amounts in the commingled fund from that investor for each day in the period divided by the number of days in the period.

(3) *Certain expenditures involving a commingled fund.* Funds invested in the commingled fund from different investors may be allocated directly to expenditures for governmental purposes pursuant to a reasonable, consistently applied accounting method that complies with paragraph (d) of this section. If a ratable allocation method is used to allocate expenditures from the commingled fund under this paragraph (e)(3), it must be the same ratable allocation method as that used to allocate payments and receipts with respect to investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Computation periods.* A commingled fund must adopt a fiscal year. Absent this adoption, a commingled fund is deemed to adopt the calendar year as its fiscal year. Not less frequently than at the end of each computation period within its fiscal year, the commingled fund must compute and allocate to each investor all payments and receipts with respect to investments, including accrued

income, gains or losses realized from sales or other dispositions of investments, and expenditures. A commingled fund may use as its computation period any consistent time period within its fiscal year that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly computation period), but it must consistently use that time period.

(5) *Unrealized gains and losses on investments of a commingled fund*—(i) *Commingled funds with shorter-term investment portfolios.* If the weighted average maturity (as defined in paragraph (e)(5)(iii) of this section) of all investments held by a commingled fund during a particular fiscal year does not exceed one year, and the investments held by the commingled fund during that fiscal year consist exclusively of debt obligations, then the commingled fund is not required to satisfy the mark-to-market requirement of paragraph (e)(5)(ii) of this section.

(ii) *Mark-to-market requirement for commingled funds with longer-term investment portfolios.* Except as provided in paragraph (e)(5)(i) of this section, a commingled fund must satisfy the mark-to-market requirement in either paragraph (e)(5)(ii)(A) or (e)(5)(ii)(B) or this section.

(A) *Mark-to-market annually.* The commingled fund treats all its investments as if sold at fair market value (as defined in § 1.148–2T(d)), on the last day of the fiscal year. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during that fiscal year. That allocation must use the same ratable method used to allocate other investment items under paragraph (e)(1) of this section.

(B) *Mark-to-market for each interim computation period.* The commingled fund consistently treats its investments as if sold at fair market value on the last day of each computation period (as defined in paragraph (e)(4) of this section). The net gains or losses from these deemed sales must be allocated to all investors of the commingled fund during that computation period. That allocation must use the same ratable method used to allocate other investment items under paragraph (e)(1) of this section.

(iii) *Definition of weighted average maturity.* For any period of time, the weighted average maturity of the investments held by a commingled fund is the sum of the average maturities of the investments as of each day in the period divided by the number of days in the period. For any day, the average maturity of the investments of a commingled fund is the amount determined by—

(A) Multiplying the amount of the investment by its remaining maturity expressed in years (and any fraction thereof);

(B) Adding the products determined in paragraph (e)(4)(iii)(A) of this section; and

(C) Dividing the sum determined in paragraph (e)(4)(iii)(B) of this section by the aggregate amount of investments of the commingled fund for that day.

(6) *Administrative costs of a commingled fund*—(i) *In general.* Except as provided in paragraph (e)(6)(ii) of this section, administrative costs are not taken into account for purposes of determining payments and receipts under § 1.148–2T(b)(3) and § 1.148–2T(b)(2) with respect to investments held by a commingled fund. Thus, administrative costs generally do not increase the costs for investments or reduce the income from investments held by the commingled fund that are passed through to its investors. Accordingly, the income from investments held by the commingled fund must be "grossed up" by the fund's nonqualified administrative costs before being allocated to investors.

(ii) *Exception for qualified administrative costs*—(A) *In general.* In determining payments and receipts with respect to investments under § 1.148–2T(b)(3) and § 1.148–2T(b)(2) with respect to investments held by a commingled fund, qualified administrative costs of investments of a commingled fund are taken into account. Costs are qualified administrative costs only if they are paid or incurred for items described in paragraph (e)(6)(ii)(B) of this section and only to the extent they do not exceed the limitation specified in paragraph (e)(6)(ii)(C) of this section.

(B) *Use limitation.* Costs are described in this paragraph (e)(6)(ii)(B) if they are paid or incurred solely as direct administrative costs of the commingled fund, such as audit, safekeeping, custody, brokerage, recordkeeping, and similar costs and expenses.

(c) *Amount limitation.* Costs satisfy the limitation in this paragraph (e)(6)(ii)(C) if they do not exceed the sum of the following—

(*1*) .25 percent of that portion of the average daily balance (as defined in paragraph (e)(2)(iii) of this section) of amounts invested in the commingled fund for the fiscal year not in excess of $10,000,000, plus

(*2*) .125 percent of that portion of the average daily balance in excess of $10,000,000.

(7) *Allocations among issues of commingled funds serving as common reserve funds or sinking funds*—(i) *Permitted ratable allocation methods.* Except as otherwise required by paragraph (b)(2) or (b)(3) of this section, if a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues, investments held by that commingled fund must be allocated, as of any required date of allocation, ratably among the applicable issues sharing the commingled fund in accordance with one of the following proportions—

(A) *Outstanding principal amount.* The outstanding principal amounts of the issues as of the date of allocation, except that in the case of any bond of an issue that was issued with original issue discount or premium in excess of one-fourth of one percent multiplied by the number of complete years to maturity of issue, the present value of that bond must be used in lieu of its outstanding principal amount.

(B) *Present value.* The present values of the issues as of the date of the allocation determined in accordance with § 1.148–3T(b)(8).

(C) *Aggregate one-year debt service.* The aggregate amount of debt service payable on the issues covered by the commingled fund during the ensuing one-year period.

(ii) *Frequency of allocations.* An issuer must make any necessary allocations required by this paragraph (e)(7) not less frequently than each date on which a computation of the universal cap is required under paragraph (b)(3) of this section. In addition, an issuer must make allocations on each date that it adds an issue to the coverage of the commingled fund described in this paragraph (e)(7). This paragraph (e)(7) does not apply to a bona fide debt service fund (as defined in § 1.103–13(b)(12)).

(8) *Expenditures of certain commingled investment proceeds of governmental issues.* If an issue is neither a private activity bond issue under section 141 nor a refunding issue, amounts representing investment proceeds (as defined in § 1.148–8T(d)(5)) of the issue are treated as allocated to expenditures for a governmental purpose when both of the following requirements are satisfied—

(i) *Commingled with certain governmental revenues.* The amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer.

(ii) *Reasonably expected to be spent within six months.* The amounts are reasonably expected to be spent for

governmental purposes within a period not to exceed six months from the date of the commingling.

(f) *Consequences of certain failures to use permitted accounting methods.* If the Commissioner determines that a failure to account for gross proceeds of an issue in accordance with this section is not due to willful neglect, the Commissioner may prescribe a reasonable accounting method for gross proceeds of the issue that satisfies this section in lieu of or in conjunction with determining other consequences of that failure. Regarding the consequences of certain failures to comply with the arbitrage rebate requirement that are not due to willful neglect generally, see § 1.148-1T(c).

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

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26 CFR Part 1

[INTL-0372-88; INTL-0401-88]

RIN 1544-AM15, 1545-AL80

Intercompany Transfer Pricing and Cost Sharing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to intercompany transfer pricing and cost sharing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. These regulations would provide guidance implementing the amendment.

DATES: Comments and requests for a public hearing must be received by May 29, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-0372-88) (for comments on cost sharing provisions) or (INTL-0401-88) (for comments on other provisions), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Howard Berger, with respect to all provisions except cost sharing, and Lisa Sams, with respect to cost sharing provisions, both of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0372-88 and INTL-0401-88) (202-377-9059 (Berger) and 202-874-1490 (Sams), not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.482-2 (g)(2)(i) and (6). This information is required by the Internal Revenue Service to verify the existence of a qualified cost sharing arrangement and to determine the appropriateness of each participant's cost share. The likely respondents are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual reporting and/or recordkeeping burden: 4,250 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 8.5 hours.

Estimated number of respondents and/or recordkeepers: 500.

Effective Date

These regulations are generally proposed to be effective for taxable years beginning after December 31, 1992. However, they will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986 for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these proposed regulations are generally effective for taxable years after December 31, 1992, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the inbcome attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the proposed effective date of these regulations, the final sentence of section 482 shall be applied using any reasonable method not inconsistent with the statute. The Internal Revenue Service considers a method that applies these proposed regulations or their general principles to be a reasonable method. A transitional rule is provided at § 1.482-2(g)(8) with respect to cost sharing arrangements entered into under current § 1.482-2(d)(4) in prior taxable years.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code. Section 482 was amended by the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085, 2561, *et seq.*

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 ("the Act") amended section 482, to require that consideration for intangible property be commensurate with the income attributable to the intangible. The legislative history of the Act states that this change was intended to assure that the division of income between related parties reasonably reflects the economic activities each undertakes. See H.R. Rep. 99-281, 99th Cong., 2d Sess. (1986) at II-637. The legislative history also expresses concern that insufficiently stringent standards previously had been used in determining whether an uncontrolled transfer is comparable to a controlled transfer. The legislative history specifically notes concern about the improper use of comparables with regard to "high profit-potential intangibles," noting that it is especially difficult to obtain realistic comparables with respect to such intangibles because they seldom if ever are transferred to unrelated parties. See H.R. Rep. 99-426, 99th Cong., 1st Sess. (1985) at 424.

The Conference Committee report on the Act recommended that the Internal Revenue Service (the "Service") conduct a comprehensive study of transfer pricing and consider whether regulations under section 482 should be modified. In response, the Treasury Department and the Service issued a

study of intercompany transfer pricing (Notice 88–123, 1988–2 C.B. 458, the "White Paper") on October 18, 1988. Although the White Paper primarily considered transfers of intangibles, it also addressed the application of section 482 to other transactions. The White Paper specifically discussed the need to modify the regulations dealing with transfers of tangible property to take into account the common incorporation of the value of intangibles into tangible property. As described in greater detail below, such changes are found in amendments to § 1.482–2(e).

The White Paper proposed two approaches for determining the proper charge for an intangible under the commensurate with income standard. The first was a pricing approach. It included two methods: The exact comparable method and the inexact comparable method. The second was an income approach. It also included two methods: The basic arm's length return method ("BALRM") and BALRM with profit split. The BALRM generally allocated income to the parties to a transaction by assigning industry average rates of return to their assets.

Many comments on the White Paper criticized the prominent role given to BALRM, arguing that BALRM would be difficult to apply because the information BALRM required generally would not be available, would be unfair to corporations whose rates of return vary considerably from the average, and would allocate too much income to U.S. entities. The Service also was urged to assign a greater role to inexact comparable transactions and to reconsider the use of safe harbor rules. These comments were taken into account in the development of the three pricing methods described in § 1.482–2 (d) and (f) of these proposed regulations.

Both the exact comparable and inexact comparable methods, like the methods for determining an appropriate price described elsewhere in § 1.482–2, are intended to apply the general standard of § 1.482–1 (*i.e.*, the price of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer) to specific situations. They should not be applied mechanically or without regard for this purpose. Thus, § 1.482–1(b)(1) has been modified to clarify that its principles are intended to guide application of the specific methods described in § 1.482–2.

The Conference Committee report also noted that Congress did not intend to preclude the use of a cost sharing arrangement to allocate income attributable to an intangible among related parties provided that such an arrangement is consistent with the requirement that the allocation of income among related parties reasonably reflect the actual economic activity undertaken by each. To satisfy this requirement, each participant should bear an appropriate portion of all research and development costs on unsuccessful as well as successful products within an applicable product area, each participant's cost share generally should be proportionate to profit determined before deduction for research and development, and an appropriate return should be provided to a participant that effectively put its funds at greater risk than other participants. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–638.

The White Paper concluded that cost sharing arrangements should have standard terms. For instance, the White Paper stated that most shared research and development should be conducted with respect to products that were within the same three-digit Standard Industrial Classification code. This proposal was intended to prevent a U.S. participant from paying for unsuccessful research while receiving little or no benefit from successful research, and to prevent a foreign participant from failing to pay for unsuccessful research while receiving significant benefits from successful research. Other requirements proposed by the White Paper included the assignment to each participant of exclusive rights in developed intangible property, the restriction of membership in a cost sharing arrangement to those in a position to exploit developed intangibles by means of the manufacture of products, and the exclusion of marketing intangibles from the scope of an arrangement's research and development.

Comments on these proposals maintained that the White Paper's approach would unduly restrict the ability of taxpayers to enter into a cost sharing arrangement. Additional comments raised concerns with respect to the White Paper's proposed method for measuring anticipated benefits in computing cost shares (including assignment of exclusive geographic rights), the adjustments of cost shares in subsequent years to reflect changes in subsequent benefits, the exclusion of non-manufacturers as eligible participants, the identification of costs that must be shared pursuant to the arrangement, and buy-in or buy-out rules that govern cases where a portion of the intangible is considered to be transferred (including whether going concern value should be included and whether taxpayers should be permitted flexibility in selecting the form of payment for a buy-in or buy-out).

Several comments suggested that the Service model new cost sharing regulations on rules proposed in 1966 and withdrawn in 1968. These suggestions were taken into account in developing § 1.482–2 (g).

Summary of Proposed Regulations

Section 1.482–1(b)(1)

Section 1.482–1(b)(1) coordinates existing regulations that explain the scope and purpose of regulations under section 482 with new provisions interpreting the commensurate with income standard. Section 1.482–1(b)(1) also clarifies the general meaning of the arm's length standard and the relationship of § 1.482–1 to § 1.482–2. As revised, § 1.482–1(b)(1) provides that the test to be applied in all instances is whether uncontrolled taxpayers exercising sound business judgment would have agreed to the same terms given the actual circumstances under which controlled taxpayers dealt.

For example, closely related transfers of tangible and intangible property, such as "round-trip" transactions, should be viewed together in determining whether the price of each transaction is arm's length. A round-trip transaction typically begins with a license of an intangible to a related party. The licensee uses the intangible to produce tangible property and sells the tangible property either to the licensor of the intangible or to the licensor's affiliates. Rather than analyzing each of these transactions independently, the proposed regulations allow the district director to consider the price charged for the tangible property as one of the circumstances that should be taken into account in determining whether an uncontrolled taxpayer would have agreed to the same consideration for the intangible property.

Section 1.482–2(d)

Section 1.482–2(d) replaces current rules applicable to intangible property. Section 1.482–2 (d)(1)(i) provides that an arm's length consideration for an intangible must be commensurate with the income attributable to it. Section 1.482–2(d)(1)(ii) defines the terms intangible, transfer, controlled transfer, and uncontrolled transfer. Section 1.482–2(d)(1)(iii) provides that paragraph (d) applies to any transaction that in substance is a transfer of an intangible, regardless of the form of the transaction.

Section 1.482–2(d)(2) outlines how an arm's length consideration for an intangible is determined. Section 1.482–2(d)(2)(iii) prescribes the priority of the methods for determining an arm's length

consideration. Ordinarily, the method that relies on the most complete and accurate data and requires the fewest adjustments will most accurately reflect the amount of consideration that an unrelated taxpayer would have charged for the same intangible under the same circumstances. Highest priority therefore is assigned to the matching transaction method. Second priority is assigned to the comparable adjustable transaction method. If those methods cannot be applied, then an arm's length consideration is determined under the comparable profit method. Under § 1.482-2(d)(2)(iv), all relevant facts and circumstances must be considered in applying these methods, including information from the taxable year under review, and from taxable years before and after that taxable year. The regulations do not require the Service or the taxpayer to demonstrate the inapplicability of a higher priority method before applying a lower priority method. However, either the Service or the taxpayer may establish the applicability of a higher priority method.

Section 1.482-2(d)(3) describes the matching transaction method. A matching transaction is an uncontrolled transfer of the same intangible under the same, or substantially similar, economic conditions and contractual terms.

The intangible involved in a controlled transfer will be considered the same as the intangible involved in an uncontrolled transfer only if the protected interest or body of knowledge that is subject to exploitation through the use of each intangible are identical. Geographic or use restrictions are considered differences in contractual terms, rather than differences in the interests transferred.

Section 1.482-2(d)(3)(iii) provides guidance for determining whether the economic circumstances in the controlled and uncontrolled transfers are substantially similar. Economic factors that could affect the amount of consideration charged in the two transactions will be considered. Section 1.482-2(d)(3)(iv) provides guidance for determining whether the contractual terms of the controlled and uncontrolled terms are substantially similar. Contractual terms that could affect the amount of consideration charged in the two transactions will be considered.

Under § 1.482-2(d)(3)(v), adjustments will be made when the economic conditions and contractual terms of controlled and uncontrolled transactions are substantially similar but are not identical. Adjustments may be made to compensate only for a limited number of differences that both alone and combined have only a minor effect on the consideration charged in the uncontrolled transfer. If other adjustments would be required to compensate for differences, the economic conditions and contractual terms are not substantially similar and the matching transaction method does not apply.

Section 1.482-2 (d)(4) describes the comparable adjustable transaction method. Under this method an arm's length consideration is determined with reference to the amount of consideration charged in an uncontrolled transfer of the same or a similar intangible under adjustable circumstances, subject to verification by the comparable profit interval described in § 1.482-2(f). Verification of a comparable adjustable transaction by reference to the comparable profit interval is intended to ensure that adjustments under this method do not produce results that are inconsistent with the dealings of uncontrolled taxpayers. The same factors considered under the matching transaction method in determining whether economic conditions and contractual terms are substantially similar are considered in determining whether the economic conditions and contractual terms of controlled and uncontrolled transactions are adjustable. Contractual terms and economic conditions will be considered adjustable if they are sufficiently similar that the effect of any differences on the consideration charged in the uncontrolled transfer can be determined with reasonable accuracy.

The consideration charged in an uncontrolled transfer must be adjusted to compensate for material differences between the controlled and uncontrolled transfers. When more than one comparable adjustable transaction is available, an arm's length consideration should be determined with reference to the transaction for which the necessary adjustments can be most accurately determined.

Section 1.482-2(d)(5) describes the comparable profit method, which applies to determine an arm's length consideration when the matching and comparable adjustable transaction methods are inapplicable. This method requires a comparison of the operating income that results from the consideration actually charged in a controlled transfer ("reported operating income") with the operating incomes of similar taxpayers that are uncontrolled. See § 1.482-2(d)(5)(v) for the definition of "reported operating income." The consideration charged in the controlled transfer ordinarily will be considered an arm's length amount when reported operating income falls within the comparable profit interval but will not be considered arm's length, and may be adjusted, when reported operating income falls outside the comparable profit interval. In the latter case, the transfer price generally may be adjusted to produce operating income that is at the "most appropriate point" in the comparable profit interval. A special rule allows a smaller adjustment to be made when reported operating income is outside of, but corresponds closely to, the comparable profit interval. This special rule is intended to narrow the scope of controversies when reported operating income does not vary significantly from results that are within the comparable profit interval. Section 1.482-2(d)(5)(iv) provides limited exceptions to this special rule.

Section 1.482-2(d)(6) provides guidance regarding transfers of intangibles for more than one taxable year. Section 1.482-2(d)(6)(i) provides that all relevant facts throughout the period the intangible is used may be considered. Ordinarily an adjustment may be made with respect to an intangible in the taxable year under examination even though the charge for the intangible was arm's length in an earlier year. Section 1.482-2(d)(6)(ii) provides three exceptions to this rule. The first exception applies only in the case of the matching or comparable adjustable transaction methods. Generally, an allocation may not be made under those methods if an arm's length consideration was charged for the intangible in the year it was transferred, operating income remained in the comparable profit interval for all subsequent years (including the year under examination), and there has been no more than a minor variation in the amount of operating income attributable to the transferred intangible.

The second exception requires that the transferee paid a royalty in exchange for the use of the intangible, the intangible has been used for at least 10 years since the date of its initial transfer, and the royalty was determined to be an arm's length royalty for each year of its use throughout the 10-year period under the matching or comparable adjustable transaction method.

The third exception requires that the relevant agreement contained no provision for adjustments to the royalty to reflect unanticipated changes in profitability, the use of the intangible was limited in a commercially reasonable way, and the transferee's operating income has moved outside the comparable profit interval due to changes in circumstances that were

beyond the control of the taxpayers and neither anticipated nor reasonably foreseeable.

Section 1.482-2(d)(7), which will provide rules concerning the treatment of lump sum payments, is reserved. Chapter Six of the White Paper took the position that taxpayers may structure transactions with lump sum payments provided the economic consequences of a lump sum payment resemble those under a periodic payment approach. Chapter 8 of the White Paper suggested that a lump sum payment be treated as an open transaction, with the lump sum invested in a hypothetical certificate of deposit from which arm's length consideration would be subtracted year by year. Another approach would treat the lump sum as the present value of a stream of payments projected by the taxpayer. An adjustment could be made in the year of transfer to the extent the lump sum differed from the properly computed present value of the stream. Annual adjustments could be made to the extent the actual arm's length amount for a particular year differed from the projection for that year. The Service invites comments on these, or any other, approaches to lump sum payments.

Section 1.482-2(d)(8) clarifies the "developer-assister" rules now found in § 1.482-2(d)(1)(ii). New examples are provided illustrating the application of these rules to the development and enhancement of marketing intangibles.

Section 1.482-2(e)

Section 1.482-2(e)(1) modifies the rules applicable to sales of tangible property. Although the commensurate with income amendment to section 482 in the Act addressed the transfer of intangible property, the Conference Report also directed that "careful consideration be given to whether the existing regulations could be modified in any respect." H.R. Rep. 99-841, 99th Cong., 2d Sess. (1986) at II-637-638. The regulations extend the use of the comparable profit interval to the resale price, cost plus and so-called "fourth" methods (§§ 1.482-2(e)(1) (ii)-(iv)), which are employed when the comparable uncontrolled price method is inapplicable. When one of these methods is employed, the regulations provide that the comparable profit interval is to serve as a check on the result indicated by such method; if the result produced by the method does not fall within the comparable profit interval, then the result should be disregarded for purposes of determining an arm's length price.

This change is necessary because applying the comparable profit interval solely to transfers of intangibles would create an artificial and unwarranted distinction between the treatment of tangible and intangible property, and would lead to disputes in cases involving tangible property incorporating an intangible. Adoption of similar transfer pricing rules for the tangible and intangible components of the transferred property will eliminate or reduce the need to allocate the property's value between its tangible and intangible components and then to determine the profits attributable to each such component.

A similar allocation and valuation problem may arise in cases in which the transfer of services in indistinguishable from the transfer of intangible property. See *Hospital Corporation of America* v. *Commissioner*, 81 T.C. 520 (1983). The Service solicits comments on how the services regulations (§ 1.482-2(b)) should incorporate the commensurate with income standard.

These regulations modify the priority of methods under § 1.482-2(e). The comparable uncontrolled price method retains the highest priority. Second priority is given either to the resale price method or the cost plus method, depending on which of the two methods more accurately produces an arm's length price in a particular situation. A price determined under either the resale price method or the cost plus method will be considered arm's length only if it yields a level of operating income that is within the comparable profit interval. Other methods still may be applied, but such other methods also must yield a level of operating income that is within the comparable profit interval. The regulations do not require the Service or the taxpayer to demonstrate the inapplicability of a higher priority method before applying a lower priority method. However, either the Service or the taxpayer may establish the applicability of a higher priority method.

The legislative history expressed concern with judicial interpretations of the comparable uncontrolled price method. These regulations clarify that adjustments must be made to comparables when there are differences between them, in order to use them as comparables.

Section 1.482-2(f)

Section 1.482-2(f) describes the comparable profit interval. In general, the comparable profit interval should provide taxpayers with greater certainty in establishing their intercompany transfer prices. Many taxpayers should be able to apply objective measures of profitability (referred to as profit level indicators) of similarly situated parties to their own financial data to develop their own estimates of the comparable profit interval and confirm that their transfer prices produce results that fall within the comparable profit interval.

Section 1.482-2(f)(1) states that the comparable profit interval identifies levels of profits that the appropriate controlled taxpayer whose operating income is tested (the "tested party") would have earned if its profit level indicators had been equivalent to those of similarly situated uncontrolled taxpayers. Profit level indicators derived from uncontrolled taxpayers are applied to the financial data of the tested party to yield the "constructive operating income" that the tested party would have earned. The comparable profit interval then is derived from the constructive operating incomes that converge. If necessary, the most appropriate point within the comparable profit interval is selected.

Section 1.482-2(f)(2) provides that data used in constructing the comparable profit interval normally should be based on actual results before, during, and after the taxable year under examination.

Section 1.482-2(f)(3) identifies six steps that must be followed in developing a comparable profit interval. The steps are interdependent and, in some cases, certain steps may have to be repeated to match the availability of data used in later steps with the determination made in an earlier step.

Section 1.482-2(f)(4) provides rules for the first step: selecting the appropriate controlled taxpayer whose operating income should be tested. In the case of the transfer of an intangible, the tested party normally will be the transferee.

Section 1.482-2(f)(5) provides rules for the second step: determining the "applicable business classification" of the tested party. The applicable business classification normally includes the operations of the tested party that relate to transactions with controlled taxpayers, which are referred to as the "tested operations." The tested operations then are compared to the operations of uncontrolled taxpayers. If possible, operations of uncontrolled taxpayers are selected that closely correspond to the tested operations. If it is not possible to obtain reliable data regarding uncontrolled taxpayers with respect to products that closely correspond to the products related to the tested operations, then the scope of the applicable business classification is broadened.

Section 1.482-2(f)(6) provides rules for the third step: computing the constructive operating incomes that are

used to determine the comparable profit interval. The constructive operating incomes are derived by applying profit level indicators obtained from a selection of uncontrolled taxpayers in the applicable business classification to financial data relating to the tested operations.

Profit level indicators should be selected that provide the most reliable basis for comparison under the particular facts and circumstances. Some profit level indicators will be more reliable in particular types of cases than others. Section 1.482-2(f)(6)(iii)(C) identifies a number of profit level indicators that may be used in appropriate cases. These include: Rate of return on assets, ratio of operating income to sales, ratio of gross income to expenses, and profit splits. Before application of a profit level indicator to the data of the tested party, the data must be adjusted to reflect (1) any significant differences between the business practices of the tested party and the uncontrolled taxpayers, and (2) any other allocations under section 482. The Service invites comment on the specified profit level indicators and on other profit level indicators and the circumstances in which they might be used.

Section 1.482-2(f)(7) describes the fourth step: determining the comparable profit interval. The comparable profit interval normally is derived from a set of constructive operating incomes that are computed by applying various profit level indicators obtained from uncontrolled taxpayers to the financial data of the tested party. Data that tends to converge is used to form an interval that is reasonably restricted in size, and data that diverges significantly from other data is excluded from the interval.

Two tests are generally used to identify converging data. First, when constructive operating incomes computed with different profit level indicators from the same uncontrolled taxpayer converge, such data generally should be included within the comparable profit interval. Such convergence indicates that the uncontrolled taxpayer from which the data was drawn is comparable to the tested party. If the constructive operating incomes drawn from a single uncontrolled taxpayer diverge, such data generally should be excluded from the interval unless adjustments can be made that account for this lack of uniformity. The second type of convergence considered is convergence of constructive operating incomes obtained from one or more profit level indicators from different uncontrolled taxpayers. In determining both types of convergence, the reliability of all data must be considered, and greater weight accorded to data that is more reliable. If the number of uncontrolled taxpayers whose operations correspond to the applicable business classification is large enough to permit the use of valid statistical techniques, then convergence must be determined by using those techniques to identify a reasonably narrow area of concentration among all the constructive operating incomes computed. The Service solicits comments concerning which statistical techniques would be most appropriate for determining such an area of concentration.

Section 1.482-2(f)(8) describes the fifth step: selecting the most appropriate point within the comparable profit interval, when necessary. (It is not necessary to select the most appropriate point, for example, when the comparable profit method applies and the reported operating income was within the comparable profit interval.) If statistical techniques were used to construct the comparable profit interval, then the most appropriate point will be determined by using measures of central tendency. The Service solicits comments concerning which statistical methods would provide the most appropriate measures of central tendency. If statistical techniques were not used to construct the comparable profit interval, the most appropriate point will be determined by considering a number of factors relating to the comparability and reliability of the underlying data. These factors include similarity of functions performed by the tested party and the uncontrolled taxpayer, similarity of products or services, the extent to which different profit level indicators produce converging amounts of constructive operating income, the number and accuracy of the adjustments required to apply a profit level indicator to uncontrolled taxpayers, the extent to which the profit level indicator meets the reliability factors set forth in § 1.482-2(f)(7)(ii), and the extent to which the profit level indicator produces converging results when applied to the uncontrolled taxpayers.

Section 1.482-2(f)(9) describes the sixth step: determining the transfer price for the controlled transaction, when necessary. The transfer price is determined by adjusting the actual charge in the controlled transaction to produce an operating income for the tested party that equals the constructive operating income corresponding to the most appropriate point in the interval.

Section 1.482-2(g)

Section 1.482-2(g) provides rules for qualified cost sharing arrangements. In general, the regulations require that the structure of a cost sharing arrangement reflect the following general principles—

1. Each participant must have a reasonable expectation of using developed intangibles in the active conduct of its trade or business;

2. The costs of all related intangible development must be shared;

3. Each participant's share of the costs of developing intangibles must be proportionate to its share of the income attributable to developed intangibles; and

4. Participants must compensate the owners or developers of intangible property an arm's length amount for the use of that property, unless the property is developed by the participants through the cost sharing arrangement. Likewise, if a participant bears a portion of the costs incurred in developing an intangible, and subsequently transfers or abandons its rights in the intangible, the remaining participants must compensate the departing participant.

Section 1.482-2(g)(1) states that an intangible development cost sharing arrangement will not be considered a qualified arrangement unless it meets the requirements of § 1.482-2(g)(2), and a member of a controlled group will not be eligible to participate in a cost sharing arrangement unless the member meets the requirements of § 1.482-2(g)(3). If the requirements of § 1.482-2(g) (2) and (3) are met (that is, if a qualified cost sharing arrangement exists), the district director may nonetheless make allocations to cost shares, as provided in § 1.482-2(g)(4), to reflect each participant's arm's length share of the costs and risks of developing intangible property.

The requirements of a qualified cost sharing arrangement include the requirements contained in the current regulations (an agreement in writing between two or more eligible participants providing for the sharing of the costs and risks of developing intangible property in return for a specified interest in any intangible that may be produced), and two new conditions. The new conditions are that the arrangement comply with the administrative requirements of § 1.482-2(g)(6)(i), and that participants make a reasonable effort to measure the share of benefit that each expects to receive and divide costs accordingly. Costs shared must include the costs of unsuccessful or less successful intangible development. One of the

objectives of this requirement is to prevent "cherry picking" (*e.g.*, U.S. participants bearing disproportionate costs of unsuccessful research, or foreign participants deriving disproportionate benefits from successful research). The district director is also permitted under this paragraph to apply the cost sharing provisions to any arrangement that in substance constitutes a cost sharing arrangement, to the extent that application of the developer-assister rules under § 1.482–2(d)(8) would result in a failure to clearly reflect the income of a group of controlled taxpayers. The Service solicits comments on the appropriate scope of application of this rule. The Service also solicits comments on the appropriate application of the principles of § 1.482–2(g) in the context of partnerships that develop and exploit intangibles.

Section 1.482–2(g)(2)(ii) provides that a U.S. participant's cost share should be proportionate to the benefits that the participant reasonably anticipates it will derive from the research. Depending on the circumstances, anticipated benefits may be measured in several different ways, as long as the measure reasonably predicts the benefits to be shared. If the development activity relates to more than one cost sharing arrangement, the benefits derived by the participant must be compared to the benefits derived by all of the relevant participants, including those in the other arrangements, for purposes of determining an appropriate cost share. An effort to anticipate benefits generally should include annual review of the participants' cost shares, and permit any adjustments necessary to reflect changes in economic conditions and other factors.

To the extent that a cost sharing arrangement fails to divide cost shares in proportion to benefits, the regulations provide for three different types of adjustment. The type of adjustment to be applied is determined by a comparison of the U.S. participant's cost/income ratio and the cost/income ratio of the other participants.

The cost/income ratio used for purposes of the cost sharing provisions is generally the participant's three-year average cost share, divided by its three-year average operating income attributable to developed intangibles. Operating income attributable to developed intangibles is defined as income from the license or sale of developed intangibles plus income earned from the sale of products or services incorporating such intangibles.

First, if the cost/income ratio of a U.S. participant is "grossly disproportionate" to the cost/income ratio of the other participants, the method for dividing cost shares will be presumed not to reflect a reasonable effort to share costs in proportion to benefits, and the cost sharing arrangement will not be considered a qualified cost sharing arrangement. Second, if the cost/income ratio of a U.S. participant is "substantially disproportionate" to the cost/income ratio of the other participants, the cost sharing arrangement will be considered a qualified arrangement, but a partial transfer of intangible property may be deemed to have occurred outside of the scope of the arrangement. In such a "buy-in" or "buy-out" situation, consideration for the transfer of the intangible must be consistent with the provisions of § 1.482–2(d). Section 1.482–2(g)(4)(ii)(D) provides that a U.S. participant's cost/income ratio will not be considered substantially disproportionate if it is less than twice the cost/income ratio of the other eligible participants. Third, if the cost/income ratio of a U.S. participant is not substantially disproportionate to the cost/income ratio of the other participants, an adjustment will be limited to an adjustment of the participants' cost shares.

Section 1.482–2(g)(3) defines an eligible participant. As noted above, there must be at least two eligible participants in order for a cost sharing arrangement to be qualified. In order to be considered eligible, each participant must be able to use developed intangibles in the active conduct of its trade or business. The principles of § 1.367(a)–2T(b)(2) determine whether a participant's activities constitute a trade or business.

An active trade or business may exist even though activities are carried out by independent contractors on behalf of a participant. An intangible will not be considered used in the active conduct of a participant's trade or business if a principal purpose of the participant for entering into the arrangement was to obtain intangible property to transfer to an uncontrolled taxpayer.

One member of a group of controlled taxpayers may participate in a cost sharing arrangement on behalf of other members (the "cost sharing subgroup") for the purpose of meeting the "active trade or business" requirement. However, the intangible property must be transferred from the participating member to the other members of the subgroup on an arm's length basis, either under a separate cost sharing arrangement in effect within that subgroup or otherwise.

Section 1.482–2(g)(4) describes the allocations that may be made by the district director to reflect each participant's arm's length share of an arrangement's costs. First, if the intangible development encompassed by the arrangement is too broad or too narrow, then an adjustment in the participants' cost shares may be necessary to place the arrangement on an arm's length basis. An intangible development area is too broad if any participant will not be able to use developed intangibles in its active business, and it is too narrow if it does not encompass all related intangible development.

Second, if there is a variation between the share of the benefit that each participant expects to receive and the share that is actually received, then, as described above, cost share payments may be reallocated, a buy-in or buy-out may be required, or the cost sharing arrangement may be ignored. Unless another method is more reliable, allocations will be based on a comparison of the U.S. participant's cost/income ratio to the other participants' cost/income ratio, as described above.

Section 1.482–2(g)(5) provides that cost sharing payments will be characterized as costs of developing intangibles to the payor and reimbursements of such costs to the payee. That section also provides that if an arrangement is not considered a qualified arrangement, or if a "buy-in" or "buy-out" is deemed to have occurred, payments with respect to any transfer of intangible property must be treated in accordance with § 1.482–2(d).

Section 1.482–2(g)(6) provides the administrative requirements of a qualified cost sharing arrangement. It also lists the administrative requirements that an eligible participant must satisfy. The paragraph mandates substantial compliance with each requirement. Thus, a minor administrative error will not result in the disqualification of an arrangement or a participant.

Section 1.482–2(g)(7) defines three terms: "specified interest in any intangible," "U.S. participant," and "costs of developing intangibles." The regulations do not specify accounting principles that must be used in determining costs of developing intangibles. The Service invites comments with respect to whether U.S. generally accepted accounting principles, tax accounting principles, or other principles should be used. Section 1.482–2(g)(8) states that existing bona fide cost sharing arrangements, under

current § 1.482–2(d)(4), will be considered qualified cost sharing arrangements if modified, as necessary, to conform with § 1.482–2(g) within one year of the publication of the regulation.

Safe Harbor

In the absence of a matching transaction, an arm's length amount of consideration for an intangible may be determined by reference to a comparable adjustable transaction, defined in § 1.482–2(d)(4) as an uncontrolled transfer involving the same or similar intangible under adjustable economic conditions and contractual terms that results in a level of operating income for the tested party that is within the comparable profit interval. In this context the comparable profit interval is intended to verify the reasonableness of the amount of consideration derived by reference to the uncontrolled transfer.

Although the use of the comparable profit interval as a check on a comparable adjustable transaction should increase taxpayers' certainty regarding their transfer prices, a safe harbor for determining the comparable profit interval could provide even greater certainty. The Service solicits comments on whether such a safe harbor should be developed. Such a safe harbor, for example, could be created by multiplying the book value of the licensee's assets by published rates of return. These published rates of return could be based on an average country-wide ratio of operating income to book value of assets. For example, based on data from U.S. publicly-held companies, the average ratio of operating income to assets from 1980–1989 was approximately eleven percent. A safe harbor might be created by reference to a narrow interval of profits surrounding eleven percent.

For licensees with a dollar functional currency, the dollar book value of their assets could be used. For licensees with a different functional currency, the dollar book value of their assets could be calculated using historical exchange rates for their balance sheet assets, and their current operating income could be translated into dollars at the current exchange rate in order to determine whether their operating income falls within the safe harbor interval.

Such a safe harbor raises significant issues that may outweigh the benefits of simplicity and certainty. Matching a narrowly defined rate of return to the wider variations of returns observed in the marketplace is one problem. Differences in assets held by different taxpayers or shifting of assets among related taxpayers might be more of a problem under a safe harbor that relies solely upon rate of return on assets than under the comparable profit method, which uses rate of return on assets together with other measures.

Due to the difficulty of constructing a workable safe harbor, the proposed regulations do not include a safe harbor and specific comments are requested concerning the feasibility of such an approach and its structure. The following questions are of particular interest. Will a safe harbor simplify the comparable adjustable transaction method? Should a safe harbor be based only on a rate of return on assets method, or are there alternatives? If a safe harbor is included in regulations, how should the problems identified above be addressed? Should a safe harbor be refined so that, for example, adjustments are made to account for differences in taxpayers' debt to equity ratios relative to the country-wide average embodied in the total assets number? Should industry-specific intervals be published? How would such intervals be established? Should there be a provision permitting adjustments to book values of assets by either the taxpayer or the Service to correct distortions in the value of the assets reported by the licensee?

Operation of the Regulations

The regulations described above provide the basic framework for the operation of the transfer pricing rules under section 482 following the amendments made by the Act. The Service recognizes that the promulgation of regulations is only one step in the implementation of these rules, and that the practical effect of the rules proposed in this document will be affected by a variety of other factors. The Service continues to study the overall administration of section 482, and solicits comments on collateral administrative matters not directly relating to these regulations. Comments are particularly requested in the areas described below.

Documentation and Penalties

With respect to documentation, the White Paper noted that a "significant threshold problem in the examination of section 482 cases has been IRS access to relevant information to make pricing determinations." See 1988–2 C.B. at 461. In response to this problem, the White Paper suggested that the section 482 regulations be amended to require that the taxpayer document the methodology used to establish transfer prices prior to filing the tax return and to require that the taxpayer produce such documentation within a reasonable time during examination. The White Paper also suggested that the Government consider whether existing penalties are sufficient to compel production of such documentation. Commentators contended that such requirements would be overbroad and unduly burdensome. They proposed that if contemporaneous documentation is required at all, it be required only in cases of transfers of high profit or high volume intangibles to tax haven entities. Since the publication of the White Paper, Congress has enacted several amendments to the reporting and penalty provisions of the Code. Accordingly, questions regarding documentation and penalties will be addressed in regulations under sections 6001, 6038, 6038A, 6038C, and 6662(e) rather than under section 482. The Service requests comments on the implementation of these rules, and in particular on the appropriate scope of the "reasonable cause" and "good faith" exception to the new section 482-related penalty under sections 6662(e)(3)(B)(i) and 6664(c). For example, should a taxpayer's creation of contemporaneous documentation be a factor that is taken into account in determining whether the exception applies and, if so, what documentation should be required?

Advance Pricing Agreements

The advance pricing agreement procedure permits taxpayers to reach an agreement with the Service concerning the appropriate transfer pricing methodology to be applied in a particular case. See Rev. Proc. 91–22, 1991–1 C.B. 526. Comments are requested concerning any aspect of this program, including the potential impact of these proposed regulations and suggestions for coordination of that program with these regulations.

Improved Resolution of Section 482 Controversies

It is well settled that, upon judicial review, the Commissioner's determination of a deficiency ordinarily is entitled to a presumption of correctness, and taxpayers thus bear the burden of proving that the Commissioner's determination is incorrect in judicial proceedings. *Welch* v. *Helvering.*, 290 U.S. 111 (1933). A principal reason for this allocation of the burden of proof is that taxpayers possess the information necessary to establish the correct amount of their income and deductions. *United States* v. *Rexach*, 482 F. 2d 10 (1st Cir. 1973). Further, when Congress specifically grants discretion to the Commissioner to make certain determinations, courts will review those determinations with a greater degree of deference. *Dietz*

Corporation v. *United States*, 939 F. 2d 1 (2d Cir. 1991); *Asiatic Petroleum* v. *Commissioner*, 31 B.T.A. 1152 (1935), *aff'd*, 79 F. 2d 236 (2d Cir. 1935). Accordingly, in section 482 cases, courts generally have held that the Commissioner's determination will be revised only if it is arbitrary, capricious, or unreasonable. *Sundstrand Corporation* v. *Commissioner*, 96 T.C. 226 (1991); *G.U.R. Company* v. *Commissioner*, 41 B.T.A. 223 (1940), *aff'd*, 117 F. 2d 187 (7th Cir. 1941).

Some recent section 482 cases have found that the Commissioner's determination of a transfer price was arbitrary, capricious, or unreasonable, *e.g.*, *Merck & Company, Inc.* v. *United States*, 24 Cl. Ct. 73, 68 AFTR2d 91-5524 (Cl. Ct. 1991). Courts generally have so held when a comparable price has not been available and the courts found that the Service could not demonstrate a suitable alternative method under the current regulations. In that regard, the current regulations dealing with intangibles provide little guidance on methods to be used where comparable transactions do not exist. These proposed regulations provide such methods and prescribe when they should be used.

The guidance provided by the proposed regulations should facilitate transfer pricing by taxpayers in ways that will lead to less controversy with the Service. Similarly, the regulations should facilitate determinations by the Service of appropriate arm's length pricing. The three pricing methods prescribed in the regulations are intended to reduce disputes between taxpayers and the Service and make it easier to resolve disputes that do arise. In particular, the proposed regulations should facilitate the use of comparable transactions by permitting adjustments under the comparable adjustable transaction method. Further, the comparable profit method addresses the situation in which a comparable adjustable transaction cannot be found.

The Service anticipates that taxpayers will use these regulations to establish transfer prices for controlled transactions using the best available data, and that they will provide the data as early as is practicable in the course of an examination by the Service.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adoption of these regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Howard Berger (all provisions other than cost sharing) and Lisa Sams (cost sharing provisions). Mr. Berger and Ms. Sams are with the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.481-1 Through 1.483-2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

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

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

Authority: 26 U.S.C. 7805, 68A Stat. 917; 26 U.S.C. 7805. * * *

Par. 2. Section 1.482-1(a)(4) is amended as follows:

1. A second sentence is added at the end of paragraph (a)(4).
2. A new sentence is added at the end of paragraph (a)(5).
3. Seven new sentences are added at the end of paragraph (b)(1).
4. The additions read as follows:

§ 1.482-1 Allocation of income and deductions among taxpayers.

(a) * * *

(4) * * * The term *uncontrolled taxpayer* means any one of two or more organizations, trades, or businesses not owned or controlled directly or indirectly by the same interests.

(5) * * * The terms *uncontrolled group* and *group of uncontrolled taxpayers* mean the organizations, trades, or businesses not owned or controlled directly or indirectly by the same interests.

* * * * *

(b) * * *

(1) * * * In determining whether controlled taxpayers have dealt with each other at arm's length, the general principle to be followed is whether uncontrolled taxpayers, each exercising sound business judgment on the basis of reasonable levels of experience (or, if greater, the actual level of experience of the controlled taxpayer) within the relevant industry and with full knowledge of the relevant facts, would have agreed to the same contractual terms under the same economic conditions and other circumstances. In applying this principle, the district director may consider the combined effect of all transactions of a controlled taxpayer with other members of the group, as well as with uncontrolled taxpayers, before, during and after the taxable year under review, so that allocations described in section 482, taken as a whole, reflect the controlled taxpayer's true taxable income. For example, if a controlled taxpayer's business involves the use of intangibles licensed from another group member to produce finished products, the sale of those products to yet another member of the group, and financing arrangements with uncontrolled taxpayers, the combined effect of these transactions may be considered to determine if they reflect the true taxable income of the controlled taxpayer. The district director also may disregard contractual arrangements, or the absence of contractual arrangements, between controlled taxpayers and instead give appropriate consideration to the taxpayers' actual conduct. For example, when a controlled taxpayer that produces tangible property regularly sells its entire output to another member of the controlled group, in determining the producer's true taxable income, the district director may determine from the course of conduct that the producer does not bear the risk that the buyer will fail to purchase its output even if there is no contract requiring the buyer to do so. In the case of any transfer of an intangible between or among controlled taxpayers, the true taxable income of the transferor with respect to such transfer must be

commensurate with the income attributable to the intangible. See § 1.482-2(d).

* * * * *

Par. 3. Section 1.482-2 is amended as follows:

1. Paragraphs (d) and (e)(1) are revised.
2. The seventh sentence of paragraph (e)(2)(ii) is revised.
3. *Example (4)* and *Example (5)* are added to paragraph (e)(2)(ii).
4. Paragraphs (f) and (g) are added.
5. The additions and revisions read as follows:

§ 1.482-2 Determination of taxable income in specific situations.

* * * * *

(d) *Transfer or use of intangible property*—(1) *In general*—(i) *Arm's length standard.* If one member of a group of controlled taxpayers transfers an intangible to another member for other than an arm's length consideration, the district director may make appropriate allocations to reflect an arm's length consideration for that intangible or its use. An arm's length consideration for the intangible shall be commensurate with the income attributable to the intangible. See paragraph (g) of this section for special rules relating to qualified cost sharing arrangements.

(ii) *Definitions*—(A) *Intangible.* For purposes of section 482, the term intangible means any of the following items that have substantial value independent of the services of any individual:

(*1*) Patents, inventions, formulas, processes, designs, patterns, or know how;

(*2*) Copyrights;

(*3*) Literary, musical, or artistic compositions;

(*4*) Trademarks, trade names, or brand names;

(*5*) Franchises, licenses, or contracts;

(*6*) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(*7*) Other similar items; and

(*8*) Any interests in any such items.

(B) *Transfer.* For purposes of this section, a transfer of an intangible occurs if it is licensed, sold, assigned, loaned, contributed, or otherwise made available in any manner.

(C) *Controlled transfer.* For purposes of this section, a controlled transfer includes any transfer between members of a group of controlled taxpayers.

(D) *Uncontrolled transfer.* For purposes of this section, an uncontrolled transfer is one in which the transferor and the transferee are not members of the same group of controlled taxpayers. These include—

(*1*) Transfers between a member of one group and a party that is a member of a different group,

(*2*) Transfers between a member of one group and a party that is not a member of any group; and

(*3*) Transfers between parties each of which is not members of a group.

(E) *Other definitions.* Definitions of other terms are set forth in connection with other provisions of these regulations. These include the following—

(*1*) Applicable business classifications, defined in paragraph (f)(5)(iii) of this section;

(*2*) Assets, defined in paragraph (f)(6)(iii)(B)(*5*) of this section;

(*3*) Assisters, defined in paragraph (d)(8)(i) of this section;

(*4*) Buy-in and buy-out payments, defined in paragraph (g)(4)(iv) of this section;

(*5*) Comparable adjustable transaction, defined in paragraph (d)(4)(i) of this section;

(*6*) Comparable profit interval, defined in paragraph (f)(1) of this section;

(*7*) Comparable profit method, defined in paragraph (d)(5)(i) of this section;

(*8*) Comparable profit split, defined in paragraph (f) (6)(iii)(C)(*3*) of this section;

(*9*) Constructive operating income, defined in paragraph (f)(1) of this section (see also Operating income, Reported operating income and Operating income attributable to intangibles);

(*10*) Controlled sale, defined in paragraph (e)(1)(i) of this section;

(*11*) Costs of developing intangibles, defined in paragraph (g)(7)(ii) of this section;

(*12*) Departing participant, defined in paragraph (g)(4)(iv)(C) of this section;

(*13*) Developer, defined in paragraph (d)(8)(i) of this section;

(*14*) Eligible participant, defined in paragraph (g)(3) of this section;

(*15*) Gross income, defined in paragraph (f)(6)(iii) (B)(*2*) of this section;

(*16*) Intangible development area, defined in paragraph (g)(4)(i) of this section;

(*17*) Margins, defined in paragraph (f)(6)(iii)(C)(*2*) of this section;

(*18*) Matching transaction, defined in paragraph (d)(3)(i) of this section;

(*19*) Most appropriate point, defined in paragraph (f)(8) of this section;

(*20*) Operating expenses, defined in paragraph (f)(6)(iii)(B)(*3*) of this section;

(*21*) Operating income, defined in paragraph (f)(6)(iii)(B)(*4*) of this section;

(*22*) Operating income attributable to intangibles, defined in paragraph (g)(2)(ii)(C)(*3*) of this section;

(*23*) Profit level indicators, defined in paragraphs (f) (1) and (6)(iii)(C) of this section;

(*24*) Proportionate profits rule, defined in paragraph (g)(4)(ii)(D) of this section;

(*25*) Qualified cost sharing arrangement, defined in paragraph (g)(2) of this section;

(*26*) Related group, defined in paragraph (g)(3)(v)(A) of this section;

(*27*) Related intangible development, defined in paragraph (g)(4)(i)(B) of this section;

(*28*) Reported operating income, defined in paragraph (d)(5)(v) of this section;

(*29*) Sales, defined in paragraph (f)(6)(iii)(B)(*1*) of this section;

(*30*) Same intangible, defined in paragraph (d)(3)(ii)(A) of this section;

(*31*) Similar intangible, defined in paragraph (d)(4)(ii) of this section;

(*32*) Specified interest in an intangible, defined in paragraph (g)(7)(i) of this section;

(*33*) Substantially similar contracutal terms, defined in paragraph (d)(3)(iv) of this section;

(*34*) Substantially similar economic conditions, defined in paragraph (d)(3)(iii) of this section;

(*35*) Ten-year test, defined in paragraph (d)(6)(ii)(B) of this section;

(*36*) Tested operations, defined in paragraph (f)(5)(ii) of this section;

(*37*) Tested party, defined in paragraph (f)(4) of this section; and

(*38*) U.S. participant, defined in paragraph (g)(7)(ii) of this section.

(iii) *Coordination with paragraph (e) of this section.* This paragraph (d) applies to any transaction in which the transfer of an intangible occurs through transfers of tangible property or services, if the income attributable to the intangible is material in relation to the income attributable to the tangible property or services to which it relates. For an illustration of this rule, see *Example 3* of paragraph (f)(11).

(iv) *Scope of regulations.* Paragraph (d)(2) of this section provides general rules for determining the form and amount of an arm's length consideration. Paragraphs (d) (3), (4), and (5) of this section prescribe three methods for determining the amount of an arm's length consideration. They are, respectively, the matching transaction method, the comparable adjustable transaction method, and the comparable profit method. Paragraph (d)(6) of this section provides rules for multiple year transfers. Paragraph (d)(7) of this section is reserved for rules for regarding consideration that takes the form of a lump-sum payment. Paragraph (d)(8) of this section provides rules concerning

assistance rendered in connection with the development of an intangible. Paragraph (f) of this section provides additional guidance regarding the comparable profit method of paragraph (d)(5) of this section. Paragraph (g) of this section addresses qualified cost sharing arrangements.

(2) *Arm's length consideration*—(i) *Standard to be applied.* An arm's length consideration for an intangible is the amount of consideration that an uncontrolled taxpayer would have paid for the same intangible under the same circumstances. The income of the transferor with respect to a controlled transfer of an intangible must be commensurate with the income of the transferee attributable to the intangible.

(ii) *Form.* An arm's length consideration must be in a form that is consistent with a form that would be adopted in transactions between uncontrolled taxpayers under the same circumstances. If the transferee pays nominal or no consideration for an intangible and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty unless a different form is clearly more appropriate.

(iii) *Priority of methods for determining an arm's length consideration.* An arm's length consideration must be determined by applying the matching transaction method, the comparable adjustable transaction method, or the comparable profit method, described in paragraphs (d) (3), (4), and (5) of this section, respectively. Because the matching transaction method requires the fewest adjustments and relies on the most complete and accurate data, an arm's length consideration must be determined under that method if the standards for its application are met. If those standards are not met, an arm's length consideration must be determined under the comparable adjustable transaction method if the standards for its application are met. If the standards for applying neither of these methods are met, the amount of an arm's length consideration must be determined under the comparable profit method. The inapplicability of a higher priority method need not be specifically established before applying a lower priority method. However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(iv) *Application of methods.* In applying the methods described in paragraphs (d) (3), (4), and (5) of this section, the district director may consider all relevant facts and circumstances throughout the period the intangible is used, including information from before, during and after the taxable year under review. The district director is not limited to considering projections or forecasts, and may consider the actual income derived from the use of an intangible. See paragraph (d)(6) of this section for additional guidance in this regard.

(3) *Matching transaction method*—(i) *In general.* Under the matching transaction method, an arm's length consideration for a controlled transfer of an intangible is determined by reference to the consideration charged in an uncontrolled transfer of the same intangible under the same or substantially similar economic conditions and contractual terms (a "matching transaction"). If the uncontrolled transfer is under economic conditions and contractual terms that are not the same as, but are substantially similar to, those of the controlled transfer, the uncontrolled transfer must be adjusted as provided in paragraph (d)(3)(v) of this section. If the uncontrolled transfer is under economic conditions and contractual terms that are neither the same as, nor substantially similar to, those of the controlled transfer, the uncontrolled transfer is not a matching transaction but may be a comparable adjustable transaction under the method described in paragraph (d)(4) of this section.

(ii) *Same intangible*—(A) *In general.* A controlled transfer will be considered to involve the same intangible as an uncontrolled transfer if the property, protected interest or body of knowledge that is subject to exploitation through the use of each intangible and the relative stages of development of each intangible are identical. For example, a patented process used to manufacture a specific product is not the same intangible as a different patented process used to manufacture the same product merely because the products produced in each case are identical. Transfers must involve identical intangible property, interests or knowledge in order to be considered transfers of the same intangible.

(B) *Effect of different rights.* Differences in the exploitation rights permitted under two transfers are considered differences in the contractual terms and economic conditions of the transfers rather than differences in the intangible itself. Thus, different geographic or use restrictions are not differences in the intangible itself. For example, the transfer of the right to use a patented process to manufacture, use, and sell a product within a specified market involves the same intangible as a separate transfer of the right to use the same patented process to manufacture, use and sell, the product in a different market. The right to sell a patented product with an attached trademark (or similar marketing intangible), however, is not the same intangible as the right to sell the same product without the trademark.

(iii) *Substantially similar economic conditions.* The determination of whether economic conditions in the controlled and uncontrolled transfers are substantially similar requires a comparison of all economic factors that could affect the amount of consideration in the two transfers. These factors include, but are not limited to—

(A) The similarity of geographic markets, including:

(*1*) The relative size of each market,

(*2*) The extent of overall economic development in each market, and

(*3*) The extent of competition in each market with regard to the uses to which the intangible is applied;

(B) The extent to which the products or services to which the intangible relates have been accepted within each market;

(C) The existence and extent of any collateral transactions or ongoing business relationship between the parties to each transfer; and

(D) The functions performed by the parties and the economic risks associated with those functions.

For example, the transfer of an intangible for use in a developing country would not constitute a transfer under substantially similar economic conditions as the transfer of the same intangible for use in an industrialized country if the overall level of economic development in the markets affects the consideration for the intangible.

(iv) *Substantially similar contractual terms.* The determination of whether contractual terms in the agreements covering controlled and uncontrolled transfers are substantially similar requires a comparison of all contractual terms which could affect the amount of consideration under each agreement. These contractual terms include, but are not limited to—

(A) The amount and form of the consideration charged for the transferred intangible;

(B) The duration of the contracts, and any termination or renegotiation rights;

(C) The portion of the total interests in the intangible to which the contracts apply, including any limitations on the ways the transferee may use the intangible;

(D) Provisions for accelerating or delaying payment; and

(E) Provisions describing the functions to be performed by each party, including any ancillary services (such as technical assistance, marketing, and product development).

For example, if the uncontrolled transfer provides for the transferee to receive a specified level of technical assistance and training, the controlled transfer must contain corresponding rights in order for the contractual terms to be considered substantially similar. If one agreement calls for the transferee to perform significant marketing functions, while in the other the transferor agrees to perform such marketing functions, the contractual terms of the two transfers are not substantially similar.

(v) *Adjustments to economic conditions and contractual terms*—(A) *In general.* If the same intangible is transferred in a matching transaction under economic conditions and contractual terms that are not the same as, but are substantially similar to, those of the controlled transfer, the consideration charged in the uncontrolled transfer must be adjusted to compensate for those differences. Proper adjustments to the matching transaction will thus reflect the consideration that would have been charged had its economic conditions and contractual terms been the same as those of the controlled transfer.

(B) *Limitation.* Adjustments to an uncontrolled transaction under this paragraph (d)(3)(v) are permitted to compensate only for a limited number of minor differences in economic conditions and contractual terms that have a definite and precisely determinable effect on the consideration for the intangible. The differences for which adjustments will be permitted under this method must be sufficiently limited so that each adjustment alone and all the adjustments combined have only a minor effect on the consideration charged in the uncontrolled transfer. If these standards are not met, then the economic conditions and contractual terms will not be considered substantially similar and the matching transaction method will not apply.

(vi) *Examples.* The following examples illustrate matching transactions:

Example 1. (i) USCo is a U.S. corporation that develops and distributes business software for personal computers. USCo has developed a new line of specialized accounting software that it sells mainly in foreign markets. USCo serves the market in country F for this software by licensing it to an uncontrolled country F corporation, UF. USCo serves the market in country B through its wholly-owned foreign subsidiary, RB. UF and RB have identical license agreements with USCo which entitle them to be exclusive distributors of the product in their respective countries in exchange for a royalty of 20 percent of the net selling price.

(ii) In 1996, the IRS audits USCo's 1994 taxable year, the second year in which the agreement was in place. Since the accounting software sold by RB is identical to the software sold by UF, the two transfers involve the same intangible. In addition, the UF license satisfies the requirement of substantially similar contractual terms because the terms of the license that USCo has with UF are identical to the terms of the license it has with RB. Furthermore, RB and UF perform the same functions relating to marketing and distribution of the software. Reliable sales information relevant to these transactions for the years 1993 through 1995 shows that both RB and UF are relatively significant distributors in their respective markets; however, neither holds a monopoly position or a dominant market share. Based on the review of these and other relevant factors, it is determined that the economic conditions with respect to the two transfers are substantially similar and that no adjustments under paragraph (d)(3)(v) of this section need be made. Accordingly, the matching transaction method is applicable, and the royalty rate of 20 percent in the controlled transfer to RB is determined to be an arm's length amount of consideration for 1994.

Example 2. The facts are the same as in *Example 1,* except that the controlled transfer to RB covers all future revisions and updates to the accounting software while the uncontrolled transfer to UF covers only the current version of the software. Since the intangibles transferred in the two transactions are different, the transfers do not involve the same intangible. Therefore, the UF transfer is not a matching transaction.

Example 3. The facts are the same as in *Example 1,* except that the uncontrolled transfer to UF includes contractual terms that require USCo to furnish technical assistance to UF (including information concerning marketing and packaging of the accounting software). The UF agreement provides that USCo will be reimbursed for its costs attributable to any technical assistance it provides. The RB agreement does not contain a similar provision and it provides that the level of technical assistance that can be demanded by UF is relatively modest and will have little effect on the value of the accounting software. Minimal levels of technical assistance are actually provided to UF and RB by USCo. Definite and precisely determinable adjustments to the consideration charged for the accounting software can be made with respect to this difference in contract terms on the basis of the costs to USCo of the technical assistance actually provided. Accordingly, the contractual terms are substantially similar and the UF license is a matching transaction. However, the district director may make an allocation to reflect any differences in technical assistance actually provided.

Example 4. The facts are the same as in *Example 3,* except that USCo is required to provide the same forms of technical assistance at cost to both UF and RB under the contractual terms of the two transfers. In practice, however, the assistance actually provided by USCo to RB involves extensive transfers of knowhow with respect to developing effective distribution networks within the country B market. The marketing function in the uncontrolled transfer, however, is carried on primarily by UF with little actual assistance provided by USCo. The uncontrolled transfer in this case fails to meet the standards for a matching transaction for two reasons. First, because the transfer to RB involves different and more extensive areas of knowhow developed by USCo than the transfer to UF, the two transactions do not involve the same intangible. Second, because the economic conditions of the two transfers involve significantly different functions actually performed by USCo, and any adjustments to compensate for these differences could be relatively large, these conditions are not substantially similar. Accordingly, the uncontrolled transfer is not a matching transaction.

Example 5. The facts are the same as in *Example 1* and no adjustment is made in 1994. Due to RB's capacity for expansion of its distribution network, however, USCo anticipates that future growth in worldwide markets will be met by RB. Beginning in 1995, RB expands its marketing network beyond the country B market. By 1998, RB has significantly expanded its worldwide sales and has developed a dominant market share in several substantial new markets where it is able to charge premium prices for its product. The same factors are not present in country F, and UF continues to hold a relatively stable market share. These changes in economic conditions have a major effect on RB's operations. The adjustment to the consideration charged by UF to account for these differences in economic conditions would be material in comparison to the overall consideration paid to USCo. Accordingly, the economic conditions in the uncontrolled transfer are no longer substantially similar to those of the controlled transfer, and the standards for the matching transaction method are not met with respect to the 1998 taxable year. Nevertheless, the uncontrolled transfer may continue to be a comparable adjustable transaction described in paragraph (d)(4) of this section.

(4) *Comparable adjustable transaction method*—(i) *In general.* Under the comparable adjustable transaction method, an arm's length consideration for an intangible is determined by reference to the consideration charged in an uncontrolled transfer involving the same or similar intangible under adjustable economic conditions and contractual terms, adjusted as provided in paragraph (d)(4)(iv) of this section. An uncontrolled transfer will not meet the standards of this paragraph (d)(4) if the consideration determined by reference

to that transfer results in a level of operating income for the tested party, as defined in paragraph (f)(4) of this section, that is outside of the comparable profit interval, as provided under the rules of paragraph (f) of this section. An uncontrolled transfer that meets the standards of this paragraph (d)(4) is a "comparable adjustable transaction."

(ii) *Same or similar intangible.* A controlled transfer will be considered to involve the same or similar intangible as an uncontrolled transfer if the property, protected interest or body of knowledge that is subject to exploitation through the use of each intangible and the relative stages of development of each intangible are sufficiently similar that the effect of any material differences can be determined with reasonable accuracy.

(iii) *Adjustable economic conditions and contractual terms.* Whether economic conditions and contractual terms are adjustable must be determined using the same factors that apply in determining whether such conditions and terms are substantially similar for purposes of the matching transaction method (as described in paragraphs (d)(3) (iii) and (iv) of this section). The comparable adjustable transaction method does not require that all such terms and conditions be substantially similar, or that adjustments compensate for only a limited number of minor differences. To be considered adjustable, however, the contractual terms and economic conditions must be sufficiently similar that the effect of any material differences can be determined with reasonable accuracy.

(iv) *Adjustments for differences in intangibles, economic conditions, and contractual terms.* If the same or similar intangible is transferred under adjustable economic conditions and contractual terms, the consideration called for in the uncontrolled transfer must be adjusted to compensate for material differences between the intangibles, economic conditions, and contractual terms of the transfers. Adjustments to the uncontrolled transfer will reflect the consideration that would have been charged had its terms and conditions been the same as those of the controlled transfer.

(v) *Selection of most similar comparable adjustable transaction.* If more than one comparable adjustable transaction is available, the arm's length consideration is determined under this method by using the uncontrolled transfer most similar to the controlled transfer, determined by reference to the factors described in paragraphs (d)(4) (ii), (iii) and (iv) of this section. The most similar comparable adjustable transaction will generally be the uncontrolled transfer for which. the necessary adjustments can most accurately be determined.

(vi) *Examples.* The following examples illustrate comparable adjustable transactions. See also paragraph (f)(11) of this section, which provides examples of the application of the comparable profit interval to test a potential comparable adjustable transaction.

Example 1. X is a domestic corporation engaged in the manufacture and distribution of small plastic products. X has developed and patented certain processes used in the injection molding of its plastic products. In 1994, X expands its operations through a wholly-owned subsidiary, Y, incorporated in country F. Y uses the same manufacturing processes as X and sells its products in country F and other nearby markets. Y agrees to pay X a royalty of 6.5% of gross sales for its use of the injection molding process and related knowhow. In 1996, the district director examines the royalty agreement to determine if the consideration agreed to in 1994 was an arm's length amount. Intangibles related to various types of injection molding processes have been licensed between uncontrolled taxpayers, but none of the processes involve a property, protected interest or body of knowledge which is identical to the process developed by X. Accordingly, these uncontrolled taxpayer licenses do not involve the same intangible and cannot serve as matching transactions. The most similar transaction to the transfer between X and Y involves a process used for injection molding of soap products that was developed by corporation A and licensed to uncontrolled corporation B, a country F corporation. The royalty rate in the agreement between A and B is 5% of gross sales. B uses the licensed technology to manufacture soap products that it distributes in country F. Reasonably determinable adjustments can be made to reflect the following differences between the two transactions:

(i) The injection molding process developed by X is more sophisticated than the process developed by A and it affects more aspects of the manufacturing process;

(ii) The improved manufacturing technology in Y's plastic business in country F has a significant effect on Y's market share and overall profitability, while improvements to B's manufacturing process in country F have a less beneficial economic effect;

(iii) The contract between X and Y provides for continued technical assistance to be provided at no additional cost by X while the agreement between A and B does not mention technical assistance; and

(iv) Technical assistance has in fact been provided by both A and X to their respective licensees, but the costs of providing the technical assistance has been slightly more in the case of X.

Considering each of the above factors, it is determined that a 1.5% increase over the royalty rate charged in the transaction between A and B is an appropriate adjustment to reflect the differences between the two transactions. In addition, the operating income earned by Y after payment of the 6.5% royalty is within the comparable profit interval described in paragraph (f) of this section. Accordingly, the royalty rate set between X and Y will be an arm's length amount of consideration under the comparable adjustable transaction method.

Example 2. The facts are the same as in *Example 1,* except that the license agreement between X and Y contains a royalty rate of 3% of gross sales and there is no comparable adjustable transaction between A and B. X defends the 3% royalty as an arm's length amount by reference to a license agreement between uncontrolled taxpayers C and D. C is a developer of an intangible that involves improvements to the computer controls in the production of advanced machine tools. D licenses this intangible for use in its country F machine tool manufacturing business and pays C a royalty of 3% of gross sales. The differences between the functions performed with the two intangibles are substantial. For instance, C's process is used for only one step of many stages of the manufacturing of the machine tools and has little effect on the size of D's labor force. By contrast, the injection molding process developed by X replaces or significantly affects each stage of the manufacture of Y's plastic products and results in a major labor force reduction. Due to these differences between the intangibles involved in the two transfers, and the differences in the overall economic benefit to be derived from the cost reductions achieved, compensating adjustments to the royalty charged in the uncontrolled transfer cannot be reasonably ascertained. Accordingly, the transfer of the intangible from C to D is not a comparable adjustable transaction.

Example 3. The facts are the same as in *Example 1,* except that the assistance actually provided by X to Y in the controlled transfer is substantially greater than the assistance provided by A to B in the uncontrolled transfer. The assistance provided in the controlled transfer extends to all aspects of Y's manufacturing and marketing efforts, and constitutes a wide body of knowledge accumulated by X in its manufacturing and marketing of plastic products in the U.S. market. This assistance is a substantial factor in the success of Y's manufacturing and marketing operations. In contrast, B's assistance from A is limited solely to the operational aspects of A's injection molding process. B's other manufacturing expertise, and all of its marketing knowhow, were developed through B's long term experience in country F. Accordingly, there are substantial differences between the intangibles transferred by A and X; the transfer to Y involves knowhow relating to all of Y's manufacturing and marketing operations, whereas the transfer to B is limited to one aspect of the manufacturing process. Due to the lack of reliable data concerning the value to B of its self-developed intangibles as well as the comparative economic effects between the plastic and soap markets resulting from these

broader types of intangibles, the adjustments to account for these differences are not reasonably determinable. Accordingly, the transfer from A to B is not a comparable adjustable transaction.

Example 4. The facts are the same as in *Example 1*, except that Y's use of the injection molding processes in 1994 is only in an early stage of implementation within country F. As expected by X and Y, the process becomes fully operational in 1995 allowing Y to significantly reduce manufacturing costs, lower the prices of its products, and expand its market share within country F. By 1998, Y is the largest manufacturer of these products in the market and has significantly increased both its volume of sales and its profitability. As a result, the operating income earned by Y in 1998 (after payment of the 6.5% royalty to X) substantially exceeds the comparable profit interval described in paragraph (f) of this section. Moreover, the economic conditions involved in Y's operations have grown sufficiently different from the economic conditions involved in B's soap production that adjustments to the royalty rate paid by B to account for those differences are no longer reasonably determinable. Accordingly, the transfer between A and B is not a comparable adjustable transaction for the 1998 taxable year.

(5) *Comparable profit method*—(i) *In general.* If there are no uncontrolled transfers that meet the standards for either matching transactions or comparable adjustable transactions, then an arm's length consideration for the controlled transfer of an intangible must be determined by reference to the comparable profit interval of the tested party under the rules of paragraph (f) of this section. Paragraphs (d)(5) (ii), (iii), and (iv) of this section provide rules concerning application of the comparable profit method based on whether the reported operating income (as defined in paragraph (d)(5)(v) of this section) of the tested party is within or outside of the comparable profit interval. These rules do not apply for purposes of using the comparable profit interval to test a potential comparable adjustable transaction, as required in paragraph (d)(4)(i) of this section, or for purposes of testing a result under any method described in paragraph (e)(1) (iii) or (iv) of this section.

(ii) *Effect if reported operating income of the tested party is within the comparable profit interval.* If the comparable profit method applies (*i.e.*, the standards for the matching or comparable adjustable transaction methods have not been met) and the consideration charged in the controlled transfer results in reported operating income of the tested party that is within the comparable profit interval, that amount of consideration will generally be treated for purposes of this paragraph (d) as an arm's length consideration. Accordingly, allocations with respect to those transfers ordinarily will not be made under this paragraph (d). See paragraph (d)(5)(iv) of this section for exceptions to this rule.

(iii) *Effect if reported operating income of the tested party is outside of the comparable profit interval*—(A) *General rule.* If the comparable profit method applies (*i.e.*, the standards for the matching or comparable adjustable transaction methods have not been met) and the consideration due in the controlled transfer results in reported operating income of the tested party outside of the comparable profit interval, an adjustment under this method may be made to the amount of consideration for such transfer. Except as provided in paragraph (d)(5)(iii)(B) of this section, the adjustment must result in a level of operating income of the tested party at the most appropriate point within the comparable profit interval, as described in paragraph (f)(8) of this section.

(B) *Discretion to limit adjustments.* In determining the amount of any adjustment to be made under this method, the district director will consider how closely the reported operating income corresponds to the comparable profit interval. If reported operating income of the tested party is not significantly outside the comparable profit interval, any adjustments made by the district director will take into account the amount of deviation between the comparable profit interval and the reported operating income. The closer the reported operating income is to the comparable profit interval, the smaller an appropriate adjustment may be. The adjustment must bring the operating income within the comparable profit interval but may be smaller than necessary to reach the most appropriate point in the interval. See paragraph (d)(5)(iv) of this section for exceptions to this rule.

(C) *Examples.* The following examples illustrate an adjustment of the tested party's operating income:

Example 1. The transferee of an intangible is the party and the comparable profit interval for the transferee, as determined under paragraph (f) of this section, consists of operating income falling between $1.5 and $2 million. The transferee's reported operating income is $2.1 million. Under all the facts and circumstances of this case, the most appropriate point within the comparable profit interval is $1.7 million. However, the district director determines that the transferee's reported operating income is not significantly outside the comparable profit interval. Consequently, rather than adjusting the transferee's reported operating income to $1.7 million (the most appropriate point within the interval), the district director adjusts the transferee's reported operating income to $1.9 million.

Example 2. Assume the facts are the same as in *Example 1*, except that the transferee's reported operating income is $5.0 million. The transferee's reported operating income lies significantly outside the appropriate profit interval. Consequently, the district director adjusts the transferee's reported income to the most appropriate point, $1.7 million.

(iv) *Exceptions.* If the comparable profit method applies, the district director may make an adjustment that results in a level of operating income for the transferee at the most appropriate point within the comparable profit interval, as described in paragraph (f)(8) of this section, if—

(A) The transferee paid no consideration in connection with the controlled transfer; or

(B) The consideration paid by the transferee in connection with the controlled transfer was substantially disproportionate to the value of the intangible.

In such cases the rules of paragraphs (d)(5) (ii) and (iii)(B) of this section that would permit no adjustment or a more limited adjustment shall not apply.

(v) *Reported operating income.* The term "reported operating income of the tested party" means the operating income of the tested party reflected on a timely U.S. income tax return (or an amended return) filed before the Internal Revenue Service first contacts the tested party or any other member of the same group of controlled taxpayers concerning an examination of the return for the taxable year. If the tested party files a U.S. income tax return, its operating income is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account income attributable to the transferee's use of the intangible or consideration charged for the intangible by the transferor. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (d)(5)(v) if it satisfies the requirements of a qualified amended return for purposes of § 1.6661–6(c) as set forth in those regulations or as the Commissioner may prescribe by Revenue Procedure. If the tested party does not file a U.S. income tax return, its operating income is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the transferee's use of the intangible or consideration charged for the intangible by the transferor affects the calculation of

taxable income on the U.S. income tax return of any other member of the same group of controlled taxpayers.

(vi) *Example.* The following example illustrates reported operating income:

Example. USCo, a domestic corporation, wholly owns two foreign subsidiaries F1 and F2. F1 is the developer of an intangible, which it licenses to F2 for a royalty of 5% of gross sales. The royalty received by F1 constitutes foreign personal holding company income under section 954(c). USCo timely files a return for 1994 that includes the amount of the royalty payment as gross income under section 951. The royalty amount has no other effect on the taxable income reportable for 1994 on a U.S. tax return by any person. F2 is the tested party with respect to the controlled transfer of the intangible. In determining whether the royalty paid by F2 was an arm's length consideration, the operating income of F2 will be considered its reported operating income for purposes of applying the comparable profit method.

(6) *Transfers for more than one taxable year*—(i) *Timing of review.* If an intangible is transferred under an agreement with a term covering more than one taxable year, the consideration charged in each taxable year may be adjusted to assure that it is commensurate with the income attributable to the intangible. The district director may consider all relevant facts and circumstances throughout the period the intangible is used in determining whether to make allocations in the taxable year under examination. Except as provided in paragraph (d)(6)(ii) of this section, the determination in an earlier year that the amount charged for an intangible was arm's length will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible.

(ii) *Exceptions*—(A) *Operating income of the tested party remains within the comparable profit interval.* No allocation will be made under paragraphs (d)(3) (matching transaction method) and (d)(4) (comparable adjustable transaction method) of this section for the use of an intangible if:

(*1*) An arm's length consideration (within the meaning of this paragraph (d)) was charged for the intangible in the year it was transferred;

(*2*) The reported operating income of the tested party was within the comparable profit interval (as described in paragraph (f) of this section) in all years subsequent to the year of the transfer, including the taxable year under examination; and

(*3*) There has not been a major variation in the annual amounts of revenue attributable to the transferred intangible.

(B) *Ten-year test.* No allocation shall be made under this paragraph (d) to increase the consideration for the use of an intangible if:

(*1*) The intangible was transferred pursuant to a written agreement that meets the following conditions:

(*i*) At the time the agreement was entered into, the intangible was in existence and was reasonably susceptible of valuation;

(*ii*) The agreement was in effect throughout a 10 year period ending at any time prior to the taxable year under examination; and

(*iii*) The agreement remained in effect in the taxable year under examination;

(*2*) Significant commercial production involving the intangible occurred throughout the 10 year period;

(*3*) The consideration charged under the agreement is set by reference to a royalty rate that was applied throughout the 10 year period and continued to apply with respect to the taxable year under examination; and

(*4*) Either of the following conditions is satisfied:

(*i*) The consideration charged with respect to each of the 10 years previously was determined, or is determined subsequently, to be an arm's length amount under either paragraph (d)(3) (matching transaction method) or (d)(4) (comparable adjustable transaction method) of this section; or

(*ii*) The transferee's reported operating income was within the comparable profit interval throughout the 10 year period and the taxable year under examination.

(C) *Limitation on allocations in subsequent taxable years due to unanticipated events.* No allocation will be made under this paragraph (d) to increase the consideration for the intangible for any taxable year if each of the following facts is established:

(*1*) The controlled taxpayers entered into a written agreement that provided for an amount of consideration with respect to any prior taxable year that is determined to be an arm's length amount under either the matching transaction method or the comparable adjustable transaction method.

(*2*) The written agreement between the uncontrolled taxpayers that entered into the matching or comparable adjustable transaction contained no provision that would have permitted adjustment or termination due to unanticipated changes of profitability, and no adjustment or termination was in fact made by the uncontrolled taxpayers in any taxable year through the taxable year under review.

(*3*) The written agreement between the controlled taxpayers limited the use of the intangible to a specified field or purpose in a manner that was consistent with industry practices and any limitation in the agreement between the uncontrolled taxpayers.

(*4*) The tested party's operating income moved outside of the comparable profit interval solely because of changes in economic conditions that were—

(*i*) Beyond the control of any member of the group of controlled taxpayers, and

(*ii*) Neither anticipated nor reasonably foreseeable.

(*5*) The written agreement between the controlled taxpayers contained no provision that would have permitted an adjustment of the amount of consideration charged for the intangible, and that agreement remained in effect in the taxable year under review.

(D) *Examples.* The unanticipated events test as set forth in paragraph (d)(6)(ii)(C) of this section is illustrated by the following examples:

Example 1. X is a U.S. corporation with a wholly owned foreign subsidiary Y. X and Y perform pharmaceutical research, and manufacture and market pharmaceutical products worldwide. X has discovered, patented and obtained FDA approval for Lolip, a cholesterol-lowering drug the active ingredient of which is different from the other competitive drugs which perform similar therapeutic functions. Several of these competitive drugs are licensed to uncontrolled taxpayers in Europe and Asia under long term arrangements which do not provide a mechanism for adjusting the royalty payments in the event of unanticipated changes in economic circumstances. After trial marketing in Europe and Asia to determine expected levels of acceptance, X computes a royalty on the transfer from X to Y of the right to manufacture and market Lolip in Europe and Asia on the basis of the expectation that the competitive drugs will remain in those markets. Two years after X licenses Lolip to Y, a study is published linking the competing drugs to high rates of liver cancer. As a result, in a short time Lolip captures a substantially higher percentage of the European and Asian markets than originally anticipated. Based on reliable documentation, X establishes the five facts listed in paragraph (d)(6)(ii)(C) of this section. Accordingly, no adjustment will be made based solely on the increase in the profitability experienced by Y that was attributable to loss of market share by its competitors due to the liver cancer connection.

Example 2. Assume the same facts as in *Example 1* except that there is no linkage of the competing drugs to liver cancer and the competitors do not lose their anticipated market share. Furthermore, it is determined that the process for manufacturing Lolip generates and releases into the atmosphere high concentrations of a certain pollutant in violation of the U.S. Clean Air Act. Rather

than modify the process used in X's U.S. plant, X closes its manufacturing operation and purchases from Y 100 percent of the Lolip needed to supply the U.S. market. The plant closing is not a change that is beyond the control of the parties. Accordingly, the exception described in paragraph (d)(6)(ii)(C) of this section will not apply. Any allocation made by the district director for subsequent taxable years will take into account the fact that Y has acquired the right, in effect, to manufacture Lolip for the U.S. market.

(7) *Lump-sum payments.* [Reserved]

(8) *Development of an intangible*—(i) *Identification of the developer.* Except as provided in paragraph (g) of this section, when two or more members of a controlled group undertake the development of an intangible, one member will be regarded as the developer of the intangible, and, therefore, as its owner for purposes of section 482. The other participating members will be regarded as assisters. Which controlled taxpayer is the developer and which controlled taxpayers are assisters will be determined under all the facts and circumstances. In making this determination, greatest weight must be given to the extent to which each member—

(A) Bears the direct and indirect costs and corresponding risk of developing the intangible; and

(B) Makes available without adequate compensation property or services likely to contribute substantially to developing the intangible.

A controlled taxpayer will be treated as bearing the costs and corresponding risk of development only if it is legally bound before the costs are incurred to bear the costs without regard to the success of the project. For this purpose, the risk to be borne with respect to development activity is the possibility that such activity will not result in the production of intangible property or that the intangible property produced will not be of sufficient value to allow for the costs of developing it. Other factors that may be relevant in determining which controlled taxpayer is the developer include the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the actual conduct of the controlled taxpayers.

(ii) *Allocations with respect to transfers by the developer.* If the developer of an intangible makes the intangible available to another controlled taxpayer (including any assister), the district director may make an allocation with respect to that transfer to reflect an arm's length consideration for the intangible. See paragraph (d)(1) of this section.

(iii) *Allocations with respect to assistance provided to the developer.* The district director may make allocations to reflect arm's length consideration for assistance provided to the developer by another controlled taxpayer in connection with the development of an intangible. Such assistance may include loans, services, or the use of tangible or intangible property. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules of this section. For example, if one member of a controlled group allows another member of the group to use tangible property, such as laboratory equipment, in connection with the latter's development of an intangible, any allocations with respect to the developer's use of the tangible property will be determined under paragraph (c) of this section. If consideration for assistance provided to the developer is not arm's length, instead of making an allocation with respect to the assistance, the district director may treat the difference between the amount of an arm's length consideration for the assistance and the consideration charged by the assister as a loan, either from the assister to the developer (if consideration charged is less than an arm's length amount) or as a loan from the developer to the assister (if consideration charged exceeds an arm's length amount), that is subject to paragraph (a) of this section.

(iv) *Examples.* The following examples illustrate the principles of this paragraph (d)(8). In all these examples, it is assumed X and Y are members of the same group of controlled taxpayers.

Example 1. X, at the request of Y, undertakes to develop a new machine that will function effectively in the climate in which Y's factory is located. Y agrees in writing before X incurs any costs to bear all the direct and indirect costs of the project whether or not X successfully develops the machine. X does not make any of its own property available for use in connection with the project without adequate compensation. The machine is successfully developed and X provides to Y the process necessary to produce it. Y is considered the developer of the process and, therefore, shall not be treated as having obtained it in a transfer subject to the rules of this paragraph (d). The district director may make appropriate allocations with respect to assistance rendered by X. The district director also may treat any use of the process by X as a transfer by Y that is subject to the rules of this paragraph (d) and make allocations with respect to that transfer.

Example 2. Assume the same facts as in *Example 1* except that Y agrees to bear the costs only if the machine is successfully developed. X is considered the developer and Y is regarded as having obtained the process in a transfer subject to the rules of this paragraph (d). Therefore, the district director may make allocations to reflect an arm's length consideration for the transfer of the process.

Example 3. X undertakes to develop a new chemical product M in its research and development department and incurs direct and indirect costs of $1,000,000 per year in 1994, 1995, and 1996. X employs the formula for compound N which it developed and owns. The value of the use of the formula for compound N in connection with the project is $750,000. In 1995, four chemists employed by Y spend six months working on the project in X's laboratory. The salary and other expenses connected with the chemists' activities during that period total $200,000 and are paid by Y without charge to X. In 1996, product M is perfected and Y obtains patents on its formula. X is considered the developer of product M because, among other things, it bore the greatest share of the costs and risks incurred in connection with the project and made available valuable property (the formula for compound N). The formula for product M is deemed to have been transferred to Y in 1996 by virtue of Y's obtaining patent rights to product M. The district director may make allocations in that year to reflect arm's length consideration for the transfer. The district director also may make allocations in 1995 with respect to the assistance rendered by Y. If the district director does not make an allocation for 1995 with respect to the services of the chemists in accordance with the principles of paragraph (b) of this section, the district director may treat the amount of an arm's length consideration as a loan to X from Y.

Example 4. X, a foreign producer of cheese, markets its cheese in countries other than the United States under the trade name DR. X owns all worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, X decides to enter the U.S. market and organizes U.S. subsidiary Y to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name DR in the United States. Y incurs $5,000,000 of expenses promoting the name DR in that year for which it is not reimbursed by X. Y is considered the developer of the enhanced U.S. rights to the trade name.

(e) *Sales of tangible property*—(1) *In general*—(i) *Arm's length standard.* Where one member of a group of controlled taxpayers sells or otherwise disposes of tangible property to another member of the group ("controlled sale") at other than an arm's length price, the district director may make appropriate allocations between the seller and the buyer to reflect an arm's length price for that sale or disposition. An arm's length price is the price that an uncontrolled taxpayer would have paid under the same circumstances for the property involved in the controlled sale.

(ii) *Priority of methods.* Paragraphs (e)(2), (3), and (4) of this section prescribe three methods for determining an arm's length consideration. They are, respectively, the comparable uncontrolled price method, the resale price method, and the cost plus method. In addition, a special rule is provided in paragraph (e)(1)(vi) of this section for the sale of an ore or mineral. Because the comparable uncontrolled price method generally will involve the most complete and accurate data and require the fewest and most readily quantifiable adjustments, the amount of an arm's length consideration must be determined under this method if the standards for its application are met. If those standards are not met, the amount of an arm's length consideration must be determined under either the resale price method or the cost plus method, depending upon which method relies on the most complete and accurate data, and requires the fewest and most readily quantifiable adjustments. Use of the resale price method ordinarily is more appropriate when a manufacturer sells products to a controlled distributor which, without further processing or the use of significant intangibles, resells the products in uncontrolled transactions. Use of the cost plus method ordinarily is more appropriate when a manufacturer sells products to a controlled taxpayer that after further processing, or the use of significant intangibles, resells the products in uncontrolled transactions. The inapplicability of a higher priority method need not be specifically established before applying a lower priority method. However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(iii) *Confirmation of resale price and cost plus methods by the comparable profit interval.* A transfer price determined under either the resale price method or the cost plus method reflects arm's length consideration only if that price results in a level of operating income for the tested party that is within the comparable profit interval described in paragraph (f) of this section.

(iv) *Other methods.* Where none of the three methods of pricing described in paragraph (e)(1)(ii) of this section can reasonably be applied under the facts and circumstances of a particular case, a method of pricing other than those described in that paragraph, or a variation on those methods, may be used, but only if that method yields a level of operating income for the tested party that is within the comparable profit interval described in paragraph (f) of this section. Such methods may include an analysis based on profit level indicators, described in paragraph (f)(6)(iii) of this section. Generally, the best such method will result in operating income for the tested party that is at the most appropriate point within the comparable profit interval as described in paragraph (f)(8) of this section. The inapplicability of a higher priority method need not be specifically established before applying an "other method" under this paragraph (e)(1)(iv). However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(v) *Product line and statistical analysis.* The methods of determining arm's length prices described in this paragraph (e) are stated in terms of their application to individual sales of property. However, because a taxpayer may make controlled sales of many different products, or many separate sales of the same product, it may be impractical to analyze every sale for the purpose of determining the arm's length price. Therefore an arm's length price may be determined or verified by applying the pricing methods to product lines or other groupings where it is impractical to ascertain an arm's length price for each product or sale. In addition, the district director may determine or verify the arm's length price of all sales to a controlled taxpayer by employing reasonable statistical sampling techniques.

(vi) *Mineral products.* The price for a mineral product which is sold at the stage at which mining or extraction ends shall be determined under the provisions of §§ 1.613–3 and 1.613–4.

(2) * * *

(ii) * * * Some of the differences that may affect the price of property are differences in the quality of the product, terms of sale, intangible property associated with the sale, time of sale, sales volume, inventory turnover rate, advertising and warranty practices and the level of the market and the geographic market in which the sale takes place. * * *

Example (4). Assume that the circumstances surrounding the controlled and uncontrolled sales are identical, except that, in the controlled sales, the transferee bears the warranty obligations that arise in the resale of the product. If the effect of this difference on the price is not reasonably ascertainable, then the uncontrolled sales will not be comparable to the controlled sales.

Example (5). Assume that the circumstances surrounding the controlled and uncontrolled sales are identical, except for the fact that the volume of controlled sales is different from the volume of uncontrolled sales and such volume of controlled sales would produce a reasonably ascertainable volume discount. The adjusted uncontrolled sales will be comparable to the controlled sales.

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(f) *Comparable profit interval*—(1) *In general.* The comparable profit interval is composed of various amounts of profit that a tested party would have earned if objective measures of its profitability ("profit level indicators") had been equivalent to those of various uncontrolled taxpayers that performed similar functions. Specifically, profit level indicators derived from the financial data of uncontrolled taxpayers are applied to the tested party to recalculate its operating income. Each recalculated amount is referred to in this section as "constructive operating income." The comparable profit interval is then derived from those constructive operating incomes that converge. This comparable profit interval is used to confirm the validity of a transfer price calculated through the use of other methodologies, under the rules of paragraphs (d)(4), and (e)(1) (iii) and (iv) of this section. In addition, under the rules of paragraphs (d)(5) and (e)(1)(iv) of this section, the comparable profit interval may be used in determining the transfer price for the controlled transfer of intangible property. Paragraph (f)(3) of this section describes the six steps of the analysis that is applied in this paragraph (f) to derive the comparable profit interval. While in many cases this analysis will consist of a sequential application of the six steps, the steps are interdependent and certain steps may have to be reapplied to take into account results derived in succeeding steps.

(2) *Data from multiple years.* Unless the circumstances indicate that a different period is more appropriate, the interval will be based on actual results (rather than projections) from the three-year period that includes the taxable year under review, the preceding year and the following year. Circumstances that may warrant the use of a different period include the unavailability of reliable data from the relevant time periods, the normal business cycles of the industry under review, and the life cycle of the products or intangibles being examined. To the extent that reliable data is available, data pertaining to uncontrolled taxpayers and data pertaining to the tested party should relate to comparable time periods.

(3) *Development of a comparable profit interval.* The development of a

comparable profit interval consists of the following steps:

(i) *Step 1.* Select the party to a controlled transaction to be tested. This determination is made under paragraph (f)(4) of this section.

(ii) *Step 2.* Determine the applicable business classification of the tested party. This determination is made under paragraph (f)(5) of this section.

(iii) *Step 3.* Compute constructive operating incomes, as described in paragraph (f)(6) of this section.

(iv) *Step 4.* Determine the comparable profit interval, as described in paragraph (f)(7) of this section.

(v) *Step 5.* When necessary, determine the most appropriate point in the comparable profit interval, as described in paragraph (f)(8) of this section.

(vi) *Step 6.* Determine the transfer price for the controlled transaction, as described in paragraph (f)(9) of this section.

(4) *Step 1: Select the party to a controlled transaction to be tested*—(i) *In general.* The first step in constructing a comparable profit interval is to determine which of the parties to the controlled transaction will be the tested party. The party selected need not be the person that is under examination. For example, if an examination concerns the income of the U.S. parent corporation attributable to the transfer of an intangible to a foreign subsidiary, the comparable profit interval may be calculated with respect to the subsidiary.

(ii) *Basis for selection of the tested party.* The tested party is the party to the controlled transaction whose operating income can be verified using the most reliable data and with the fewest and most accurately quantifiable adjustments. In the case of a transfer of an intangible, the tested party ordinarily will be the transferee. In cases involving the controlled sale of tangible property in which the resale price method applies, the tested party ordinarily will be the buyer. In cases involving the controlled sale of tangible property in which the cost plus method applies, the tested party ordinarily will be the seller. However, the comparable profit interval may be applied to check the operating income of any party to a controlled transaction if the operating income of such party can be more reliably and accurately tested than the operating income of other parties.

(5) *Step 2: Determine the applicable business classification of the tested party*—(i) *In general.* The constructive operating incomes that are used to establish the comparable profit interval are derived from the operations of uncontrolled parties that are similar to the tested operations of the tested party. This paragraph (f)(5) provides rules for identifying these operations, which are referred to as the applicable business classification. As described in paragraphs (f)(5) (ii) and (iii) of this section, determining the applicable business classification is a two-stage process. First, the operations of the tested party that are related to the transactions between the tested party and the other members of the group of controlled taxpayers are identified (the "tested operations"). Second, the tested operations are matched as closely as possible to similar operations of uncontrolled taxpayers based on the data available to determine the applicable business classification. In some cases, the analyses of the constructive operating incomes discussed below may indicate that there is insufficient reliable data related to the applicable business classification to construct a comparable profit interval. In such a case it will be necessary under this paragraph (f)(5) to identify a different applicable business classification (or classifications) that may be more specific or more general than the original applicable business classification in order to obtain sufficient reliable data to construct the comparable profit interval.

(ii) *Tested operations.* Tested operations include that portion of the tested party's operations that are related to or integrated with the transactions with controlled parties that are under review. These operations may include manufacture and sale of products, product lines, or other product groupings, as well as types of services or other functions that the tested party performs. The identification of tested operations must consider both the types of products and the functions that are related to the transaction between the tested party and controlled taxpayers. For example, if the tested party's only transactions with other members of the group of controlled taxpayers consist of purchases of a single product for resale, and such purchases represent a small portion of the tested party's overall inventory purchases, then the tested operations should be those that relate to purchases and sales of that product. If, however, the tested party engages in multiple transfers of tangible and intangible property with other members of the group of controlled taxpayers, the tested operations should be those that relate to all such transfers. In appropriate cases, the tested operations will include all of the operations of the tested party.

(iii) *Applicable business classification.* The applicable business classification is the broadest category of tested operations that most corresponds to the products and functions of uncontrolled taxpayers for which sufficient reliable data is available. If, however, there is insufficient reliable data from uncontolled taxpayers that corresponds to the tested operations, then the tested operations are divided into more than one applicable business classification, each of which corresponds to products and functions or uncontrolled parties for which reliable data is available. If the tested operations must be divided, each applicable buisness classification selected must be as broad as possible, while still ensuring that reliable data regarding uncontrolled parties is available. A broad classification that corresponds to the tested operations may not be divided into more specific classifications if there is sufficient reliable data relating to the broad classification. If, however, it is not possible to obtain reliable data regarding uncontrolled taxpayers that perform functions with respect to products that closely correspond to the products related to the tested operations, then the scope of the applicable business classification is broadened to include the functions performed by the tested party and as broad a category of products as is necessary to obtain reliable data. For example, if the tested operations are distribution of compact disc players, in the absence of sufficient reliable data a broader applicable business classification, such as distribution of consumer electronic products, may be appropriate. Although it is not necessary to demonstrate that there is inadequate data relating to a narrow category of products before applying a broad category of products, if it subsequently is established that there is adequate reliable data relating to a narrow category of products, then the applicable business classification will be based on that narrow category.

(6) *Step 3: Compute constructive operating incomes*—(i) *In general.* Constructive operating income is computed by applying profit level indicators derived from uncontrolled taxpayers to financial data of the tested party. The selection of profit level indicators under this step depends upon two interdependent factors: First, the extent to which reliable data is available concerning similar uncontrolled taxpayers; and second, the extent to which particular profit level indicators provide a reliable basis for comparing profits of controlled and

uncontrolled taxpayers under the facts and circumstances of the case.

(ii) *Selection of data relating to uncontrolled taxpayers.* Data relating to uncontrolled taxpayers must be selected from the data used for purposes of selecting the applicable business classification under paragraph (f)(5)(iii) of this section. In determining which data to select, further consideration must be given to the similarity between the uncontrolled taxpayers and the tested party. Similarity with respect to the size of the operations composing the applicable business classification and the relevant markets, as well as other factors indicating similarity, must be considered. When an uncontrolled transfer used in a method described in paragraph (d)(4)(i) of this section, or an uncontrolled transaction used in a method described in paragraphs (e)(1)(iii) and (iv) of this section is tested to determine whether it results in a level of operating income that is within the comparable profit interval, the selected group generally should include the relevant party to such uncontrolled transfer or transaction.

(iii) *Selection of profit level indicators that provide a reliable basis for comparing profits*—(A) *In general.* Profit level indicators measure the relationship between various factors and income. A variety of different profit level indicators can be calculated in any given case. Thus this step requires the selection of the profit level indicator (or indicators) that will produce an accurate comparison under the facts and circumstances of the particular case, depending on the nature of the activities being examined and the reliability of the available data from uncontrolled taxpayers. A profit level indicator may provide a reliable basis for comparing profits even it it can be appropriately applied only to some, but not all, of the uncontrolled taxpayers.

(B) *Definitions.* The following definitions apply for purposes of determining profit level indicators and computing constructive operating income:

(*1*) *Sales.* The term *sales* means the amount of total revenue from sales, less discounts and returns.

(*2*) *Gross income.* The term *gross income* means sales less cost of goods sold.

(*3*) *Operating expenses.* The term *operating expenses* includes expenses associated with advertising, sales, marketing, administration, research and development, and a reasonable allowance for depreciation and amortization. It does not include interest expense, foreign income taxes (as described in § 1.901–2(a)), and domestic income taxes.

(*4*) *Operating income.* The term *operating income* means gross income less operating expenses.

(*5*) *Assets.* The term *assets* generally means the book value of total assets (measured by the average of the book values for the beginning of the year and the end of the year). Where recent acquisitions, leased assets, purchased intangibles or currency fluctuations, or other factors create a significant difference between the book value of the assets of the controlled taxpayer and the book value of the assets of the uncontrolled taxpayers that would distort the comparison, appropriate adjustments must be made so that the asset values in each case are measured on a comparable basis.

(C) *Profit level indicators.* Profit level indicators that provide a reliable basis for comparing profits may include the following:

(*1*) *Rate of return on assets.* The rate of return on assets is the ratio computed by dividing the operating income of the uncontrolled taxpayer by the assets of that taxpayer. It may be necessary to make certain adjustments to the assets of the uncontrolled taxpayers as described under the definition of assets in paragraph (f)(6)(iii)(B)(*5*) of this section. This profit level indicator is more reliable when the values of self-developed intangibles held by the tested party and the uncontrolled taxpayers are similar.

(*2*) *Margins.* Margins are ratios that are determined by relationships between income and costs. Different margins divide income and costs in different ways. Accordingly, a number of different margins may be examined, when appropriate, depending on the type of data available from the uncontrolled taxpayers. Reliable margins may include:

(i) *Ratio of operating income to sales.* The ratio of operating income to sales is frequently more reliable than other margins. Because it is based on broad measures, it accommodates some variation between the functions performed by uncontrolled taxpayers and the functions performed by controlled taxpayers. Nevertheless, similarity of the economic level of production for the functions performed (*e.g.*, manufacturer or distributor) and the type of business generally is necessary to ensure reliability.

(ii) *Gross income to operating expenses.* The ratio of gross income to operating expenses is most reliable when the uncontrolled taxpayers perform functions that are similar to the functions performed by the controlled taxpayer. If the functions performed are different, this ratio may not be used because the composition of operating expenses will be different and may lead to inappropriate results. Review of the classification of expenses for consistency is necessary even if the functions performed by the taxpayers being compared are virtually identical. This profit level indicator may be used only when the uncontrolled taxpayers being compared have characterized material items consistently or when adjustments can be made to the accounting entries so that such items are classified consistently.

(*iii*) *Other margins.* Other margins include, but are not limited to, the ratio of operating income to labor costs and the ratio of operating income to all expenses other than those included in cost of goods sold. Other margins should be used only when they provide reasonable indications of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length.

(*3*) *Comparable profit split*—(*i*) *In general.* A comparable profit split is derived from the combined operating income of uncontrolled taxpayers that entered transactions and performed functions similar to those of the members of the group of controlled taxpayers. Each such uncontrolled taxpayer's percentage of the combined operating income is determined and used to divide the combined operating income of the group of controlled taxpayers.

(*ii*) *Methods for determining comparable profit split.* Depending on the reliablility of the data, a residual profit split or an overall profit split may be used.

(*A*) *Residual profit split.* Under the residual profit split, income attributable to assets is determined by applying a rate of return to the value of assets held by the uncontrolled taxpayers. This amount then is subtracted from the operating income of each such uncontrolled taxpayer to yield the residual income. The sum of the uncontrolled taxpayers' residual incomes is the residual combined income. The profit split is the percentage of the residual combined income earned by each uncontrolled taxpayer. This profit split then is applied to the tested party to calculate its constructive operating income. The same rates of return that were applied to the uncontrolled taxpayers are applied to the assets of the group of controlled taxpayers, and the resulting amount then is subtracted from the combined operating income of the group of

controlled taxpayers. The residual combined income then is apportioned among the group of controlled taxpayers in the same percentages that were determined for the uncontrolled taxpayers. For purposes of this paragraph (f)(6)(iii)(C)(*3*) of this section, assets are defined by reference to paragraph (f)(6)(iii)(B)(*5*) of this section, except that assets do not include intangible property. The rate of return applied to the assets should be an average rate of return earned by uncontrolled taxpayers that perform functions similar to those performed by the controlled taxpayers but that do not have significant intangibles.

(*B*) *Overall profit split.* Under the overall profit split, the group of controlled taxpayers' profit split is determined in the same manner as under the residual profit split, but without first providing a return to assets.

(*iii*) *Rules for application of comparable profit split*—(*A*) *Limitations on use of profit split.* A comparable profit split may be used only if reliable financial data is available regarding the members of the group of controlled taxpayers and the uncontrolled taxpayers. In addition, a comparable profit split may be used only if the functions performed by each of the uncontrolled taxpayers are the same as the functions performed by each member of the group of controlled taxpayers. A profit split may not be used if the combined rate of return on assets earned by the uncontrolled taxpayers varies significantly from the combined rate of return on assets earned by the members of the group of controlled taxpayers. Furthermore, a profit split may not be used if an uncontrolled transferee possesses self-developed intangibles that are relevant to the applicable business classification and that contribute significantly more (or less) to the profits derived from the applicable business classification than self-developed intangibles that the related transferee owns. See *Example 8* of paragraph (f)(11) of this section for a case in which a comparable profit split cannot be used as a profit level indicator.

(*B*) *Appropriate uses of profit splits.* A comparable profit split is most appropriately used where the tested party and the other members of the group of controlled taxpayers employ significant self-developed intangibles that are not reflected on their financial statements, and the combined rate of return of the uncontrolled taxpayers is similar to the combined rate of return earned by the members of the group of controlled taxpayers. See *Example 1* of paragraph (f)(11) of this section for a case in which a comparable profit split is applicable as a profit level indicator. Use of the residual profit split generally is most appropriate when the proportion of the combined value of assets held by each of the uncontrolled taxpayers significantly differs from the proportion of the combined value of assets held by each member of the group of controlled taxpayers. The overall profit split generally is more appropriate when the relative book value of assets is approximately equal.

(*4*) *Other indicators.* [Reserved]

(*iv*) *Applying profit level indicator to controlled taxpayer to compute constructive operating income*—(A) *In general.* The profit level indicators selected in paragraph (f)(6)(iii) of this section and calculated for the uncontrolled taxpayers selected in paragraph (f)(6)(ii) of this section are applied to the relevant financial data of the tested party, adjusted as provided in paragraph (f)(6)(iv)(B) of this section, in order to compute constructive operating income.

(B) *Adjustments to financial data of the tested party.* For purposes of this paragraph (f), financial data of the tested party must be adjusted in two ways. First, adjustments must be made to reflect any allocations under section 482, other than adjustments made under this paragraph (or made under paragraph (d) or (e) of this section and verified under this paragraph) that affect the tested party's financial data. Second, adjustments must be made to account for material differences between the assets of the tested party and the assets of uncontrolled taxpayers, such as differences in the relative amounts of financial assets or inventory held. If the tested party's assets are adjusted, the tested party's operating income ordinarily must be adjusted to reflect income and expenses attributable to the adjusted assets. For example, an adjustment to impute carrying charges attributable to adjusted inventory may affect operating income. See *Examples 5* and *9* of paragraph (f)(11) of this section, illustrating adjustments that may be made to the tested party's assets and operating income.

(C) *Examples.* The following examples illustrate the principles described in paragraphs (f)(6)(iv) (A) and (B) of this section.

Example 1. Assume a selected profit level indicator is the rate of return on assets, the rate of return on assets for selected uncontrolled taxpayer A is 10.4 percent, and the assets of the tested party are $1,000. When using the rate of return on assets the relevant financial data of the tested party is the book value of the assets of the tested party. Therefore, the constructive operating income computed using the rate of return on assets derived from A is $104 (.104×$1,000).

Example 2. Assume the ratio of gross income to operating expenses is selected as a profit level indicator, the ratio of gross income to operating expenses for selected uncontrolled taxpayer B is ⅓, and the operating expenses of the tested party are $150. In addition, assume that a $10 rental adjustment has been made under paragraph (c) of this section. This adjustment increases the tested party's operating expenses to $160. When using the ratio of gross income to operating expenses, the relevant financial data of the tested party is its operating expenses. Therefore, constructive operating income computed for the ratio of gross income to operating expenses derived from B is $53 (⅓×$160).

(7) *Step 4: Determine the comparable profit interval.* The comparable profit interval is constructed by selecting amounts of constructive operating income that converge to form an interval that is reasonably restricted in size. If there is a small number of uncontrolled taxpayers whose operations correspond closely to the applicable business classification, two types of convergence should be considered in constructing the comparable profit interval. This first type of convergence is convergence of constructive operating incomes of the tested party derived from several profit level indicators of a single uncontrolled taxpayer. Convergence of multiple constructive operating incomes derived from a single uncontrolled taxpayer indicates that the uncontrolled taxpayer and the tested party are comparable and suggests that constructive operating incomes derived from that taxpayer should be included within the comparable profit interval. When multiple profit level indicators derived from a single uncontrolled taxpayer produce amounts of constructive operating income that diverge, those amounts will be excluded from the comparable profit interval unless the uncontrolled taxpayer's financial data can be adjusted appropriately to account for the factors contributing to this lack of conformity. See paragraph (f)(6)(iii)(C) of this section for a description of potential adjustments. The second type of convergence that must be considered is convergence of constructive operating incomes derived from one or more profit level indicators obtained from multiple uncontrolled taxpayers. Constructive operating incomes that diverge from other points in the interval will be excluded from the comparable profit interval. Factors that must be considered in determining whether the constructive operating income diverges include the relative

distance between the constructive operating income and the closest points in the interval compared to the distance between other points within the interval. In determining covergence, greater weight will be given to the more reliable constructive operating incomes. Reliability will be assessed by considering the quality of the underlying data with regard to its relative specificity, the similarity of the products and functions of the uncontrolled taxpayer from which the data is drawn and the tested operations, the similarity of the markets from which data is drawn, and the degree to which it fits the profit level indicator. If the number of uncontrolled taxpayers whose operations correspond to the applicable business classification is large enough to permit the use of valid statistical techniques, then convergence must be determined by using those techniques to identify a reasonably narrow area of concentration among all of the constructive operating incomes computed.

(8) *Step 5: Determine the most appropriate point in the comparable profit interval.* It may be necessary to identify the most appropriate point within the comparable profit interval under this paragraph (f)(8) for purposes of the comparable profit method described in paragraph (d)(5) of this section and other methods described in paragraph (e)(1)(iv) of this section. The most appropriate point must be determined considering all the facts and circumstances. If statistical techniques were used to construct the comparable profit interval, the most appropriate point is determined using statistical measures of central tendency. Otherwise, in selecting the constructive operating income that represents the most appropriate point, the following factors should be considered:

(i) The comparability of each uncontrolled taxpayer from which the constructive operating income was derived. Comparability for this purpose is based on—

(A) The similarity of the functions performed by the tested party to those performed by the uncontrolled taxpayer, and the similarity of the economic risks associated with those functions;

(B) The similarity of the products or services provided by the tested party to those provided by the uncontrolled taxpayer; and

(C) The extent to which different profit level indicators of the uncontrolled taxpayer produce converging results when applied to the tested party;

(ii) The extent to which adjustments are necessary to apply the profit level indicator that generated the constructive operating income. Constructive operating incomes derived from a profit level indicator requiring the fewest and most accurately quantified adjustments is accorded the greatest weight;

(iii) The extent to which the profit level indicator that generated the constructive operating income meets the reliability factors described in paragraph (f)(7)(ii) of this section; and

(iv) The extent to which the profit level indicator that generated the constructive operating income produces converging results when applied to each of the uncontrolled taxpayers used in determining the comparable profit interval.

(9) *Step 6: Determine the transfer price for the controlled transaction.* When the most appropriate point within the comparable profit interval has been determined as described in paragraph (f)(8) of this section (or, where appropriate, only the comparable profit interval has been determined under paragraph (f)(7) of this section), a transfer price for the controlled transaction is determined under the principles of paragraphs (d) and (e) of this section. The transfer price is determined by adjusting the actual charge for the controlled transaction to produce an operating income for the tested party that is equal to the constructive operating income corresponding to the most appropriate point.

(10) *Coordination of the use of the comparable profit interval with other allocations under section 482*—(i) *Allocations that affect operating income.* For purposes of paragraph (d) of this section, the tested party's reported operating income must be adjusted to reflect all other allocations under this section that affect operating income. Similarly, for purposes of paragraph (e)(1) of this section, adjustments must be made to account for allocations that affect operating income before determining whether operating income falls within the comparable profit interval. For example, if the resale price method under paragraph (e)(3) of this section is applied, and a rental allocation is made under paragraph (c) of this section, this adjustment should be taken into account in computing operating income before determining whether operating income falls within the comparable profit interval. As described in paragraph (f)(6)(iv) of this section, such adjustments also may affect the construction of the comparable profit interval.

(ii) *Allocations that do not affect operating income.* Income or expense adjustments under section 482 that do not affect the amount of operating income have no bearing on the application of this paragraph (f). For example, interest expense is an item of expense that is not deducted from gross income in order to calculate operating income. Therefore, any adjustments to interest expense have no effect on the determination of the comparable profit interval.

(11) *Examples.* The application of this paragraph (f) is illustrated by the following examples.

Example 1—Comparable profit interval applied to confirm a comparable adjustable transaction—(i) *Background.* Controlled taxpayer CE is a foreign corporation that is wholly-owned by a domestic corporation, USCorp. In 1994, CE and USCorp conclude a 10-year license agreement pursuant to which USCorp licensed the right to use a patented manufacturing process related to the producion of product P in exchange for royalty payments of 5 percent of CE's net sales of P. During the audit of USCorp's 1999 taxable year, the district director reviews whether the consideration charged for the patent is arm's length. Uncontrolled taxpayer UE operates in the same market and performs functions similar to those of CE. UE licenses rights to manufacture and sell its product Q solely from an uncontrolled taxpayer, X, and pays a royalty to X at the rate of 25 pecent of its sales. Since the two transfers do not involve the same intangibles (and no other potentially matching transactions are located), the matching transaction method is not applicable. The district director determines, however, that the intangibles involved in the two transactions are similar and that the economic conditions and contractual terms involved in the two transfers meet the standards described in paragraph (d)(4)(iii) of this section. Moreover, the district director determines that differences in the intangibles, contract terms and economic conditions offset one another in such a way that the royalty rate derived from the uncontrolled transaction for purposes of determining an arm's length royalty rate for the controlled transaction should remain 25 percent. Accordingly, the transaction will serve as a comparable adjustable transaction if the royalty rate from the uncontrolled transfer results in a level of operating income for CE that is within the comparable profit interval. To make this determination, the district director develops profit level indicators from UE and other companies that perform functions similar to those that CE performs.

(ii) *Financial data for CE and UE.* In order to develop profit level indicators from UE, financial data is reviewed for both CE and UE. For this purpose, data from years 1998 through 2000 is compiled and averaged. In addition, the profit earned by USCorp and X attributable to products P and Q, respectively, is calculated in order to determine the combined operating income with respect to these products. This review of financial data provides the following results (in $ thousands):

	Data from CE	Data from UE
Sales	1,200	1,000
Cost of goods sold	(650)	(550)
Gross Income	550	450
Operating Expenses:		
Royalty payments	(60)	(250)
Other	(90)	(75)
Operating income	400	125
Assets	570	440

	Data from USCorp	Data from X
Operating income	170	525
Assets	1000	400

(iii) *Operating income under potential comparable adjustable transaction.* If CE had paid an amount of consideration consistent with the UE license agreement, its royalty payment would have been 25 percent of its sales, or $300 ($1,200 x 25 percent) rather than the $60 it actually paid. Adjusting the operating income of CE by the $240 difference in these royalty amounts ($300 minus $60) results in operating income of $160 ($400 minus $240). The district director determines whether this result would have been within the comparable profit interval.

(iv) *Profit level indicators.* The profit level indicators described in paragraph (f)(5) of this section are first analyzed with respect to the above financial data of UE to yield a percentage for each separate indicator. Those percentages can then be applied to the financial data for CE in order to derive an amount of constructive operating income for CE that conforms to each profit level indicator. The director determines that in the present case, the four following profit level indicators are appropriate, and CE's financial data does not need to be further adjusted in order to make them applicable:

(A) *Return on assets.* The UE data indicates that UE has earned a rate of return on its assets of 28.4 percent ($125 of operating income divided by $570 of assets). If CE had earned 28.4 percent on its assets, its constructive operating income would have been $162 ($570 of assets multiplied by 28.4 percent).

(B) *Ratio of gross income to operating expenses.* The district director determines that given the type of intangible transferred in the controlled transaction and given the fact that royalty payments are included in operating expenses by UE, royalty payments should be included in operating expenses for purposes of applying this ratio. The UE data provides a ratio of gross income to operating expenses in the amount of 138.5 percent ($450 divided by $325). Since the controlled transaction being reviewed for CE (*i.e.*, the royalty expense) is part of the operating expenses in this case, this ratio is applied to CE by determining the level of operating expenses yielding this ratio in relation to gross income of $550. The operating expenses required in this case would be $397 (550 divided by 138.5 percent). If CE had made royalty payments of $307 ($397 of total operating expenses minus $90 of other operating expenses), its gross income would have been $240, and its constructive operating income would have been $153 ($550 gross income minus $397 operating expenses).

(C) *Ratio of operating income to sales.* The ratio of operating income to sales for UE is 12.5 percent ($125 divided by $1,000). If CE's ratio were the same, its constructive operating income would have been $150 ($1,200 of sales multiplied by 12.5 percent).

(D) *Profit Split.* An analysis of the functions performed and income earned by CE and UE suggests that each has valuable self-developed intangibles. In addition, the combined rate of return on assets earned by CE and US Corp of 36.3% ([400+150]/[570+1000]) does not differ significantly from the combined rate or return on assets earned by UE and X of 34.1% ([125+400]/[400+1100]). Based on the foregoing, the district director determines that a profit split is an appropriate profit level indicator in this case. The district director determines that an appropriate return for UE's measurable assets is 15.0% and that an appropriate return for X's measurable assets is 10.0%. Subtracting these amounts from the operating income of each leaves a residual combined operating income of $349 (125−[.15×440]+400−[.10×1100]). UE's residual operating income of 59 (125−.15×440) represents 16.9% of the residual combined operating income. If CE had earned 15.0% on its measurable assets of 570 and X had earned 10% on its measurable assets of 1000 their residual combined operating income would be $384 (570−[.15×570]−[.10×1000]. If CE had earned 16.9% of this residual combined operating income, then CE's constructive operating income would have been $151 ([.15×570]+[.169×384]).

(v) *Summary of profit level indicators from UE.* The following chart summarizes each of the profit level indicators derived from UE and the profit results when those indicators are applied to CE's financial data:

	PLI from UE (percent)	Constructive operating income for CE
Return on assets	28.4	$162
Gross income to operating expenses	138.5	153
Operating income to sales	12.5	150
Profit split	16.9	151

(vi) *Weight to be given to UE results.* The data derived from UE should be given significant weight for serveral reasons. First, the analysis has been performed at a very specific level (by comparable products) and has been derived from the same market. Second, the results from four different profit level indicators converge at an interval of $150 to $162. Finally, the license between UE and X meets the standards for a comparable adjustable transaction and would produce operating income results of $160, which converges with the results produced by the other indicators.

(vii) *Further analysis.* The district director reviews other companies that are less comparable to CE than UE, but that perform functions similar to those performed by CE and operate in similar markets. Data from these other companies is not given as much weight as the data from UE. Nevertheless, the data confirms that any reasonable construction of an comparable profit interval would include $160 as an appropriate amount of constructive operating income for CE. Since the results from other similar companies confirm the above findings, it can be concluded that the royalty rate of 25 percent used by UE would have resulted in CE being within the comparable profit interval and that the transaction between UE and X meets the requirements for the comparable adjustable transaction method under paragraph (d)(4) of this section.

(viii) *Adjustment.* Based on the above review of UE and other similar companies, the district director determines that the royalty rate of 25 percent derived from the license between UE and X, resulting in $160 of operating income for CE, should serve as a comparable adjustable transaction as defined in paragraph (d)(4) of this section. Accordingly, for 1990 the district director adjusts the royalty to be received by USCorp to 25 percent of CE's sales.

Example 2—Comparable profit interval applied to disqualifying potential comparable adjustable transaction. (i) The facts are the same as in *Example 1* except that a different unontrolled taxpayer, DE, also is found. DE licenses rights to manufacture and sell its product B solely from an uncontrolled taxpayer, G, and pays a royalty to G at a rate of 5 percent of its sales. CE paid an amount of consideration consistent with the DE license agreement. If DE's license from G were a comparable adjustable transaction, the district director would need to determine whether CE's operating income result of $400 were within the comparable profit interval. The results from other uncontrolled taxpayers derived in *Example 1* suggest that CE's operating income of $400 would have been outside of this interval. Nevertheless, the district director examines DE's financial data to determine if this information suggests that inappropriate weight was given to the results in *Example 1.*

(ii) *Financial data for DE.* Averaged data for DE from years 1998 through 2000 is as follows (in $ thousands):

	Data from DE
Sales	1000
Cost of goods sold	(750)
Gross income	250
Operating expenses:	
Royalty payments	(50)
Other	(75)
Operating income	125
Assets	1,190

(iii) *Summary of profit level indicators from DE.* The following chart summarizes each of the profit level indicators derived from DE and the amounts of constructive operating income which result when those indicators are applied to CE's financial data.

Insufficient information on G is available to apply a profit split analysis.

	PLI from DE (percent)	Operating income for CE
Return on assets	10.5	$162
Gross income to operating expenses	200.0	185
Operating income to sales	12.5	150

(iv) *Analysis of DE's profit level indicators.* The levels of constructive operating income derived from DE's return on assets and operating income to sales are similar to one another and to the amounts of constructive operating income derived from UE. This information adds further weight to the results derived in *Example 1.* Therefore, the new data suggests that constructive operating income of $400 would not be within the comparable profit interval. The potential comparable adjustable transaction of DE's licence agreement is rejected and the allocation described in *Example 1* is not changed.

Example 3—Transfer of tanible property resulting in no adjustment. (i) Foreign Parent (FP) is a publicly-traded foreign corporation with a U.S. subsidiary (USS) that is under audit for its 1994 taxable year. FP manufactures a consumer product for worldwide distribution and has developed a trademark that has significant U.S. marketing value. USS imports the finished product and distributes it within the United States under that trademark. USS's income attributable to the trademark is material in relation to the income attributable to the sale of the product alone.

(ii) In accordance with paragraph (d)(1) (III) of this section, the district director applies an analysis based on paragraph (d) (5) of this section to determine an arm's length price for sales of the product from FP to USS.

(iii) Based on all the facts and circumstances, the district director determines that USS should be the tested party. Accordingly, the district director reviews the financial data of USS for the taxable years preceding and following the taxable year under review. The district director determines that no adjustments to the financial data of USS are necessary under paragraph (f)(6)(iv)(B) of this section. For the taxable years 1993 through 1995, USS shows the following results (in $ thousands):

	1993	1994	1995	Average
Assets	310,000	310,000	310,000	310,000
Sales	500,000	500,000	560,000	520,000
Cost of goods sold	393,000	400,000	412,400	401,800
Purchases from FP	350,000	350,000	365,000	355,000
Other	43,000	50,000	47,400	46,800
Gross income	107,000	100,000	147,600	118,200
Operating expenses	80,000	110,000	110,000	100,000
Operating income	27,000	(10,000)	37,600	18,200

The above data from USS, averaged over three years, results in the following ratios:

	Percent
Operating income/sales (OI/S)	3.5
Operating income/assets (OI/A)	5.9
Gross income/operating expenses (GI/OE)	118.2

(iv) To construct the comparable profit interval, the district director obtains data from independent operators of wholesale distribution companies. After examining this data, the district director selects only the companies in the most similar types of businesses and performing the most similar functions in comparison to USS. An analysis of the information available on these companies shows that their profit level indicators do not fluctuate significantly when at least three years are included in the average. Calculating the average ratio of operating income/sales, the average ratio of operating income/assets and the average ratio of gross income/operating expenses for each of the uncontrolled distributors and applying each profit level indicator to USS produces the following constructive operating incomes ("COI") (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	20,460	118.0	18,000
B	9.6	49,920	23.3	72,230	146.7	46,700
C	7.1	36,920	16.9	52,390	139.0	39,000
D	4.2	21,840	8.0	24,800	122.0	22,000
E	7.1	36,920	11.5	35,650	127.2	27,200
F	3.6	18,720	6.3	19,530	117.0	17,000
G	3.1	16,120	5.8	17,980	115.0	15,000
H	1.8	9,360	2.7	8,370	106.9	6,900

(v) The constructive operating incomes derived from the profit level indicators of uncontrolled distributors A, D, F and G are clustered most closely. USS's average reported operating income of $18.2 million is within the interval that could be constructed from these numbers. Therefore, the district director determines that no allocation should be made under section 482 even though USS's operating income for 1994, a loss of $10 million, is clearly outside of any interval that could be constructed from these numbers.

Example 4—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 3* except that USS reported the following income and expenses (in $ thousands):

	1993	1994	1995	Average
Assets	310,000	310,000	310,000	310,000
Sales	500,000	500,000	560,000	520,000
Cost of goods sold	370,000	400,000	460,000	410,000
Purchases from FP	320,000	350,000	410,000	360,000
Other	50,000	50,000	50,000	50,000
Gross income	130,000	100,000	100,000	110,000
Operating expenses	110,000	110,000	110,000	110,000
Operating income	20,000	(10,000)	(10,000)	0

Applying the above data, the three profit level indicators described in *Example 3* would now produce the following results for USS:

	Percent
Operating income/sales (OI/S)	0
Operating income/assets (OI/A)	0
Gross income/operating expenses (GI/OE)	100

(ii) Applying the same profit level indicators derived from the same uncontrolled distributors to USS now results in the following constructive operating income (COI) for USS (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	20,460	118.0	19,800
B	9.6	49,920	23.3	72,230	146.7	51,370
C	7.1	36,920	16.9	52,390	139.0	42,900
D	4.2	21,840	8.0	24,800	122.0	24,200
E	7.1	36,920	11.5	35,650	127.2	29,920
F	3.6	18,720	6.3	19,530	117.0	18,700
G	3.1	16,120	5.8	17,980	115.0	16,500
H	1.8	9,360	2.7	8,370	106.9	7,590

(iii) Constructive operating incomes derived from A, D, F and G are most closely clustered. Using the principles described in paragraph (f)(8) of this section the district director determines that F is the most comparable uncontrolled taxpayer, the ratio of operating income to sales is the most reliable profit level indicator, and that $18.72 million is the most appropriate point in the interval. USS's reported operating income in 1994 was a loss of $10 million. Therefore, for 1994 the district director makes a $28.72 million adjustment with respect to USS's purchases from FP.

Example 5—Transfer of tangible property with adjustment for inventory. (i) The facts are the same as *Example 4* except that USS has assets of $450 million in 1993, 1994 and 1995. Applying the same profit level indicators derived from the same uncontrolled distributors to USS now produces the following constructive operating incomes for USS (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	29,700	118.0	19,800
B	9.6	49,920	23.3	104,850	146.7	51,370
C	7.1	36,920	16.9	76,050	139.0	42,900
D	4.2	21,840	8.0	36,000	122.0	24,200
E	7.1	36,920	11.5	51,750	127.2	29,920
F	3.6	18,720	6.3	28,350	117.0	18,700
G	3.1	16,120	5.8	26,100	115.0	16,500
H	1.8	9,360	2.7	12,150	106.9	7,590

(ii) Further examination reveals that USS's ratio of inventory to sales of .60 is substantially higher than the inventory to sales ratios for A through H, which range from .19 to .31. As described in paragraph (f)(6)(iv)(B) of this section, USS's inventory is adjusted to reflect the inventory to sales ratios of comparable companies. The district director determines based on all the facts and circumstances that it is necessary to adjust USS's average value of inventory for 1993, 1994 and 1995 to relect a ratio of .31 of USS's sales, as set forth below (in $ thousands):

USS	1993	1994	1995	Average
Actual inventory	300,000	300,000	336,000	312,000
Inventory adjustment	(145,000)	(145,000)	(162,400)	(150,800)
Adjusted inventory	155,000	155,000	173,600	161,200

(iii) Based on the foregoing, USS's total assets are adjusted under paragraph (f)(6)(iv)(B) of this section, as set forth below (in $ thousands):

1993	1994	1995	Average
305,000	305,000	287,600	299,200

(iv) Furthermore, adjustments to USS's operating income are necessary to reflect a carrying charge for the extra inventory held by USS. The district director calculates the carrying charge by multiplying the amount of the asset adjustment by an appropriate interest rate. Assuming that the appropriate rate in this case is 4%, the carrying charge for each of the years 1993 and 1994 is $5,800,000, the carrying charge for 1995 is $6,496,000, and the average carrying charge for all three years is $6,032,000.

(v) Based on the foregoing, the district director reduces USS's reported operating income for 1993 and 1994 by $5,800,000, and the reported operating income for 1995 by $6,496,000. Thus, USS's reported operating income for 1993 is $14,200,000, for 1994 it is ($15,800,000) and for 1995 it is ($16,496,000). The average reported operating income for the three years is adjusted under paragraph (f)(6)(iv)(B) of this section to ($6,032,000).

(vi) The comparable profit method under paragraph (d)(5) of this section is then applied, based on the assets as adjusted above, to determine whether the adjusted operating income of ($6,032,000) is within the comparable profit interval.

Example 6—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops and patents new production techniques for the widgets. The widgets are manufactured by DevCo's foreign subsidiary, ManuCo, located in Country H. ManuCo and Devco enter a license agreement pursuant to which Devco transfers the right to use the patent to ManuCo in return for a royalty

equal to 5 percent of ManuCo's widget sales. ManuCo sells the widgets to Markco, a U.S. subsidiary of DevCo, for distribution and marketing in the United States. The price that DevCo charges to MarkCo for the widgets is determined to be a comparable uncontrolled price within the meaning of paragraph (e)(2) of this section. The district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo for taxable year 1994 is an arm's length consideration for the patent. No matching transactions or comparable adjustable transactions are available. Accordingly, the district director examines whether the operating income of ManuCo is within the comparable profit interval. To begin this analysis, the district director examines ManuCo's financial data from 1993–1995, which is as follows (in $ thousands):

	1993	1994	1995	Average
Assets	24,000	25,000	26,000	25,000
Sales to MarkCo	25,000	30,000	35,000	30,000
Cost of goods sold	5,000	6,000	7,000	6,000
Gross income	20,000	24,000	28,000	24,000
Operating expenses	2,250	2,500	2,750	2,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	1,000	1,000	1,000	1,000
Operating income	17,750	21,500	25,250	21,500

Based on this data, ManuCo's ration of operating income to sales (OI/S) from 1993 to 1995 was 71.7%, and ManuCo's ratio of operating income to assets (OI/A) was 86.0%.

(ii) In order to compare ManuCo's profits with those of other companies, the district director analyzes companies performing similar functions. No information on uncontrolled taxpayers in country H that perform similar functions is available. Other uncontrolled manufacturers exist in country H. However, the functions they perform are significantly different from those performed by ManuCo. The country H uncontrolled manufacturers produce products at the direction of their purchasers, who maintain supervision over all aspects of the production, including the amount produced. In addition, raw materials are either purchased from the buyer or made at the direction of the buyer and all processes employed in the manufacturing operation are owned by the buyers.

(iii) Since reliable data from comparable country H companies is unavailable, companies performing the most similar functions in the most similar markets are considered. The district director determines that data available in country M provides the best match of companies in a similar market performing similar functions.

(iv) Applying the principles of paragraph (f)(6) of this section to financial information from the uncontrolled country M companies, the district director computes the following constructive operating incomes from the uncontrolled country M companies (in $ thousands):

Unrelated company	OI/S (percent)	ManuCo COI	OI/A (percent)	ManuCo COI
A	5.3	1,590	3.3	825
B	11.6	3,480	8.2	2,050
C	17.0	5,100	16.5	4,125
D	10.0	3,000	12.0	3,000
E	8.6	2,574	8.5	2,120
F	14.0	4,200	15.0	3,750

Based on this data, the district director determines that the most appropriate point in the comparable profit interval for ManuCo would have resulted in operating income of $3 million, which requires an adjustment of $18.5 million. To reflect this adjustment, the royalty rate is increased from 5% of sales to 66.7% of sales.

Example 7—Transfer of intangible to manufacturer/distributor. The facts are the same as *Example 6* except that ManuCo no longer sells to its controlled affiliate, MarkCo. ManuCo manufacturers the widgets for sale in a region outside the United States and is responsible for distribution and marketing in that region. No information on uncontrolled taxpayers performing this set of functions in country H is available. In addition, no companies performing similar functions can be found in country M (since these functions are significantly different from the functions reviewed under the facts of *Example 6*). Companies performing the most similar functions in the most similar market are found in the United States. Therefore, the type of analysis undertaken in *Example 6* is repeated using a selection of U.S. companies to generate profit level indicators which are then applied to ManuCo.

Example 8—Transfer of intagible with profit split. (i) The facts are the same as *Example 7* except that more information is available with respect to RW, an uncontrolled U.S. taxpayer. Specifically, enough information is available to calculate the way that the profits are split between company RW and the uncontrolled taxpayer from which company RW licenses its intagible. The district director examines the following information to determine whether the analysis in *Example 7*, above, should be reconsidered:

	OI/A (percent)	Percent of combined OI(percent)
Unrelated:		
RW	25.0	75
Licensor (to RW)	15.0	25
Combined	21.4	100
Related:		
ManuCo	86.0	75
DevCo	15.0	25
Combined	39.4	100

(ii) This information shows that combined operating income is split 25 percent/75 percent in both cases (with 75 percent retained by the licensee). In addition, the licensor in both cases has earned a rate of return on its assets of 15 percent. Although the profits are split in the same way and the rate of return of the licensor is identical, the combined profitability of the products is substantially different. The product manufactured by ManuCo provides an overall rate of return on assets (39.4 percent) that is almost twice the return earned by the uncontrolled taxpayers (21.4 percent). Given this major variance between these combined rates of return, the profit split information from company RW fails to provide reliable information regarding how profits shoud be divided in the case under review. Accordingly, the analysis in *Example 7* is not modified.

Example 9—Transfer of intangible with adjustment for financial assets. The facts are the same as *Example 6*, above, except that ManuCo has assets of $45 milllion. Examination of ManuCo's balance sheet suggests that ManuCo has an unusually high ratio of financial assets to total assets. Based on a comparison of the financial assets held by ManuCo and those held by the

comparable companies, the district director determines that $20 million of ManuCo's assets should be segregated as excess financial assets. These financial assets are invested with uncontrolled taxpayers and earn a market rate of return. Segregation of the excess financial assets is necessary in order to enhance the reliability of the ratio of operating income to assets. Therefore, these financial assets are not included in the total assets when calculating constructive operating income and the income earned from these financial assets is not included in ManuCo's reported operating income within this applicable business classification. ManuCo's assets used in the calculation of operating income/assets are adjusted to $25 million and the analysis proceeds as in *Example 6*.

(g) *Sharing of costs and risks*—(1) *In general*—(i) *Limitation on allocations.* If a member of a group of controlled taxpayers acquires an intagible as an eligible participant in a qualified cost sharing arrangement, the district director may make allocations with respect to that acquisition to reflect each participant's arm's length share of the costs and risks of developing the intagible, under the rules of this paragraph (g). If a member of a group of controlled taxpayers acquires an intangible from another member of the group through any means other than as an eligible participant in a qualified cost sharing arrangement, then the district director may make appropriate allocations to reflect an arm's length consideration for the intangible under the rules of paragraph (d) of this section.

(ii) *Scope of regulations.* An arrangement for the development of intagibles will be considered a qualified cost sharing arrangement only if it meets the requirements of paragraph (g)(2) of this section. A member of a group of controlled taxpayers will be considered an eligible participant only if it meets the requirements of paragraph (g)(3) of this section. Paragraph (g)(4) of this section describes the allocations that may be made by the district director to reflect an eligible participant's arm's length share of the costs and risks of developing intangible property in a qualified cost sharing arrangement. The character of payments made pursuant to a qualified cost sharing arrangement is described in paragraph (g)(5) of this section. Paragraph (g)(6) of this section sets forth administrative requirements, and additonal definitions are provided in paragraph (g)(7) of this section. Paragraph (g)(8) of this section set forth a transitional rule.

(2) *Qualified cost sharing arrangement*—(i) *In general.* A qualified cost sharing arrangement must—

(A) Include two or more eligible participants;

(B) Be recorded in writing contemporaneously with the formation of the cost sharing arrangement;

(C) Provide for the sharing among eligible participants of the costs and risks borne by any participant of developing one or more intangibles in return for a specified interest in any intangible that may be produced;

(D) Reflect a reasonable effort by each eligible participant to share all of the costs and risks of intangible development, including the costs and risks of unsuccessful or less successful related development, such that each eligible participant's share of the costs and risks is proportionate to the benefits that each eligible participant reasonably anticipates it will receive from the exploitation of intangibles developed under the arrangement; and

(E) Meet the administrative requirements described in paragraph (g)(6)(i) of this section.

A cost sharing arrangement that includes ineligible participants may still be a qualified cost sharing arrangement but only with respect to its eligible participants. See paragraph (g)(3)(vi) of this section for rules applicable to ineligible participants.

(ii) *Costs proportionate to benefits*—(A) *In general.* A cost sharing arrangement must establish a method that, under all the facts and circumstances (including information about the markets in which the intangible is likely to be exploited), reflects a reasonable effort to share the costs of developing intangibles in proportion to the benefits that each eligible participant anticipates it will receive from the exploitation of intangibles developed under the arrangement. Under appropriate circumstances, anticipated benefits may be measured by reference to anticipated units of production (where there is a uniform unit of production for all participants), anticipated sales (measured at the same level of the production or distribution process for all participants), anticipated gross or net profit, or any other measure that reasonably predicts the benefits to be shared. If the intangible development benefits more than one qualified cost sharing arrangement, the anticipated benefits of a participant of any of those arrangements must be measured by reference to all such arrangements.

(B) *Adjustments to the method used.* A method reflects a reasonable effort to share costs in proportion to benefits only if it provides that the costs shared by each eligible participant must be adjusted to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the arrangement. Such adjustments must ensure that the method continues to reflect a reasonable effort to share costs in proportion to benefits over time, and they should generally be made on an annual basis.

(C) *Presumption based on operating income*—(*1*) *In general.* A method will be presumed not to reflect a reasonable effort to share costs in proportion to benefits if a U.S. participant's cost/income ratio is grossly disproportionate to the cost/income ratio of all other eligible participants. The U.S. participant may rebut this presumption by establishing that the method used in the arrangement provides a reasonably accurate measure of benefits.

(*2*) *Cost/income ratio.* The cost/income ratio of a U.S. participant is the average of the cost of developing intangibles borne by the participant divided by the participant's average operating income attributable to intangibles developed under the arrangement. The cost/income ratio of other eligible participants is the sum of the other participants' average costs divided by the sum of their average operating incomes attributable to intangibles developed under the arrangement. For this purpose, the average cost of developing intangibles and average operating income is calculated by using the average of such amounts from the current taxable year and the two preceding taxable years. However, different periods for costs, income, or both may be used if amounts from such periods more clearly reflect the relationship between the cost of developing intangibles and operating income attributable to intangibles developed under the arrangement. For example, different periods may be used to reflect the effect of the time between the year in which the development costs were incurred and the year in which the benefits from developed intangibles were realized.

(*3*) *Operating income attributable to intangibles.* Operating income attributable to intangibles developed under the arrangement is all operating income that is directly or indirectly attributable to the intangible development area, without reduction for the cost of developing intangibles and without regard to cost sharing payments. Such income includes income from the license or sale of intangibles developed under the cost sharing arrangement, and income earned with respect to the sale of products or services incorporating developed intangibles.

(*4*) *Cross references.* U.S. participant is defined in paragraph (g)(7)(iii) of this section. Operating income is defined in paragraph (f)(6)(iii)(B)(*4*) of this section. Cost of developing intangibles is defined in paragraph (g)(7)(ii) of this section.

(iii) *Discretion to apply cost sharing.* In unusual circumstances in which application of the developer-assister rules under paragraph (d)(8) of this section would not clearly reflect the income of a member of a group of controlled taxpayers, the district director may apply the rules of this paragraph (g) to any arrangement that in substance constitutes a cost sharing arrangement (notwithstanding a failure to comply with any requirement of this section).

(3) *Eligible participant*—(i) *In general.* For purposes of this paragraph (g), an eligible participant is a member of a group of controlled taxpayers that agrees to participate in a qualified cost sharing arrangement, if the participant meets the administrative requirements described in paragraph (g)(6)(ii) of this section, and if intangibles developed under the arrangement are, or will be, used in the active conduct of the participant's trade or business. Rules describing whether an intangible is used in the active conduct of a participant's trade or business are provided in paragraphs (g)(3) (ii), (iii), and (iv) of this section. A special rule for the treatment of a group of controlled taxpayers as a single eligible participant is provided in paragraph (g)(3)(v) of this section.

(ii) *Trade or business.* The rules of § 1.367(a)-2T(b)(2) apply in determining whether the activities of a participant in a cost sharing arrangement constitute a trade or business. For this purpose, the term "participant in a cost sharing arrangement" must be substituted for the term "foreign corporation".

(iii) *Active conduct.* In general, a participant actively conducts a trade or business only if it carries out substantial managerial and operational activities. For this purpose, managerial and operational activities carried out on behalf of the participant by independent contractors may be attributed to the participant, but only to the extent that the participant bears the economic risks, and receives the benefits, of those activities.

(iv)(A) *Use of intangibles in the active conduct of a trade or business.* In general, an intangible is used in the active conduct of a trade or business of a participant if it is held for the purpose of promoting the participant's conduct of that trade or business, or is otherwise held in a direct relationship to that trade or business. An intangible is not used in the active conduct of a participant's trade or business if a substantial purpose for participating in the arrangement is to obtain an intangible to transfer to an uncontrolled taxpayer. It will be presumed that a substantial purpose for participating in a cost sharing arrangement is to obtain an intangile to transfer to an uncontrolled taxpayer if there are any significant direct or indirect transfers of developed intangibles to an uncontrolled taxpayer during the course of the arrangement or within four years of the termination of the arrangement. (B) *Example.* The following example illustrates a substantial purpose:

Example. Controlled corporations A, B and C enter into a qualified cost sharing arrangement for the purpose of developing an improved Product X. Costs are shared equally among the three taxpayers. A, B, and C have exclusive rights to sell Product X in North America, South America and Europe, respectively. When an improved Product X is developed, C manufactures and sells the new product in most of Europe. However, for sound business reasons, C licenses the right to use the new product technology to manufacture and sell products, within a small European country, to an unrelated manufacturer. Exploitation of the new Product X technology in that country is not a substantial transfer of the technology. The district director will not presume that C entered into the cost sharing arrangement with a substantial purpose of obtaining intangible property to license or sell to an uncontrolled taxpayer.

(v) *Treatment of controlled taxpayers as a single participant*—(A) *In general.* One member of a group of controlled taxpayers may participate in a cost sharing arrangement on behalf of one or more other members of the group (the "cost sharing subgroup"). For purposes of applying the rules of this paragraph (g) to such a cost sharing arrangement, the cost sharing subgroup will be treated as a single participant in the arrangement. Whether the cost sharing subgroup is treated as an eligible participant under the arrangement will be determined on the basis of all of the activities performed by members of the cost sharing subgroup. Whether the arrangement establishes a method that reflects a reasonable effort to share the costs of developing intangibles in proportion to the anticipated benefits must be determined on the basis of the benefits that the cost sharing subgroup reasonably anticipates receiving from the exploitation of intangibles developed under the arrangement.

(B) *Transfers within cost sharing subgroup—(1) In general.* Any intangible acquired pursuant to a qualified cost sharing arrangement in which a cost sharing subgroup is treated as a single eligible participant will be considered acquired solely by the member participating in the arrangement on behalf of the cost sharing subgroup. Accordingly, any transfer of that intangible by the participating member to any other member of the cost sharing subgroup is a transfer of an intangible subject to the rules of paragraph (d) of this section.

(*2*) *Arrangement within cost sharing subgroup.* The rule of the preceding paragraph (g)(3)(v)(B)(*1*) of this section will not apply if all the members of the cost sharing subgroup have themselves entered into a separate qualified cost sharing arrangement, pursuant to which they have reimbursed the participating member for an appropriate share of the arrangement's costs. In that case, any intangible acquired pursuant to the first cost sharing arrangement will be considered acquired by each member of the cost sharing subgroup that is an eligible participant in the separate cost sharing arrangement. The treatment of the separate cost sharing arrangement within the cost sharing subgroup must be determined under the rules of this paragraph (g).

(vi) *Treatment of ineligible participant.* If a qualified cost sharing arrangement has one or more ineligible participants in a taxable year, the costs of developing intangibles incurred by those participants in that taxable year must be taken into account by the eligible participants in determining their cost shares. An ineligible participant that is a member of the controlled group of taxpayers must be treated as an assister under the rules of paragraph (d)(8) of this section. Consideration for the transfer of an intangible that is due from an ineligible participant must be allocated among eligible participants in proportion to the share of costs of each eligible participant. See paragraph (g)(4)(iv) of this section for rules applicable to eligible participants that become ineligible participants in a qualified cost sharing arrangement.

(4) *Allocations with respect to qualified cost sharing arrangements*—(i) *Appropriate scope of intangible development area*—(A) *In general.* The district director may make allocations with respect to a qualified cost sharing arrangement to ensure that the intangible development area covered by the agreement is broad enough to encompass related intangible development (as described in paragraph (g)(4)(i)(B) of this section), and narrow enough so that the costs shared are for the development of products or services that are of potential use (as described in paragraph (g)(4)(i)(C) of this section) to each eligible participant. An intangible

development area is a classification of products or services with respect to which intangible development is conducted under a qualified cost sharing arrangement.

(B) *Related intangible development.* Related intangible development consists of all intangible development, including basic research, that may reasonably be regarded as leading to the development of any product or service in the stated intangible development area, without regard to whether such products or services are ever successfully developed or sold. Related intangible development also includes any activity, conducted or funded by any participant, relating to similar products or services. Whether products or services are similar for this purpose will be determined by examining all facts and circumstances that demonstrate the practical or scientific relationship between the intangible development activities engaged in with respect to the products or services. For this purpose, consideration will be given to the participants' prior business practices, the business practices of uncontrolled taxpayers in the same or related businesses, and the three-digit Standard Industrial Classification code which includes such products or services. If an intangible development area used in a qualified cost sharing arrangement is determined to be too narrow, the district director may make appropriate allocations to cost shares under this paragraph (g) so that all costs attributable to related intangible development are shared by the eligible participants. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(C) *Potential use of products or services.* An intangible development area covers costs for the development of products or services that are of potential use to an eligible participant if it is reasonable to expect that new products or services within the area will be used in the active conduct of a trade or business of that participant in a commercially significant manner. An intangible development area must exclude any significant area of intangible development if it is reasonable to expect that the intangible development will lead to products or services that are not of potential use to an eligible participant. If an intangible development area used in a qualified cost sharing arrangement is determined to be too broad, the district director may make appropriate allocations under this paragraph (g) so that only those costs attributable to the development of products or services that are of potential use to eligible participants are shared under the arrangement. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(D) *Examples.* The following examples illustrate the appropriate scope of an intangible development area:

Example 1. A group of controlled taxpayers in the automotive industry enters a cost sharing arrangement under which they develop new engine technologies. The group has members in Country A and the United States. Part of the intangible development conducted by the members relates exclusively to electric motors and has no potential application to internal combustion engines. The Country A members of the group do not presently and do not anticipate in the future producing or selling automobiles with electric motors. An appropriate intangible development area for the group's cost sharing arrangement will not include the electric motor development since it is reasonable to expect that such intangible development will lead to products that are not of potential use to the Country A members.

Example 2. The facts are the same as in *Example 1*, above. In addition, one member of the group conducts intangible development related to developing high performance engines that are used in race cars. This intangible development is not directly related to any products that the group markets commercially. However, in the past certain advances made in race car development have been applied commercially, and it is reasonable to expect that the intangible development will continue to yield technologies that will be exploited commercially. An appropriate intangible development area for the group's cost sharing arrangement will include this high performance intangible development, since it is reasonable to expect that new products within the area could be used by each member of the arrangement.

(ii) *Appropriate method for sharing costs*—(A) *In general.* The district director may make allocations with respect to a qualified cost sharing arrangement to ensure that the method used for sharing costs is an appropriate measure of the benefits reasonably anticipated by each eligible participant. Such allocations may be required when the method chosen fails to accurately reflect the reasonably anticipated benefits over time. Unless another method of sharing costs provides a more reliable measure of the participant's reasonably anticipated benefits over time, an allocation may be made by reference to a comparison of the participant's cost/income ratio and the cost/income ratio of the other eligible participants. Paragraphs (g)(4)(ii) (B) through (E) of this section describe the allocations that may be made to reflect an appropriate method of sharing costs. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(B) *Adjustments to costs shared.* If a U.S. participant's cost/income ratio is not substantially disproportionate to the cost/income ratio of the other eligible participants, allocations that may be made under this paragraph (g)(4)(ii) will be limited to appropriate adjustments with respect to the costs of developing intangibles shared by that participant. Paragraph (g)(4)(ii)(D) of this section describes when a participant's cost/income ratio will not be considered substantially disproportionate. The cost/income ratio is defined in paragraph (g)(2)(ii)(C)(*2*) of this section.

(C) *Adjustments based on a substantially disproportionate cost/income ratio.* If a U.S. participant's cost/income ratio is substantially disproportionate to the cost/income ratio of the other eligible participants, a transfer of an intangible may be deemed to have occurred outside of the scope of the arrangement; in that case, allocations may be made under the rules of paragraph (g)(4)(iv)(A) of this section (buy-in and buy-out) to reflect an arm's length consideration for that portion of the intangible deemed to have been transferred. The portion of the intangible deemed to have been transferred will be measured by the difference between the U.S. participant's cost/income ratio and the cost/income ratio of the other eligible participants. Alternatively, appropriate adjustments with respct to the costs of developing intangibles shared by that participant may be made under paragraph (g)(4)(ii)(B) of this section.

(D) *Proportionate profits rule.* A U.S. participant's cost/income ratio will not be considered substantially disproportionate if it is less than twice the cost/income ratio of the other eligible participants. That is, this rule will apply if:

$$\frac{\text{U.S. participant's average costs}}{\text{U.S. participant's average operating income}} < 2 \times \frac{\text{Sum of other participants' average costs}}{\text{Sum of other participants' average operating income}}$$

(E) *Examples.* Adjustments described in this paragraph (g)(4)(ii) are illustrated by the following examples.

Example 1. (i) A U.S. participant in a long-standing cost sharing arrangement for the development of manufacturing technology is audited for its 1993 taxable year. In order to determine the type of adjustment that potentially could be made, the district director applies the formula described in paragraph (g)(4)(ii)(D) of this section. Paragraph (g)(2)(ii)(C)(*2*) of this section requires that this formula generally be applied to the current year and the two preceding years. The following information is known about the participants in the cost sharing arrangement:

[In thousands of dollars]

	1991	1992	1993	Total
U.S. participant:				
Cost share payment	15	15	20	50
Operating income	25	30	35	90
Cost/Income ratio 1991–1993=50/90=.*56*				
Other participant:				
Cost share payment	35	30	25	90
Operating income	90	75	60	225
Cost/Income ratio 1991–1993=90/225=.*4*				

(ii) 2×Other Participant's Cost/Income Ratio=.*8*

(iii) Since the U.S. participant's cost/income ratio in paragraph (ii) of this *Example 1* is less than twice the other participant's cost/income ratio, the U.S. participant's cost/income ratio will not be considered substantially disproportionate to the other participant's cost/income ratio. Accordingly, the district director will limit any allocation to an adjustment to the costs borne by the U.S. participant.

(iv) The district director determines, based on all the facts and circumstances, that the intangible development expenses generate only current benefits and that the participants' current operating incomes attributable to the product area encompassed by the cost sharing arrangement accurately reflect the relative benefits that each participant derives from current intangible development expenses. Accordingly, the participants' cost/income ratios for 1993 should be approximately equal. The U.S. participant's cost/income ratio of .56 is not approximately equal to the other participant's cost/income ratio of .4. Therefore, the district director decreases the U.S. participant's 1993 cost share payment in the amount of $3. The district director also increases the 1993 cost share payment of the other participant in the amount of $3, which is treated as a reimbursement of intangible development expenses to the U.S. participant in accordance with paragraph (g)(5) of this section. After these allocations, the U.S. participant's 1993 cost/income ratio is .49 ($17/$35), and the other participant's 1993 cost/income ratio is .47 ($28/$60).

Example 2. (i) The facts are the same as in *Example 1*, above, except that the U.S. participant manufactures the product, markets it and distributes it under its trade name, and the other participant manufactures the product and immediately sells it to an unrelated entity. Because the U.S. participant performs significant non-manufacturing functions not performed by the other participant, the district director determines that the participants' operating incomes are not an accurate measure of the relative benefits that the participants derive from intangible development conducted pursuant to the cost sharing arrangement. Rather, the district director determines that the relative benefits that the participants derive are most accurately measured by a comparison of their respective unit sales volumes. The participants' unit sales volumes for 1993 are as follows:

U.S. participant:
Unit sales—100
Other participant:
Unit sales—215

(ii) Since, as discussed in *Example 1*, above, the U.S. participant's cost/income ratio is not substantially disproportionate to the cost/income ratio of the other eligible participant, the district director will limit an allocation to an adjustment to the costs borne by the participants.

(iii) To reflect accurately the benefits that each participant derived from the research and development conducted pursuant to the cost sharing arrangement, the district director compares the number of unit sales per dollar of cost share payment generated by the U.S. participant and the other participant in 1993. The U.S. participant's ratio of cost share payments to unit sales for 1993 is .2 ($20/$100), and the ratio of the other participant's cost share payments to unit sales for 1993 is .12 ($25/$215). To approximately equalize these ratios, the district director decreases the U.S. participant's 1993 cost share payment by $6, and increases the other participant's payment by $6. After adjustment, the U.S. participant's ratio of cost share payments to unit sales is .14 ($14/$100), and the other participant's ratio of cost share payments to unit sales is .14 ($31/$215).

Example 3. (i) Assume that the facts are the same as in *Example 1*, above, except that the cost share payments of the participants are as follows:

[In thousands of dollars]

	1991	1992	1993	Total
U.S. participant	20	25	30	75
Other participant	35	30	25	90

(ii) Based on this data, the cost/income ratio of the U.S. participant is .83 ($75/$90), and the cost/income ratio of the other participant is .4 ($90/$225). The U.S. participant's cost/income ratio (.83) is more than twice the cost/income ratio of the other participant (2×.4=.8). The district director further examines the facts to determine whether the U.S. participant's cost/income ratio is substantially disproportionate to the cost/income ratio of the other participant.

(iii) The U.S. participant presents data relating to later years that demonstrates that its cost/income ratio would not be considered substantially disproportionate if data from such years were used. The U.S. participant explains that in its business there normally is a two year lapse between the time that development of a new product is completed and the time that the product is introduced commercially. In order to match its costs and benefits more precisely, the cost sharing arrangement apportions the cost sharing payments among the participants based on anticipated sales two years in the future. Therefore, 1993 costs were apportioned based on anticipated sales in 1995. The relatively high payment by the U.S. participant in 1993 was in anticipation that the U.S. market for the product line was expanding.

(iv) The following data from the years 1990 through 1995 confirms that the U.S. market was expanding relative to the other markets:

[In thousands of dollars]

	1990	1991	1992	1993	1994	1995
U.S. participant:						
Cost share payment	20	20	25	30	30	35
Unit sales	80	90	100	100	250	300
Operating income	25	25	30	35	50	65
Other Participant:						
Cost share payment	40	35	30	25	20	15
Unit sales	400	300	250	215	180	160
Operating income	100	90	75	60	50	40

(v) Based on all of the facts and circumstances, the district director determines that the research and development benefits the participants two years after the research is performed. Accordingly, the district director applies the proportionate profits rules by using income data for the years 1993 through 1995 and cost

share payments for the years 1991 through 1993, as follows:

[In thousands of dollars]

U.S. Participant:

Cost share payments 1991–1993=(20+25+30)=75

Operating income 1993–1995=(35+50+65)=150

Cost/Income ratio=75/150=.5

Other participant:

Cost share payments 1991–1993=(35+30+25)=90

Operating income 1993–1995=(60+50+40)=150

Cost/Income ratio=90/150=.6

(vi) Based on this data, the U.S. participant's cost/income ratio is less than twice the cost/income ratio of the other participant. Accordingly, an allocation by the district director for the 1993 taxable year, if any, will be limited to an adjustment to the cost share payment made by the U.S. participant.

Example 4. (i) The facts are the same as in *Example 3,* above, except that after modifying the analysis, as described in paragraph (iv) of *Example 3,* the U.S. participant's cost/income ratio is still more than twice the cost/income ratio of the other participant. The district director determines that the portion of costs borne by the U.S. participant from 1990–1995 was substantially disproportionate to the portion of costs borne by the other participant. Therefore, the district director may deem a transfer of an intangible to have occurred outside of the scope of the arrangement.

(ii) The district director determines that the portion of the intangible deemed to have been transferred (measured by the difference between the U.S. participant's cost/income ratio and the cost/income ratio of the other eligible participant) is 50%. Pursuant to paragraph (d) of this section, the district director determines that at arm's length the U.S. participant would have charged a royalty equal to 6 percent of sales to an uncontrolled taxpayer using the intangible in the same markets as the other participant. Therefore, the district director determines that the other participant should pay the U.S. participant a royalty for the use of the patent equal to 3 percent of sales (i.e., half of an arm's length royalty).

Example 5. (i) In 1993, a U.S. corporation enters a cost sharing arrangement with a foreign affiliate. Neither party contributes any intangibles to the arrangement. The parties anticipate that the intangible development performed in connection with the cost sharing arrangement will result in commercial sales in 1995, and that the relative benefits that the parties will derive from the intangible development will be most accurately measured by the dollar sales volumes of products incorporating developed intangibles. The written agreement representing the terms of the arrangement provides that the U.S. participant will bear 70 percent and the foreign participant 30 percent of the costs of developing intangibles, respectively. The actual cost share payments by the two participants and their incomes attributable to sales of products incorporating developed intangibles are as follows:

[In thousands of dollars]

	1993	1994	1995	1996	1997	1998
U.S. participant:						
Cost share payment	70	35	28	28	21	21
Operating income	0	0	5	30	50	60
Sales volume	0	0	30	90	150	180
Other participant:						
Cost share payment	30	15	12	12	9	9
Operating income	0	0	7	70	120	140
Sales volume	0	0	70	210	350	420

(ii) Pursuant to the examination of the U.S. corporation's 1996 taxable year, the district director applies the formula of paragraph (g)(4)(ii)(D) of this section to determine the adjustments that might be made with respect to the cost sharing arrangement. The district director agrees with the taxpayer that there is a two year delay between the time that intangible development is conducted and the time that commercial sales result from the development. Accordingly, the data that the district director uses for purposes of the proportionate profits formula is the parties' 1994–1996 cost share payments and their 1996–1998 operating incomes, as follows:

[In thousands of dollars]

U.S. participant:

Cost share payments 1994–1996 (35+28+28)=91

Operating income 1996–1998 (30+50+60)=140

Cost/Income ratio=91/140=.65

Other participant:

Cost share payments 1994–1996 (15)+12+12)=39

Operating income 1996–1998 (70+120+140)=330

Cost/Income ratio=39/330=.12

(iii) This data indicates that the U.S. participant's cost/income ratio is more than twice the cost/income ratio of the other participant. Because the U.S. participant bore a substantially greater share of the costs of developing intangibles than the other participant throughout the years for which data is available, and because the parties failed to adjust their respective cost shares to better reflect their respective shares of the benefits, the district director determines that the U.S. participant's cost/income ratio is grossly disproportionate within the meaning of paragraph (g)(2)(ii)(C) of this section. Accordingly, the cost sharing arrangement adopted by the parties is presumed not to reflect a reasonable effort to measure anticipated benefits as required under paragraph (g)(2)(i)(D) of this section. The arrangement is not considered to be a qualified arrangement, and the district director may make allocations under paragraph (d) of this section to reflect an arm's length consideration for any intangible property obtained by the other participant as a result of the costs of developing intangibles borne by the U.S. participant.

(iii) *Timing of allocations and the computation of interest charges.* If the district director makes an allocation under the provisions of paragraph (g)(4)(ii)(B) of this section, the allocation must be included in income in the taxable year under review, even if the costs to be allocated were incurred in a prior taxable year. If such an allocation is made, appropriate interest adjustments must be made in accordance with paragraph (a)(2) of this section. Thus, for example, if the district director allocates additional cost sharing payments from a foreign subsidiary to its U.S. parent corporation, the allocation must include the computation of interest with respect to the subsidiary's underpayment of costs in prior taxable years.

(iv) *Buy-in and buy-out payments*—(A) *In general.* If an eligible participant in a qualified cost sharing arrangement transfers an intangible that it owns to another member of the group of controlled taxpayers, an arm's length consideration for the transfer must be determined under the provisions of paragraph (d) of this section. Such a transfer may occur, for example, if the intangible is developed outside of the arrangement, if the intangible is developed inside the arrangement but transferred to a new participant in the arrangement, or if the intangible is developed inside the arrangement but additional rights in it are transferred to existing participants upon the departure of a participant. Paragraph (g)(4)(iv)(B) of this section addresses the form of consideration in such cases. Paragraph

(g)(4)(iv)(C) of this section addresses transfers accomplished by the relinquishment of rights. In addition, the provisions of paragraph (d)(8) of this section apply to determine whether any member of the controlled group must receive compensation for assistance rendered in the development of the intangible. For the purposes of paragraph (d)(8) of this section, the eligible participants of a cost sharing arrangement may be treated as a single person.

(B) *Form of consideration.* The consideration for a transfer described in this paragraph (g)(4)(iv) may take any of the following forms:

(*1*) *Lump sum payments.* [Reserved]

(*2*) *Installment payments.* Installment payments spread over the period of use of the intantible by the transferee, with interest calculated in accordance with paragraph (a)(2) of this section; and

(*3*) *Royalties.* Royalties or other payments contingent on the use of the intangible by the transferee. The consideration is owed to the person that transfers the intangible to the eligible participant. For example, if a new participant receives rights to an intangible being developed under a qualified cost sharing arrangement, and those rights are limited to the use of that intangible in a portion of the geographic area in which exclusive rights were previously held by a single participant, the consideration is owed solely to the participant who owned the exclusive geographic rights.

(C) *Relinquishment of rights.* An eligible participant in a qualified cost sharing arrangement may be deemed to have acquired rights in a intangible in another participant (a "departing participant") transfers, abandons, or otherwise relinquishes some or all of its rights under the arrangement, to the benefit of one or more of the remaining participants. Once a relinquishment of rights occurs, a departing participant may not subsequently exploit the rights of any intangible deemed relinquished unless it pays the remaining participants an arm's length consideration determined in accordance with the rules of paragraph (d) of this section.

(D) *Examples.* The following examples illustrate payments described in this paragraph (g)(4)(iv):

Example 1. Three members of a controlled group decide to form a cost sharing arrangement for the development of a car that can run at normal speeds without the use of fossil fuels. Based on a reasonable projection of their future benefits, each company agrees to bear an equal share of the costs incurred during the term of the agreement. Each member contributes $1 million. The third member also contributes plans for a motor. The two members contributing only money must pay the member contributing intangible property their share of the fair market value of the motor plans, in accordance with paragraph (d) of this section.

Example 2. In year one, four foreign controlled taxpayers enter into a cost sharing arrangement to develop a commercially feasible process for capturing energy from nuclear fusion. The cost of developing intangibles for each participant with respect to the project is approximately $1 million per year. Based on a reasonable projection of their future benefits, each company bears an equal share of the costs. In year ten, a fifth controlled taxpayer joins the cost sharing group and agrees to bear one-fifth of the future costs in exchange for rights which are anticipated to represent one-fifth of the total benefit. The fair market value of intangible property within the arrangement at the time the fifth company joins the arrangement is $45 million. The new member pays one-fifth of that amount to the prior participants (that is, $9 million dollars total, or $2.25 million to each existing member). The principles of paragraph (d) of this section may be used to determine whether the new member's payment was commensurate with the income attributable to any intangible that is eventually developed.

Example 3. Domestic corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, for the purpose of developing new products within the Group X product line. M and N share costs on the basis of the dollar value of sales in Group X products. Under an informal arrangement, M sells products in North America and N sells products in the rest of the world. N sells $10 million of Group X products every year. M sells $1 million of Group X products in the first year of the arrangement. However, each year M's Group X product line sales increase by $1 million resulting in $10 million in annual sales in the tenth year of arrangement. Accordingly, M increases the share of costs it bears. In the arrangement's tenth year, the Group X product developers make a major breakthrough. N decides to open a manufacturing plant in Mexico, and to sell its Group X product line in North America. M subsequently closes most of its factories, decreasing its total Group X product line sales to $1 million per year, and reducing its share of the costs of developing intangibles accordingly. M may be deemed a departing member of the cost sharing arrangement in the arrangement's tenth year.

Example 4. In year one, domestic pharmaceutical corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, and a sister company, O, to develop a cure for the common cold. For ten years, each company contributes $1 million annually to the cost sharing arrangement. In the tenth year, M withdraws from the arrangement and is paid a buy-out amount of $10 million, plus interest. This amount is based on the supposition that the value of intangible property within the arrangement is equal to its development cost. Within a short period of M's withdrawal, however, N and O file a new drug application for a cure for the common cold. N and O will be require to pay M an additional amount, consistent with the provisions of paragraph (d) of this section, in consideration for M's ownership of one-third of the property. The amount may be reduced by development costs incurred by N and O after M's departure.

Example 5. In year one, domestic pharmaceutical corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, and a sister company, O, to develop a cure for the common cold. For ten years, each company contributes $1 million annually to the cost sharing arrangement. In the tenth year, N withdraws from the arrangement, and is paid a buy-out payment of $10 million, plus interest. Within a short period of N's withdrawal, however, M and O decide that the intangible development is a complete failure, and they end the cost sharing arrangement. The buy-out payment will be deemed inappropriate on the basis that the group's intangibles were worth less than their cost at the time of N's departure.

(5) *Character of payments made pursuant to a qualified cost sharing arrangement.* Payments made pursuant to a qualified cost sharing arrangement (other than payments described in paragraph (g)(4)(iv) of this section) will be considered costs of developing intangibles of the payor and reimbursements of the same kind of costs of developing intangibles of the payee. Any payment made or received by a taxpayer pursuant to an arrangement that the district director determines not to be a qualified cost sharing arrangement, or a payment made or received pursuant to paragraph (g)(4)(iv) of this section, will be considered a payment in consideration for the transfer of an interest in intangible property, and will be subject to the provisions of paragraph (d) of this section.

(6) *Administrative requirements*—(i) *Cost sharing arrangement.* A cost sharing arrangement meets the administrative requirements of this paragraph (g)(6)(i) if it substantially complies with each of the following rules—

(A) The material provisions of the arrangement are recorded in writing contemporaneously with the formation of the cost sharing arrangement; and

(B) Any change to a material provision of the arrangement is recorded in writing and is reported on the attachment described in paragraph (g)(6)(ii)(A) of this section.

(ii) *Participants.* A participant meets the administrative requirements of this paragraph (g)(6)(ii) if the participant substantially complies with each of the following rules—

(A) The material provisions of the arrangement are summarized in (or a copy of the agreement is attached to) the income tax return filed by the

participant, if any, or they are summarized in any attachment to Schedule M of Form 5471 or Schedule N of Form 5472 filed with respect to that participant in each year that the arrangement is in effect;

(B) The participant maintains records that are sufficient to verify the material provisions of the arrangement, the amount of the costs borne under the arrangement by each participant during the taxable year, and the computation of each participant's operating income resulting from the arrangement; and

(C) The records described in paragraph (g)(6)(ii)(B) of this section are produced within 60 days of a request by the district director for such records (and translations of those records into English are provided within 30 days of a request for translations of specific records), or those records are produced (and translations are provided) within a period agreed upon by the district director.

(iii) *Material provisions of a cost sharing arrangement.* The material provisions of a cost sharing arrangement are—

(A) Identification of the arrangement's participants;

(B) The duration of the arrangement;

(C) The intangible development area(s) covered by the arrangement;

(D) The arrangement's method for dividing costs of developing intangibles;

(E) The extent to which any tangible or intangible property not developed under the arrangement is made available to the participants for use in the arrangement;

(F) The extent to which any entity other than an eligible participant is permitted to use intangibles developed under the arrangement (including any entity on whose behalf an eligible participant is sharing costs of developing intangibles under paragraph (g)(3)(v) of this section);

(G) Whether any participant has received an exclusive right to use developed intangibles (such as an exclusive right to manufacture particular products or an exclusive right to sell products in a particular geographic area), and, if so, the nature of that right. If a participant receives an exclusive right to use an intangible, permitting another entity to exploit the intangible in exchange for an arm's length consideration does not make the right non-exclusive;

(H) The conditions under which the arrangement may be modified or terminated; and

(I) The general administrative provisions of the arrangement.

(iv) *Example.* The following example illustrates recording and reporting changes in the material provisions of an arrangement:

Example. Corporations A, B, and C are members of a group of controlled taxpayers. A, B and C enter into a qualified cost sharing arrangement for the development of an improved Product X. They divide costs on the basis of units of product X currently produced by each: 60%–30%–10% respectively. A year later, C decides to switch to the production of Product Y, and C leaves the arrangement. A and B compensate C in an amount equal to C's share of the fair market value of the intangible property developed to date, and they change their cost shares to 66%–34%. They also license some of the intangible property already developed to D, an uncontrolled party. All of these changes (participants, users of intangible property and division of cost shares) must be recorded in writing and reported on the appropriate return.

(7) *Definitions.* The following definitions apply for purposes of this paragraph (g).

(i) *Specified interest in an intangible.* A specified interest in any intangible that may be produced pursuant to a qualified cost sharing arrangement is any legally enforceable interest, the benefits of which are susceptible of valuation, and which would ordinarily be transferred between uncontrolled taxpayers acting at arm's length under an arrangement to share costs of developing intangibles.

(ii) *Costs of developing intangibles.* The costs of developing intangibles to be shared under a qualified cost sharing arrangement include all of the direct and indirect costs of the intangible development area. When a cost sharing payment is owed by one member of a qualified cost sharing arrangement to another member, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of the amount owed, if the provisions of paragraph (a) of this section so require.

(iii) *U.S. participant.* The term "U.S. participant" means any eligible participant of a cost sharing arrangement whose income or earnings may be relevant for U.S. federal income tax purposes. Thus, for example, a "U.S. participant" includes a controlled foreign corporation as defined in section 957.

(8) *Transitional rule.* A cost sharing arrangement will be considered a qualified cost sharing arrangement, within the meaning of this paragraph (g), if the arrangement was considered a bona fide cost sharing arrangement under the provisions of § 1.482–2(d)(4), but only if the arrangement is amended, if necessary, to conform with the provisions of this paragraph (g) by the date that is one year after publication of § 1.482–2(g) in the Federal Register.

Par. 4. These amendments are effective for taxable years beginning after December 31, 1992. However, these amendments will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986 for transfers or licenses to others. Nevertheless, these amendments will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these amendments are generally effective for taxable years beginning after December 31, 1992, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 shall be applied using any reasonable method not inconsistent with the statute.

David G. Blattner,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–1941 Filed 1–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Definitions

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

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated December 31, 1991 (Administrative Record No. KY–1095), Kentucky submitted additional information to both support and modify its proposed amendment dated June 28, 1991 (Administrative Record No. KY–

1059), as it relates to Kentucky Administrative Regulations (KAR) at 405 KAR 7:020 Definitions. The amendment consists of a reorganization from one definition section at 405 KAR 7:020 to definition sections for each Chapter of 405 Kentucky Administrative Regulations (KAR). This change is being made to insure consistency with Kentucky's administrative process. The proposed amendment includes those changes to terms that were part of the earlier proposed program amendment submitted on June 28, 1991. In addition, the proposed program amendment deletes two terms not used in Kentucky's regulations. The amendment also modifies some terms to reference the Kentucky Revised Statute (KRS) definition and defines some new terms that were previously defined in a specific section of the Kentucky regulation.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on March 2, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on February 24, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 14, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the dispositon of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated December 31, 1991 (Administrative Record No. KY-1095), Kentucky submitted a proposed program amendment that reorganizes from one definition section at 405 KAR 7:020 to definition sections for each Chapter of 405 Kentucky Administrative Regulations (KAR). The change was for consistency with Kentucky's administrative process, KRS Chapter 13A. The proposed amendment repeals 405 KAR 7:020 at 405 KAR 7:021 and creates new definition sections at the beginning of each Chapter as follows: 405 KAR 7:001 definitions for 405 KAR Chapter 7, 405 KAR 8:001 definitions for 405 KAR Chapter 8, 405 KAR 10:001 definitions for 405 KAR Chapter 10, 405 KAR 12:001 definitions for 405 KAR Chapter 12, 405 KAR 16:001 definitions for 405 KAR Chapter 16, 405 KAR 18:001 definitions for 405 KAR Chapter 18, 405 KAR 20:001 definitions for 405 KAR Chapter 20, 405 KAR 24:001 definitions for 405 KAR Chapter 24.

The proposed amendment includes those changes to terms or additions of new terms that were part of the proposed program amendment (Administrative Record Number KY-1059) submitted June 28, 1991.

The proposed program amendment deletes two terms, "date of primacy" and "Federal lands program," that were not used in Kentucky's regulations.

The amendment also modifies some terms to reference the Kentucky Revised Statute (KRS) definition. Terms whose definitions in the Kentucky Administrative Regulations have been replaced with reference to KRS 350.010 are: "approximate original contour," "Cabinet," "operations," "operator," "overburden," "person," "reclamation," "Secretary," "small operator," "surface coal mining and reclamation operations," and "surface coal mining operations."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky on December 31, 1991, satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking as set forth in Kentucky's submission dated December 31, 1991, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington 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 February 14, 1992. 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 OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 17, 1992.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92-2178 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation

40 CFR Parts 72, 73, 75, and 77

[FRL-4098-3]

Acid Rain Program: Change in Public Comment Period for the Core Rules

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rules; Change in Public Comment Period.

SUMMARY: On December 3, 1991, EPA published the proposed Acid Rain Program "core" rules pursuant to title IV of the Clean Air Act Amendments of 1990, stating that public comments on the rules proposed by the December 3 notice must be received on or before February 3, 1992. However, because EPA temporarily closed public access (from January 22, 1992 to January 29, 1992) to the Air Docket containing these proposed core rules and relevant background material, the Utility Air Regulatory Group (UARG) has petitioned EPA for an extension of the public comment period until February 12, 1992. EPA is granting this petition, and will accept comments on the entire core rulemaking package until February 12, 1992.

DATES: Notice is hereby given that comments on the acid rain core rules proposed on December 3, 1991 in the **Federal Register** (56 FR 63001-63351) must be received on or before February 12, 1992.

ADDRESSES: All written comments on the acid rain core rules must be identified with the appropriate document control number and be submitted in duplicate to: EPA Air Docket (LE-131), Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Written comments on the Permits rule must be identified with the document control number "A-90-38"; written comments on the Allowance System rule must be identified with the document control number "A-91-43"; written comments on the Continuous Emissions Monitoring rule must be identified with the document control number "A-90-51"; and written comments on the Excess Emissions rule must be identified with the document control number "A-91-68". Commenters may have comments on the acid rain program or the core rules in general—such comments may be sent to the Acid Rain Core Rules-General Docket, and must be identified with the document control number "A-91-69". In addition, commenters may wish to call the Acid Rain Hotline at (617) 641-5377 to request information or ask general questions.

Comments received on these proposed rules will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday throughout Friday, excluding legal holidays, in room M-1500, first floor Waterside Mall, at the address given above.

FOR FURTHER INFORMATION CONTACT: Brian Mclean, Deputy Director, Acid Rain Division (ANR-445), U.S. Environmental Protection Agency, 401 M street, SW., Washington, DC 20460, (202) 475-9400.

SUPPLEMENTARY INFORMATION: None.

Dated: January 27, 1992.

Eileen B, Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 92-2295 Filed 1-29-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7032]

Proposed Flood Elevation Determination; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 56 FR 41316 on August 20, 1991. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Ashland, Schuylkill County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Ashland, previously published at 56 FR 41316 on August 20, 1991, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[CORRECTED]

On page 41317, in the August 20, 1991 issue of the **Federal Register** the entry for Mahanoy Creek under Ashland (Borough), Schuylkill County is corrected to read as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mahanoy Creek:	
Downstream corporate limits	*852
Upstream corporate limits	*896

Issued: January 23, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-2149 Filed 1-29-92; 8:45am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Marbled Murrelet in Washington, Oregon and California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed determination of treatened status for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California is reopened. The analysis of considerable research data collected during the 1991 breeding season has recently been completed by various researchers. The reopening of the comment period will allow the Service to consider this new information and any other information in determining whether or not a final designation of threatened status is warranted for the marbled murrelet in California, Oregon, and Washington.

DATES: Comments from all interested parties will now be received until March 2, 1992.

ADDDRESSES: Comments and materials should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266. The proposed rule, comments, and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, Field Supervisor, Portland Field Office at the above address (503/231-6179 or FTS 429.6179).

SUPPLEMENTARY INFORMATION:

Background

The marbled murrelet (*Brachyramphus marmoratus marmoratus*) is a robin-sized member of the Alcidae family found along the north Pacific coast of North America, with a separate subspecies being present in Asia. The marbled murrelet is threatened by the loss or adverse modification of nesting habitat (old-growth and mature forests) primarily due to timber harvesting. It is also threatened from mortality associated with gill-net fishing operations and the effects of oil spills throughout parts of its range.

A proposed rule to list the marbled murrelet as a threatened species in California, Oregon and Washington was published by the Service in the **Federal Register** on June 20, 1991 (56 FR 28362). The comment period on the proposal originally closed on September 18, 1991. Research addressing the life history, habitat requirements, and population status of the marbled murrelet has been ongoing. The Service believes the comment period should be reopened to obtain additional information on the species that was collected during the 1991 breeding season and is now available. This information will be considered by the Service in determining whether or not a final designation of threatened status is warranted for the marbled murrelet in California, Oregon, and Washington. Additional information and comments may now be submitted until March 2, 1992 to the Service office given in the ADDRESSES section.

Author

The primary author of this notice is Janet L. Stein, U.S. Fish and Wildlife Service (see ADDRESSES section); telephone 503/231-6179 or FTS 429-6179.

Authority

The authority for this action is as follows:

Authority: 16 U.S.C. 1361-1707; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated January 23, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-2224 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 24, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Agricultural Marketing Service

7 CFR part 59, Regulations for Inspection of Eggs and Egg Products.
PY-38, PY-76, PY-155, PY0156, PY-214, PY-222, PY-240, PY-518-1.
Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Daily.
State or local governments; Businesses or other for-profit; Small businesses or organizations; 46,718 responses; 30,621 hours.
C. Shields Jones, Jr., (202) 720-3506.

- Agricultural Marketing Service

7 CFR part 70, Regulations for Voluntary Grading of Poultry.
Products and Rabbit Products and U.S. Classes Standards, and Grades.
PY-32 and PY-33.
On occassion; Monthly.
State or local governments; Businesses or other for-profit; Small businesses or organizations; 24,951 responses; 3,086 hours.
C. Shields Jones, Jr., (202) 720-3506.

Extension

- Office of Finance and Management

Debt Collection.
On occasion.
Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 2,000 responses; 2,000 hours.
Reynaldo Gonzalez, (202) 720-1168.

- Foreign Agricultural Service

Export Sales of U.S. Agricultural Commodities.
FAS-97, 98, 99, 100.
On occasion; Weekly; Quarterly.
Businesses or other for-profit; 38,678 responses; 21,134 hours.
Thomas B. McDonald, Jr., (202) 720-3273.

- Foreign Agricultural Service

Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480—Recordkeeping and Reporting Requirements.
Recordkeeping; On occasion.
Businesses or other for-profit; Small businesses or organizations; 522 responses; 582 hours;
James Chase, (202) 720-5780.

- Food and Nutrition Service

Monthly Report of Commodity Supplemental Food and Quarterly. Administrative Financial Status Report.
FNS-153.
Monthly; Quarterly.
State or local governments; 240 responses; 1,512 hours.
Jackie Williams, (703) 305-2710.

Reinstatement

- Farmers Home Administration

7 CFR 1944-L, Farmers Home Administration Tenant Grievance and Appeals Procedure.
Recordkeeping; On occasion.
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 1,967 hours.
Jack Holston (202) 720-9736.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 92-2265 Filed 1-29-92; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

[Docket No. PE-92-001]

Organization, Functions, and Delegations of Authority

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Agricultural Marketing Service (AMS).

FOR FURTHER INFORMATION CONTACT: Burton L. McKitrick, Personnel Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, room 1721-S, Washington, DC 20090-6456, (202) 720-4874.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Administrator of AMS in 7 CFR 2.50, the Organization, Functions, and Delegations of Authority of AMS published at 37 FR 8118, April 25, 1972, and amended by 39 FR 23076, June 26, 1974, 40 FR 29559, July 14, 1975, and 54 FR 26813, June 26, 1989, is superseded by the following Statement of Organization, Functions, and Delegations of Authority of AMS. Advance public notice and opportunity for comment are unnecessary because this document relates to rules and regulations of agency organization, procedure, and practice.

General

AMS was established by the Secretary of Agriculture on November 2, 1953, as authorized by 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 67 Stat. 633; and related authorities. The name was changed to the Consumer and Marketing Service on February 8, 1965. Effective April 2, 1972, the Secretary changed the name back to Agricultural Marketing Service. The central office of AMS is located in Washington, DC, but a large part of the program activity is carrried out through various regional and field offices. The functions and authorities delegated to the

Administrator, AMS, appear in 7 CFR 2.50.

Organization and Functions

The Administrator

The Administrator is responsible for the general direction and supervision of programs and activities assigned to AMS. The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

Deputy Administrator, Marketing Programs

The Deputy Administrator, Marketing Programs, is responsible for: Participating with the Administrator in developing, administering, and coordinating activities relating to AMS transportation, marketing and regulatory programs; directing and coordinating the administration of the transportation and marketing and regulatory programs including the inspection, grading, and classing of agricultural commodities, and standardization and market news activities; directing the functions contained in the Agricultural Marketing Act of 1946, as amended, including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned; and, directing the functions contained in the legislation identified under 7 CFR 2.50. The programs and activities are carried out by the Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, Transportation and Marketing, and Science Divisions.

Deputy Administrator, Management

The Deputy Administrator, Management, is responsible for participating with the Administrator in developing, administering, and coordinating all activities relating to AMS management programs; directing and coordinating the administration of AMS Equal Employment Opportunity (EEO) and civil rights functions; and directing and coordinating the administration of the overall administrative management programs of AMS including budget and financial services, personnel, training, information resources management, management services, communication services, and information and public affairs. The programs and activities are carried out by the Financial Management, Personnel, Management Services, and Information Resources Management Divisions; the EEO Staff; and, the Information Staff.

Compliance Staff

The Compliance Staff is responsible for developing and implementing methods to ensure integrity, effectiveness, and public confidence in all AMS programs and coordinating the AMS Management Control Program; evaluating and improving methods of detecting, preventing, and taking corrective actions on violations of AMS administered statutes; conducting investigations of non-criminal violations of the statutes administered by AMS; and, investigating minor criminal violations and allegations of employee misconduct as authorized by the Department's Office of Inspector General.

Legislative and Regulatory Review Staff

The Legislative and Regulatory Review Staff is responsible for formulating and coordinating AMS legislative affairs and regulatory review programs; serving as the principal advisor to the Administrator on legislative matters; and representing AMS in developing and maintaining relationships with congressional offices.

Marketing Programs

The Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, Transportation and Marketing, and Science Divisions are under the administrative, functional, and technical direction of the Deputy Administrator, Marketing Programs.

Cotton Division

The Cotton Division is responsible for planning and administering marketing services (market news, standardization, grading, sampling, and testing), research and promotion, expansion of market outlets, marketing regulations, and related programs for cotton, cotton linters, cottonseed, cotton products, and other vegetable fibers and related commodities as authorized by appropriate legislation listed in 7 CFR 2.50.

Dairy Division

The Dairy Division is responsible for planning and administering milk marketing agreement and order programs under the Agricultural Marketing Agreement Act of 1937, as amended, including directing and coordinating the administration of the overall administrative management programs of the Milk Market Administrators and their staffs; market news and milk order market information; promotion and research programs under the Dairy and Tobacco Adjustment Act of 1983; voluntary grading and inspection of dairy products and dairy plants including development of standards as authorized by the Agricultural Marketing Act of 1946, as amended, and related programs for milk and dairy products as authorized by appropriate legislation listed in 7 CFR 2.50.

Fruit and Vegetable Division

The Fruit and Vegetable Division is responsible for planning and administering marketing services related to market news for fresh fruits and vegetables; voluntary quality standardization and grading programs for fresh and processed fruits, vegetables, edible nuts, and related commodities; the purchase of fruits, vegetables, and related commodities for Government food donation programs; fruit, vegetable, and miscellaneous commodity research and promotion programs; fruit and vegetable marketing agreement and order programs; fruit export quality certification programs; a market regulatory program for fresh and frozen fruits and vegetables; and, a Governmentwide food quality assurance program, as authorized by appropriate legislation listed in 7 CFR 2.50.

Livestock and Seed Division

The Livestock and Seed Division is responsible for planning and directing the implementation and administration of marketing service and regulatory activities relating to commodity grading and certification for meat and livestock products; inspection and certification of quality of agricultural and vegetable seeds; development, revision, and interpretation of grade standards and specifications for livestock, meat, wool, and mohair; purchases of meat, meat products and fish for Government programs; market news reporting for livestock, meat, wool, and grain products; research and promotion programs; and, regulation of the marketing of agricultural and vegetable seeds in interstate commerce, as authorized by appropriate legislation listed in 7 CFR 2.50.

Poultry Division

The Poultry Division is responsible for planning and administering market news service on poultry, eggs, and related commodities; voluntary inspection and grading of poultry and poultry products, shell eggs, egg products, rabbits and related products; mandatory inspection in all plants processing liquid, dried or frozen egg products; surveillance inspections of shell egg handlers; development and revision of grade standards and

specifications; purchase and diversion programs; regulatory activities under the Egg Products Inspection Act, Agricultural Marketing Act, and Agricultural Fair Products Act; and, research and promotion activities, as authorized by appropriate legislation listed in 7 CFR 2.50.

Tobacco Division

The Tobacco Division is responsible for planning and administering marketing services relating to market news, standardization, inspection and grading, market regulatory programs, expansion of market outlets, and related programs for tabacco products and by-products, naval stores, and related commodities as authorized by legislation listed in 7 CFR 2.50.

Transportation and Marketing Division

The Transportation and Marketing Division is responsible for planning and formulating policies and programs to assure the availability of a transportation system to meet the needs of agriculture and rural development, and for AMS marketing assistance and research activities.

Science Division

The Science Division is responsible for planning and formulating policies and programs for AMS scientific activities; AMS statistical services; plant variety protection services; developing and implementing policies, programs, and central laboratory operations to provide scientific support to commodity programs; and, carrying out pesticide-related activities, laboratory quality assurance and safety oversight activities, and related laboratory training.

Management

The Financial Management, Information Resources Management, Personnel, and Management Services Divisions; the EEO Staff; and, the Information Staff are under the administrative, functional, and technical direction of the Deputy Administrator, Management.

Financial Management Division

The Financial Management Division is responsible for planning and administering budget and financial services; formulating and recommending integrated financial policies and programs including systems, instructions, procedures, and forms; providing advice and assistance on reimbursable and cooperative agreements and other forms of Federal Assistance; and the operation of an Investment Program for AMS user-fee reserve balances.

Personnel Division

The Personnel Division is responsible for formulating policy recommendations and developing comprehensive personnel employment programs; developing and administering AMS programs for the classification of positions, organizational analysis, and position management; employee and labor relations; employee development; and, employee benefits programs.

Information Resources Management Division

The Information Resources Management Division is responsible for administering AMS information systems (both automated and manual) by formulating, planning, and implementing systems to meet AMS' changing needs and requirements in conjunction with the Administrator, Deputy Administrators, and Division Directors of AMS; formulating and preparing multi-year budgets and reports on AMS systems, projects, and system activities as required; providing AMS support in data processing, office automation, microcomputers, telecommunications, micrographics, computer graphics, system studies and evaluation.

Management Services Division

The Management Services Division is responsible for developing and administering AMS policies and programs related to real and personal property management, procurement, information management, mail, printing and distribution, and other related programs; serving as liaison with the Animal and Plant Health Inspection Service in providing certain administrative support services to AMS; and administering the voice communication system for AMS.

Equal Employment Opportunity Staff

The EEO Staff is responsible for formulating recommendations for EEO and civil rights policies and procedures and providing guidance and technical assistance on EEO and civil rights concerns; developing implementation plans and monitoring and evaluating EEO and civil rights programs for effectiveness and progress; and administering the EEO Counselor/Mediation and Special Emphasis programs.

Information Staff

The Information Staff is responsible for the overall planning and administration of all public information programs relating to the AMS program activities. The responsibilities include developing and coordinating information and public education activities addressing consumer, industry, media, congressional, AMS, and Departmental audiences.

Delegations of Authority

Deputy Administrators

The Deputy Administrator, Marketing Programs, and the Deputy Administrator, Management, are delegated the authority to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator. Each Deputy Administrator shall be primarily responsible for the programs and activities of AMS to which assigned. The Deputy Administrator, Marketing Programs, and Deputy Administrator, Management, are delegated authority to establish and interpret program policies with respect to functions assigned.

Compliance Staff; Legislative and Regulatory Review Staff

The Directors of the Compliance and the Legislative and Regulatory Review Staffs are delegated authority, in connection with the respective functions to which assigned, to perform all duties and exercise all functions and powers which are now, or which may be, vested in the Administrator (including the power to redelegate except when prohibited) except such authority as is reserved to the Administrator.

Marketing Program Divisions and Management Divisions and Staffs

The Directors of the Marketing Programs Divisions and the Management Divisions and Staffs are delegated authority, in connection with the respective functions assigned to each of them, to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator and the Deputy Administrators.

Concurrent Authority and Responsibility to the Administrator

No delegation or authorization prescribed shall preclude the Administrator, or each Deputy Administrator, from exercising any of the powers or functions or from performing any of the duties conferred

upon them, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator, and in their respective fields, by each Deputy Administrator. The officers to whom authority is delegated shall:

Maintain close working relationships with officers to whom they report;

Keep superiors advised with respect to major problems and developments;

Discuss with superiors proposed actions involving major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other Divisions or offices of AMS, and other governmental or private organizations or groups.

Prior Authorization and Delegations

All prior delegations and redelegations of authority relating to any function, program or activity covered by this notice shall remain in effect except to the extent that they are inconsistent, amended, or revoked. Nothing herein shall affect the validity of any action taken under prior delegations or redelegations of authority or assignments of functions.

Dated: January 24, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-2191 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket 92-002]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms 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 the findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street 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, Biologics, 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 assessments and findings 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 applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits 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 assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organism	Field test location
91-302-02	Cargill Hybrid Seeds	12-23-91	Corn plants genetically engineered to express a phosphino-thricin acetyl transferase gene, for tolerance to the herbicide glufosinate.	Kane County, Illinois.
91-268-02, renewal of permit 90-353-01, issued on 04-18-91.	Ciba-Geigy Corporation	12-30-91	Tobacco plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* HD1 (Btk), for resistance to lepidopteran insects.	Franklin County, North Carolina.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC this 24th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2260 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-003]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 16 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
91-353-01	DNA Plant Technology Corporation	12-19-91	Tobacco plants genetically engineered to express a chitinase gene or beta-1,3-glucanase genes to confer resistance to pathogenic fungi.	Contra Costa County, California.
91-353-02	University of California, at Davis	12-19-91	Tomato plants genetically engineered to express maize transposable elements *Activator* (*Ac*) and *Dissociation* (*DS*).	Yolo County, California.
91-357-01	Calgene, Incorporated	12-23-91	Cotton plants genetically engineered to express a bromoxynil tolerance gene from *Klesiella ozaenae* and a *Bacillus thuringiensis* (cry 1A(c)) gene, to confer resistance to lepidopteran insects.	Pinal County, Arizona; Washington County, Mississippi; and Darlington County, South CArolina.
91-357-02	Calgene, Incorporated	12-23-91	Potato plants genetically engineered to express a coat protein of the potato leaf roll virus (PLRV) and a *Bacillus thuringiensis* subsp. *tenebrionis* (Btt) protein to confer resistance to PLRV and Colorado potato beetle.	Washington County, Mississippi.
91-358-01	DuPont Agricultural Products	12-24-91	Cotton plants genetically engineered to express acetolactate synthase (ALS) genes to confer tolerance to the herbicide suffonylurea.	Lee County, Arkansas; Bolivar and Washington Counties, Mississippi; and Hidalgo and Lubbock Counties, Texas.
91-358-02	Applied Starch Technologies, Incorporated	12-24-91	Potato plants genetically engineered to express carbohydrate metabolism genes.	Grand Forks County, North Dakota.
91-360-01	Monsanto Agricultural Company	12-26-91	Potato plants genetically engineered to express a protein from *Bacillus thuringiensis* for resistance to Colorado potato beetle (CPB), and to express coat protein genes from potato leaf roll virus (PLRV), potato virus X (PVX), and potato virus Y (PVY), for resistance to PLRV, PVX, and PVY.	Canyon and Bingham Counties, Idaho; Aroostook County, Maine; Otsego County, Michigan; Umatilla County, Oregon; and Benton and Othello Counties, Washington.
91-364-01	Dow Gardens	12-30-91	*Arrielanchier laevis* plants (Allegheny Serviceberry) genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Midland County, Michigan.

Application number	Applicant	Date received	Organism	Field test location
92-002-01	Monsanto Agricultural Company	01-02-92	Potato plants genetically engineered to express a solids modification gene, a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), and coat protein genes from potato virus X (PVX), and potato virus Y (PVY), for resistance to Colorado potato beetle, PVX, and PVY.	Oneida and Waushara Counties, Wisconsin.
92-002-02	Monsanto Agricultural Company	01-02-92	Potato plants genetically engineered to express a solids modification gene and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), for resistance to Colorado potato beetle.	Essen and Suffolk Counties, New York.
92-002-03	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from maize chlorotic dwarf virus (MCDV) for resistance to MCDV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Obion County, Tennessee.
92-002-04	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from a maize chlorotic mottle virus (MCMV) for resistance to MCMV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Franklin, Harlan, and York Counties, Nebraska.
92-002-05	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from a maize dwarf mosaic virus (MDMV) for resistance to MDMV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Polk County, Iowa.
92-007-01	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and/or a metabolizing enzyme for tolerance to the herbicide glyphosate.	Jersey County, Illinois
92-007-02	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Crittenden County, Arkansas; Christian County, Illinois; Benton County, Indiana; Story County, Iowa; and Queen Annes County, Maryland.
92-007-03	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Polk County, Iowa; and Obion County, Tennessee.

Done in Washington, DC, this 24th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2262 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Smokey-Corridor Timber Sales, Lewis and Clark National Forest, Meagher County, MT

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of timber harvest, associated road construction, and prescribed fire to the various resources. The harvest of merchantable trees would be scheduled in four large sales (totaling 1,400 acres) to be sold in Fiscal Years (FY) 1993, 1994, 1995 and 1998. These timber sales include Corridor (400 acres-FY 1993), Smokey B (400 acres-FY 1994), Mizpah (200 acres-FY 1995), and South Deadman (400 acres-FY 1998). The harvest of post, poles, and other submerchantable trees would be scheduled in several small sales (500 acres) to be sold in FYs 1993-2002. Fire management practices (burning grasslands to prevent conifer encroachment) would be scheduled throughout the decade.

Road construction (6 miles) and reconstruction (8 miles) would be scheduled starting in 1993 and most likely be completed by FY 2000. Post-sale activities, firewood gathering, site preparation, and slash disposal are expected to be completed within two years after the closure of each sale. Road construction and reconstruction would be needed to implement the timber harvest and other management practices. The Forest Service also proposes to change the boundaries of Management Areas A, B, C, F, and H through an amendment to the Forest Plan, in order to better fit the management area goals identified in the Forest Plan.

DATES: Comments concerning the scope of the analysis should be received in writing within on or before March 2, 1992, in order to receive timely consideration in the preparation of the Draft EIS.

ADDRESSES: Send written comments to Victor Standa, District Ranger, Kings Hill Ranger District, 204 W. Folsom, Box A, White Sulphur Springs, MT 59645.

FOR FURTHER INFORMATION CONTACT: Craig Cowie, Smokey-Corridor Interdisciplinary Team Leader, Kings Hill Ranger District (406)547-3361.

SUPPLEMENTARY INFORMATION: The proposed projects are within the Corridor Geographic Unit (LB-3), the Black Butte Geographic Unit (LB-4), and the Smokey Geographic Unit (LB-7) as defined by the Forest Plan. The project area of approximately 89,000 acres includes all lands between Showdown Winter Sports Area south, to the District boundary from the Musselshell River on the east, to Coxcombe Butte on the west. About 77,000 acres of the project area are National Forest System lands and approximately 12,000 acres of private

land. The project area is approximately 15 miles north of White Sulphur Springs, Montana.

The timber management practices associated with the four sales are addressed together because the timing and geographic location represent a similar action under 40 CFR § 1508.25(a)(3). Road construction and fire management practices represent connected actions under § 1508.25(a)(i)(iii). The scope of the proposed action is site-specific with timer practices identified on a stand basis. Aprropriate mitigation measures are designed to respond to the identified issues and anticipated effects. The scope of the proposed action will be determined by looking at the range of alternatives, and impacts as specified by the National Environmental Policy Act.

This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives. The primary purpose and need for the proposed action is to begin harvesting timber that is mature and overmature and/or in a state of high risk from insect and/or disease, and to help supply commercial demands for timber on a long-term sustained yield basis. These stands of timber are proposed for harvest at this time because of their poor condition and occurring mortality. Timber sales were projected in the Forest Plan in the Sheep Creek and Deadman Creek drainages.

The areas of proposed harvest for the Smokey-Corridor project are within Management Areas A, B, and C of the Lewis and Clark Forest Plan.

The goal for Management Area A is to "(p)rotect, maintain or enchance the scenic values. Meet the visual quality objectives, usually retention or partial retention, with all management activities. Provide moderate timer and range levels" (Forest Plan, page 3–3).

The goal for Management Area B is to "(e)mphasize timber management and provide a moderate level of livestock forage production, while minimizing impacts to other resources" (Forest Plan, page 3–9).

The goal for Management Area C is to "(m)aintain or enhance existing elk habitat by maximizing habitat effectiveness as a primary management objective. Emphasis will also be directed toward management for habitat diversity to support a variety of indigenous wildlife species. Commodity resource management will be practiced where it is compatible to other resources" (Forest Plan, page 3–15).

No public meeting will be held prior to the issuance of the Draft EIS. However, a letter indicating the proposed action and a map of the project area will be sent to intrest publics for comment. One public meeting will be held during the formal review period of DEIS (June 1992). However, the public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision.

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals and organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management oppportunities in the area being analyzed. This information will be used in preparing the draft environmental impact statement (DEIS). This process includes:

1. Identification of potential issues related to the proposed action.
2. Identification of issues to be analyzed in depth.
3. Eliminiation of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of alternatives to the proposed action.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. One of these will be the "No-Action" alternative, in which all harvest and regeneration activities are deferred. Other alternatives will examine various levels and locations of treatment and regeneration to emphasize differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site-specific mitigation measures and the effectiveness of each proposed mitigation measure.

Preliminary scoping has been done for this project by the interdisciplinary team from the Lewis and Clark National Forest and six major issues have been identified.

Timber (Issue 1)

(a) Provide timber output as directed in the Forest Plan goals and objectives for Management Areas A, B, and C, as measured by suitable forest lands put under regulated management.

(b) Move towards a more balanced size class structure, as measured by the acres by size class.

(c) Ensure cost effective timber resource outputs, as measured by present net value (PNV) and benefit/cost ratio (B/C).

Elk (Issue 2)

(a) What are the effects on elk effective cover, as measured by effective hiding cover percentages?

(b) What are the effects on elk habitat availability, as measured by elk displacement?

(c) What are the effects on elk hunter opportunity, as measured by elk vulnerability?

Biodiversity (Issue 3)

(a) What are the effects of the proposed actions on threatened and endangered species, sensitive species, management indicator species, snag dependent species, old growth habitat, riparian areas, and fragmentation and corridors?

(b) What actions should be taken to maintain and/or restore the biological diversity and create a mosaic of successional stages in these fir dependent communities?

Water Resources (Issue 4)

(a) What are the effects on sediment produced over current levels on State water quality standards?

(b) What are the effects on fishery resources, as measured by the predicted changes in spawning and rearing habitat?

Visual Quality (Issue 5)

What are the effects of the proposed action on the visual resource as viewed from U.S. Highway 89 (Kings Hill Scenic Byway) and Showdown Winter Sports Area?

Recreation (Issue 6)

(a) What are the effects of the proposed action on winter recreation activities and opportunities?

(b) What are the effects of the proposed action on summer-fall recreation activities and opportunities?

The DEIS will be filed with the Environmental Protection Agency (EPA) and a notice of availability of the DEIS published in the **Federal Register**. It is estimated that the DEIS will be available for public review in June 1992.

The comment period on the DEIS will be for 45 days from the date of publication in the **Federal Register.**

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

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

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by October, 1992. The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses, and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The Forest Supervisor's address is: 1101 15th St. N., Box 869, Great Falls, MT 59403.

Dated: January 24, 1992.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 92-2221 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows: Rhea.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: January 27, 1992.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 92-2285 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

Finding of No Significant Impact; Adams Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a headquarters facility in Adams County, Pennsylvania by Adams Electric Cooperative, Inc. (AEC).

FOR FURTHER INFORMATION CONTACT: REA's FONSI and AEC's Borrower's Environmental Report (BER), may be reviewed at and copies obtained from the office of the Director, Northern Regional Division, REA, room 0243, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1420, or at the office of AEC, P.O. Box 130, Gettysburg, Pennsylvania 17325, telephone (717) 334-9211, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by AEC and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA to serve as its Environmental Assessment (EA).

The proposed construction project consists of an office building, an operations building/service center, a pole storage area, employee, visitor and cooperative vehicle parking and two storm water detention basins. AEC has purchased 8 hectares (20 acres) of which 6.8 ha (17 a) would be affected by the proposed facilities.

Alternatives examined for the proposed project included no action and alternative sites. REA has determined that the proposed project is an environmentally acceptable alternative that meets AEC's need with a minimum of adverse environmental impact.

REA has determined that the proposed project will have no effect on cultural resources, floodplains, water quality, air quality or threatened and endangered species or critical habitat. The proposed project is expected to have minimal impact on important farmland. The farmland soil proposed to be converted to AEC's use ranks relatively low in importance according to the Soil Conservation Service's (SCS) survey. In addition, the proposed site has been rezoned for commercial use thereby committing it to development. The SCS has determined that the proposed site is a prior converted (cropland) wetland thereby exempting it from the scope of Executive Order 11990. Therefore, wetlands will not be affected by the proposed project. REA has identified no other matters of potential concern related to the proposed project.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, AEC published a legal notice in The Gettysburg Times which has a general circulation in Adams

County. The notice appeared in the November 30 and December 2 editions of the newspaper. The public was given 30 days to respond on the environmental impact of the project. No responses to the notice were received by AEC or REA.

As a result of its independent evaluation, REA has concluded that project approval would not constitute a major federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

Dated: January 21, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc. 92-2261 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Symone Morris Behrmann; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Symone Morris Behrmann, 11 Goldfinch Court #505, Toronto, Canada, Respondent.

On May 10, 1990, Symone Morris Behrmann was convicted in the U. S. District Court for the District of Columbia of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Behrmann's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Behrmann permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on May 10, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Behrmann had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*

I. All outstanding individual validated licenses in which Behrmann appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Behrmann's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until May 10, 2000, Symone Morris Behrmann, 11 Goldfinch Court, #505, Toronto, Canada, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Behrmann by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until May 10, 2000.

VI. A copy of this Order shall be delivered to Behrmann. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-2254 Filed 1-29-92; 8:45 am]

BILLING CODE 3510-DT-M

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Action Affecting Export Privileges; Maryanne E. Callaghan; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Maryanne E. Callaghan, 39 Congress Street, Warwick, Rhode Island 02889, Respondent.

On July 20, 1990, Maryanne E. Callaghan was convicted in the U.S. District Court for the District of Columbia of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2402 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of Section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Callaghan's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Callaghan permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on July 20, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Callaghan had an interest at the time of her conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Callaghan appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Callaghan's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until 20, 2000, Maryanne E. Callaghan, 39 Congress Street, Warwick, Rhode Island 02889, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Callaghan by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until July 20, 2000.

VI. A copy of this Order shall be delivered to Callaghan. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–2255 Filed 1–29–92; 8:45 am]

BILLING CODE 3510–DT–M

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Action Affecting Export Privileges; George Wenzl; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: George Wenzl, 7375 South Potomac, Englewood, Colorado 80112, Respondent.

On November 19, 1987, George Wenzl (Wenzl) was convicted in the U.S. District Court for the District of Colorado of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) (EAA).[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a

[1] The FAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

violation of section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke and export license previously issued to such a person. Having received notice of Wenzl's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Wenzl permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on November 19, 1997. I have also decided to revoke all export licenses issued pursuant to the EAA in which Wenzl had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. All outstanding individual validated licenses in which Wenzl appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the office of Export Licensing for cancellation. Further, all of Wenzl's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until November 19, 1997, George Wenzl, 7375 South Potomac, Englewood, Colorado 80112, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Wenzl by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until November 19, 1997.

VI. A copy of this Order shall be delivered to Wenzl. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–2257 Filed 1–29–92; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Yu-Hao Liu, aka Michael Liu, aka David Liu; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: YU-HAO LIU, also known as MICHAEL LIU and as DAVID LIU, c/o Triumph Comdata Corp. 7F No. 82, Sung Teh Road Taipei, Taiwan, R.O.C., Respondent.

On January 31, 1990, Yu-Hao Liu, also known as Michael Liu and as David Liu (Liu), was convicted in the U.S. District Court for the Northern District of Illinois of violating Section 2410(a) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) (EAA).[1] Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Liu's conviction for violating the EAA, and following consultants with the Director,

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Office of Export Enforcement, I have decided to deny Liu permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 31, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Liu had an interest at the time of her conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Liu appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Liu's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 31, 2000, Yu-Hao Liu, also known as Michael Liu and as David Liu (Liu), c/o Triumph Comdata Corp., 7F No. 82, Sung Teh Road, Taipei, Taiwan, R.O.C., hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Liu by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 31, 2000.

VI. A copy of this Order shall be delivered to Liu. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-2256 Filed 1-29-92; 8:45 am]

BILLING CODE 3510-DT-M

COMMISSION OF FINE ARTS

1992 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99-190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1992 in the amount of $7,000,000. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, Pension Building, suite 312, 441 F Street, NW., Washington, DC 20001, Phone: 202-504-2200.

Deadlines for receipt of submission of grants applications is 2 March 1992.

This program provides grants for general operating support of organizations who primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 92-2179 Filed 1-29-92; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER: Defense FAR Supplement, part 239, Acquisition of Information Resources, and the clauses at 252.239; DD Form 428.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 7.41 hours.

Responses Per Respondent: 1.

Number of Respondents: 26,000.

Annual Burden Hours: 192,750.

Annual Responses: 26,000.

Needs and Uses: Defense FAR Supplement (DFARS) part 239 concerns information collection requirements associated with acquiring Information Resources, specifically, the acquisition of Automatic Data Processing Equipment by DOD contractors for use in DOD contracts, and the acquisition of Telecommunication Services.

Affected Public: Businesses or other for-profit institutions and Small Businesses or Organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD CLEARANCE OFFICER: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2198 Filed 1-29-92]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet February 13-14, 1992 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussion of key issues related to stealth and stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: January 27, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-2294 Filed 1-29-92 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its January 22, 1992 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to retail water pricing to encourage conservation. The amendment requires owners of water supply systems serving the public seeking approval under section 3.8 of the Compact to submit water conservation plans with applications for new or expanded water withdrawals. In addition, applications submitted after June 30, 1992 for new or expanded withdrawals resulting in total withdrawals equalling or exceeding an average of one million gallons per day must also include an evaluation of the feasibility of implementing a water conserving retail pricing structure and billing program.

EFFECTIVE DATE: January 22, 1992.

ADDRESSES: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on proposed policy and regulations concerning retail water pricing to encourage conservation on August 14, 1991 (as noticed in the June 7, 1991 and August 6, 1991 issues of the **Federal Register**) and on December 11, 1991 (as noticed in the October 31, 1991 and December 5, 1991 issues of the **Federal Register**). Based upon testimony received and considerable deliberation and discussion, the Commission has adopted this amendment to its Comprehensive Plan and Water Code of the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410. is amended by the addition of a new subsection 2.1.2.C and a new section 2.1.7 to read as follows:

2.1.2 New and Existing Users

[A.] * * *

[B.] * * *

C. Owners of water supply systems serving the public (purveyors) seeking approval under section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application, a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

(1) The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

a. Source metering (Resolution No. 86-12);

b. Service metering (Resolution No. 87-7 Revised);

c. Leak Detection and Repair (Resolution No. 87-6 Revised;); and

d. Water Conservation Performance Standards for Plumbing Fixtures and Fittings (Resolution No. 88-2 Revision No. 2).

(2) All applications submitted after June 30, 1992 for a new or expanded water withdrawal that results in a total withdrawal equalling or exceeding an average of one million gallons of water per day shall include the following in the water conservation plan:

a. An evaluation of the feasibility of implementing a water conservation pricing structure and billing program as required in section 2.1.7; and

b. Provision of information on the availability of water-conserving devices and procedures (Resolution No. 81-9).

(3) The water conservation plan shall be subject to review and approval by the designated agency in the state where the system is located. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection and Energy: New York Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) The Executive Director shall enter into administrative agreements with each of the designated agencies to administer and enforce the provisions of this regulation. In the absence of an administrative agreement, the Commission shall administer and enforce the regulation.

(5) This regulation shall be effective immediately.

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourages conservation.

B. Definitions:

1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and

b. Timely billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);

d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or

e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);

b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);

c. Pricing that does not reflect the full cost of providing services; or

d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria:

1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under section 3.8 of the Compact for a new or expanded water withdrawal and whose proposed total withdrawal equals or exceeds an average of one million gallons of water per day shall include in its water conservation plan submitted as part of the application, an evaluation of the feasibility of implementing a water conserving pricing structure and billing program. A purveyor may limit the evaluation to less than its entire system upon application and a determination that a review of its entire system is not necessary. The evaluation shall, at a minimum, consider:

a. The potential change in the quantity of water demanded for customer classes and their end uses of water during both peak and non-peak periods stemming from alternative water conservation pricing structures;

b. The potential revenue effects of the alternative pricing structures;

c. Any legal or institutional changes necessary or desirable to implement a water conservation pricing structure; and

d. How conservation pricing could be coordinated with other conservation programs and measures to reduce both average and peak water use.

3. The requirement set forth in (2) shall be waived if the purveyor either documents it has adopted a water conserving pricing structure or is in the process of implementing such a pricing structure in accordance with a Commission schedule or a schedule established by the appropriate state public utility commission.

4. The Executive Director, on or before June 30, 1993 and annually thereafter, shall review the effectiveness of the retail water pricing activities hereunder to determine their adequacy in promoting and supporting water pricing that encourages water conservation. The results of such review and recommendations, if any, shall be submitted to the Commission for its consideration.

5. This resolution shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Dated: January 24, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-2259 Filed 1-29-92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003C]

Developmental Bilingual Education Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1992.

Purpose of Program

To provide grants to establish, operate, or improve developmental bilingual education programs. These programs can support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, particularly Goal 3 and Goal 5. Programs of developmental bilingual education can support Goal 3 to the extent that they help limited English proficient (LEP) children and children whose native language is English achieve competence in English and a second language, while mastering challenging subject matter. The programs can also support Goal 5 if they prepare these children for productive employment in a global economy.

Eligible Applicants: Local educational agencies (LEAs) and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: April 3, 1992.

Deadline for Intergovernmental Review: June 2, 1992.

Applications Available: February 10, 1992.

Available Funds: $2,800,000.

Estimated Range of Awards: $75,000-$300,000.

Estimated Average Size of Awards: $175,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over applications that do not meet either or both of the priorities.

Invitational Priority 1—Certain Languages

A project providing instruction in one of the following second languages: Arabic, French, German, Hindustani, Italian, Japanese, Portuguese, Russian, Spanish, Vietnamese, or one of the Chinese languages. The special interest in programs of instruction in these major world languages is due to their importance in developing our international competitiveness. In addition, if the local community has a strategy for reforming education and reaching the National Education Goals, the second language chosen for the project should be consistent with that strategy.

Invitational Priority 2—Core Curriculum Areas

An instructional approach emphasizing one or more of the following core curriculum areas in addition to English: Mathematics, science, history, or geography.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—1 point.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.23(a)(2))—6 points.

(3) The geographical distribution of LEP children. The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—7 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—1 point.

For Applications or Information Contact: Socorro Lara or Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6641. Telephone (202) 732-5700. 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. 3291.

Dated: January 23, 1992.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 92-2218 Filed 1-29-92; 8:45 am]

BILLING CODE 4000-01-M

Business and Education Standards Program

AGENCY: Department of Education.

ACTION: Notice of proposed selection criteria for awards to be made in Fiscal Year 1992.

SUMMARY: The Secretary proposes selection criteria for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Business and Education Standards Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (Perkins Act). This program implements a key component of AMERICA 2000, the President's education strategy on which the Departments of Education and Labor are jointly working to assist business and labor to adopt voluntary industry-based skill standards. The Secretary takes this action to establish selection criteria for FY 1992 grant awards under this new program with the understanding that the Departments of Education and Labor will meet regularly to discuss the issues surrounding voluntary industry-based standards and the development and promulgation of program regulations.

DATES: Comments must be received on or before March 2, 1992.

ADDRESSES: All comments concerning these proposed selection criteria should be addressed to Debra J. Nolan, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4518), 400 Maryland Avenue, SW., Washington, DC 20202-7327.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, Telephone: (202) 732-2417. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Business and Education Standards Program provides financial assistance for organizing and operating business-labor-education technical committees that will propose national standards for competencies in industries and trades. This program is authorized under section 416 of the Perkins Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101-392, 104 Stat. 753 (1990)).

The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and private national research organizations.

Under this program, standards are to be developed through a collaborative voluntary effort by business and industry. Thus, the Secretary intends that entities seeking awards under this program will provide evidence that they represent the industry in some way; that a majority of the industry representatives—employers, labor organizations, associations, vocational and other educators or experts familiar with the industry that is to use the standards—are in agreement; and that they will participate together in the development of the standards.

The Secretary intends to use the selection criteria, the program statute, and the Education Department General Administrative Regulations for FY 1992 grant awards under this program.

The Secretary will announce the final selection criteria in a notice in the Federal Register.

Note: This notice of proposed selection criteria does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with, or following publication of, the final selection criteria.

Matching Requirement

Each grant recipient shall provide 50 percent of the cost of the business-labor-education technical committee established under the grant.

Selection Criteria

The Secretary wishes to highlight, for potential applicants, that the Business and Education Standards Program is an element of AMERICA 2000, the President's education strategy to help America move itself toward achieving the National Education Goals. The Business and Education Standards program also supports the National Education Goal of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship. Specifically, the program addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, industry, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their grasp of those skills.

The Assistant Secretary for the Office of Vocational and Adult Education has consulted with the Assistant Secretary of Labor for Employment and Training to explore the establishment of the Business and Education Standards

Program. Both Departments will be involved in the process of reviewing applications and will continue meeting throughout the operation of the program.

The Secretary proposes to use the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace, which can be used to establish job-related and industry-specific skill standards, built around core proficiencies;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in these divisions or specialty areas;

(iv) Minimum tools and equipment required in these division or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in these divisions or specialty areas;

(vi) Minimum qualifications for instructional staff in these divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this proposed selection criterion as part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national job-related and industry-specific skill standards, built around core proficiencies, for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and termination dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including now the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate a business-labor-education technical committee effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with businesses, industrial trade associations, labor organizations, vocational and other educators or experts familiar with that industry; and

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel an applicant plans to use, including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) Experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in the industries and trades.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these selection criteria and applicant eligibility.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4518, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2416.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards)

Dated: January 23, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-2220 Filed 1-29-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/JA(EU)-58, for the transfer from the Federal Republic of Germany to Japan of 20.2 kilograms of uranium oxide, enriched to 19.95 percent in the isotope uranium-235, for fabrication of fuel for the Nuclear Safety Research Reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on January 24, 1992.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 92-2286 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers: RTD/JA(EU)-59, for the transfer of 1.2 grams of uranium, enriched to 93.18 percent in the isotope uranium-235, and RTD/JA(EU)-60, for the transfer of 0.3 grams of plutonium-239.

The above mentioned materials are to be transferred from Belgium to Japan for use in determination of reaction rate distribution during the start-up of a new fast reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on January 24, 1992.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 92-2287 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP88-248-003 and RP88-248-004]

Arkla Energy Resources, a Division of Arkla, Inc, Report of Refunds

January 24, 1992.

Take notice that Arkla Energy Resources, a division of Arkla, Inc. (AER), on September 16, 1991 tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, as amended on December 31, 1991, to report that the amounts overcollected were credited to two of its customer's December 1991 invoices. AER states that the report is filed pursuant to the Commission's May 21, 1991 order in the referenced proceeding.

AER states that the amounts being refunded were collected from two downstream customers. These amounts represent the passthrough of United Gas Pipe Line Company contract settlement costs.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2199 Filed 1-29-92; 8:45 am]

BILLING CODE 717-01-M

[Docket No. CP89-5-004]

CNG Transmission Corp.; Sale of Natural Gas

January 23, 1992.

Take notice that on January 21, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, PO Box 2450, Clarksburg, West Virginia, submitted the following information regarding the sale of natural gas to be made to an affiliate under CNG's Rate Schedule USA, pursuant to the authorization granted by an order issued December 20, 1988, in Docket No. CP89-5-000.[1]

(1) Name of Buyer:Doswell Limited Partnership City of Richmond.

(2) Location of Buyer: Richmond, Virginia.

(3) Affiliation between CNG and Buyer: The buyers are not affiliated with CNG. However, a segment of the transportation service for these purchasers will be performed by CNG's affiliate, Virginia Natural Gas Company. CNG and Virginia Natural are owned by the same parent, Consolidated Natural Gas Company.

(4) Term of Sale—Doswell: December 1, 1991, through May 31, 1992, and month to month thereafter. Richmond: November 1, 1991, through March 31, 1992, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities—Daily Quantity: Doswell Ltd. Partnership 125,000 Dt/day. City of Richmond 10,000 Dt/day. Estimated Total: Doswell Ltd. Partnership 6,000,000 Dt. City of Richmond 750,000 Dt.

(6) Maximum sales rate: $3.080 per Dt. Minimum sales rate: $2.865 per Dt. Rate to be charged during billing period: Doswell Ltd.—$3.080 per Dt. City of Richmond—$3.080 per Dt.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission,

[1] CNG Transmission Corporation, 45 FERC ¶ 61,446 (1988).

Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of December 20, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, CNG may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2200 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-92-005]

Colorado Interstate Gas Co.; Tariff Filing

January 24, 1992.

Take notice that Colorado Interstate Gas Company (CIG) on January 17, 1992, tendered for filing Second Revised Sheet No. 7 and Third Revised Sheet No. 23 of its Original Volume No. 3, FERC Gas Tariff to comply with a Commission order issued January 2, 1992, in Docket No. RP91-92-004. CIG states that the requested effective date is October 2, 1991, as required by the January 2, 1992 Commission order.

CIG states that the compliance filing reflects changes to Sections 2.3 of Rate Schedule TF-1 and 2.5 of Rate Schedule TI-1 to provide that CIG can perform transportation service for up to 30 days without an executed agreement, but if an agreement is not executed in 30 days, service must be suspended until an agreement is executed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2201 Filed 1-29-92; 8:45 am]

BILLING CODE 92-2201-M

[Docket No. RP92-94-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

January 24, 1992.

Take notice that on January 22, 1992, Florida Gas Transmission Company ("FGT"), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. RP92-94-000 a petition requesting authorization for waivers of Federal Energy Regulatory Commission's ("F.E.R.C." or "Commission") policy, Commission regulations, and FGT's F.E.R.C. Gas Tariff to the extent necessary to allow FGT to add delivery points under an existing Service Agreement for firm transportation service between FGT and Gainesville Regional Utilities ("GRU"), while permitting GRU to maintain its existing priority in FGT's first-come, first-served queue.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same end-user, (ii) the new delivery points will be located in the same geographic location as an existing delivery point at which FGT presently serves GRU, and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2202 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-51-001]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

January 24, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on January 21, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1992:

Original Volume No. 3

Substitute Fifth Revised Sheet No. 2
Substitute Fifth Revised Sheet No. 3

Great Lakes states that on November 22, 1991 it submitted to the Federal Energy Regulatory Commission ("Commission") revised tariff sheets to implement a Gas Research Institute ("GRI") Charge Adjustment of 1.51¢ per Mcf consistent with the Commission's order of October 1, 1991 in Docket No. RP91-170-000, *et al.*

Great Lakes states its filing included tariff sheets identified as Fifth Revised Sheet No. 2 and Fifth Revised Sheet No. 3 to Original Volume No. 3 of its FERC Gas Tariff and that such tariff sheets reflected base tariff rates that were filed with the Commission on November 15, 1991 in Docket No. RP91-143, *et al.* These tariff sheets were accepted for filing by the Commission on December 31, 1991 in Docket No. TM92-2-48-000, *et al.*

Great Lakes states further that pursuant to the Commission's order issued December 20, 1991 in Docket No. RP91-143, *et al.*, it was directed, *inter alia*, to eliminate certain costs associated with incrementally priced facilities from the design of rates for interruptible and overrun services in the Docket No. RP91-143, *et al.* proceedings. In compliance with the December 20 order, Great Lakes states that revised base tariff rates were filed with the Commission on January 10, 1992 in Docket No. RP91-143-006, *et al.*, to be effective November 1, 1991. Great Lakes states that such filing was made under protest and without prejudice to Great Lakes' requests for rehearing in Docket Nos. RP91-143, *et al.*

Great Lakes submits that due to the compliance filing made with the Commission on January 10, 1992, and subject to Great Lakes' protest and reservation of position in that filing, it is necessary to amend the November 22, 1991 filing to reflect the base tariff rates effective coincident with the implementation of the GRI Charge Adjustment on January 1, 1992. By this filing, Great Lakes states that it is not proposing a change to any of the rates previously filed with the Commission but is merely combining the effects of two non-coincident filings.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2203 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-5-001]

Midwestern Gas Transmission Co., Compliance Filing

January 24, 1992.

Take notice that on January 7, 1992, Midwestern Gas Transmission Company (Midwestern) tendered for filing a detailed statement explaining why its projected rates conform to the Commission's regulations requiring that pipelines projected purchased gas costs based on known and measurable changes in the rate.

Midwestern states that the statement is being filed in compliance with an OPPR Director Letter Order dated December 18, 1991, in Docket Nos. TQ92-2-5-000 and TM92-2-5-000 to demonstrate that the purchase gas cost are based on known and measurable changes in the rate.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2204 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-203-008 and RP88-203-007]

Panhandle Eastern Pipe Line Co.; Report of Refunds

January 24, 1992.

Take notice that on November 14, 1991, Panhandle Eastern Pipe Line Company (Panhandle) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with the Settlement Agreement dated April 22, 1991, approved by the Commission's August 1, 1991 and September 30, 1991 orders, issued in Docket Nos. RP85-203-000 and RP88-203-000.

Panhandle states that the report summarizes Order 94 and Order 473 amounts refunded to Subject Parties or Sponsoring Parties to the Settlement.

Panhandle states that copies of the filing was sent to each of Panhandle's affected customers and respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2205 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-8-002]

Seagull Interstate Corp.; Compliance Filing Pursuant to Order No. 497

January 24, 1992.

Take notice that on January 13, 1992, Seagull Interstate Corporation (Seagull) tendered Revised Implementation Procedures and the following tariff sheet for filing in the captioned docket pursuant to Order No. 497, Section 250.16 and § 161.3 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 57A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2206 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-6-001]

Southern Natural Gas Co; Proposed Changes to FERC Gas Tariff

January 24, 1992.

Take notice that on November 27, 1991, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets, to its FERC Gas Tariff, Sixth Revised Volume No. 1, as listed on Attachment A to the filing, to be effective December 1, 1991.

Southern states the purpose of the filing is to reflect in the Index of Requirements to its FERC Gas Tariff, the authorizations granted by the Commission in its Order Issuing Certificate and Approving Abandonment which issued on October 31, 1991, in Docket No. CP92-6-000. In addition, Southern notes that the revised tariff sheets incorporate various other changes based on superseding service agreements and certain service changes which have already been authorized by the Commission.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions as well as parties of record in the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2207 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM91-8-29-004 and TM91-9-29-004]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

January 24, 1992.

On January 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Second Revised Sheet Nos. 138, 144 and 151 to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco proposes to notify its customers via electronic bulletin board of any upstream rate change proposal which Transco will track under its storage rates schedules within 3 business days following Transco's receipt of such filing.

Transco proposes to file to track any such rate change within 30 days following the issuance date of the Commission's order which accepts and makes effective the rate change.

Transco has requested that such revised tariff sheets be effective February 20, 1992.

Transco states that copies of the filing have been sent to all interested state commissions and all parties in the captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2208 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-68-000]

Vesta Energy Co.; Petition for Declaratory Order

January 24, 1992.

Take notice that on January 23, 1992, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Vesta Energy Company (Vesta) petitioned the Commission for a declaratory order to clarify that section 6.3 of Panhandle Eastern Pipe Line Company's (Panhandle) Gas Tariff provides that firm transportation utilizing alternate receipt points shall receive higher scheduling and curtailment priority at those points than interruptible shippers and that Panhandle be ordered to schedule shippers' receipt of gas accordingly.

Vesta further requested a shortened notice period and expeditious action by the Commission its petition, since it claims that timing is of the essence to protect Vesta from further irreparable economic harm as a result of being denied its contractual and legal rights to firm transportation at alternate receipt points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2209 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-93-000]

Williston Basin Interstate Pipeline Co.; Revised Tariff Sheets

January 24, 1992.

Take notice that on January 21, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing proposed changes in Second Substitute First Revised Sheet Nos. 128 and 131 to Original Volume No. 1-B of its FERC Gas Tariff. The proposed effective date of the revised tariff sheets is January 21, 1992.

Williston Basin states that the revised tariff sheets were filed under protest to address the Commission's statement in its December 27, 1991 order in Docket No. RP91-141-004 concerning the manner in which it proposed that shippers cure imbalances.

Williston Basin states that the instant filing is being made under protest and without prejudice to Williston Basin's rights on rehearing and judicial review of the above referenced order.

Williston Basin states that a copy of the filing is being served upon those listed on the official mailing list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2210 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-120-NG]

Coenergy Ventures, Inc.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for Blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 31, 1991, of an application filed by Coenergy Ventures, Inc. (CVI) requesting blanket authorization to import up to 72 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. CVI intends to use existing pipeline facilities for the proposed imports and states that it would submit quarterly reports detailing each transaction.

The application was 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 filled at the address listed below no later than 4:30 p.m., eastern time, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: CVI, a Michigan corporation with its principal of business in Detroit, Michigan, is a wholly-owned subsidiary of MCN Investment Corporation, which is, in turn, a wholly-owned subsidiary of MCN Corporation, both Michigan corporations. CVI is a natural gas marketing company engaged in the business of buying and selling natural gas, and currently holds a blanket export authorization issued in DOE/FE Opinion And Order No. 504 on May 16, 1991 (1 FE Para 70,448). CVI proposes to be the seller of the gas to purchasers located in the United States, and, on occasion, act as an agent for either domestic purchasers or Canadian suppliers. CVI's states that the gas imported under the requested authorization will be sold on a firm and interruptible basis at market responsive prices for sale to various United States customers.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of 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 CVI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 on January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2288 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-83-NG]

Enron Oil & Gas Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Oil & Gas Marketing, Inc. blanket authorization to export up to 36.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

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, January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2289 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-109-NG]

Meridian Oil Transportation Inc.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 19, 1991, of an application filed by Meridian Oil Transportation Inc. (Meridian) requesting blanket authorization to export up to 54 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. Meridian intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. Meridian states that it will submit quarterly reports detailing each transaction.

The application was 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, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Meridian, a Texas corporation with its principal place of business in Houston, Texas, is engaged in the business of purchasing, reselling, and transporting natural gas in the Texas intrastate market. Meridian is a wholly-owned subsidiary of Meridian Oil Hydrocarbons Inc., which in turn is a wholly-owned subsidiary of Burlington Resources Inc.

Meridian requests authorization to export gas for its own account as well as for the account of its suppliers and purchasers. The requested authority would be used for spot and/or short term sales on a firm or interruptible basis. Meridian states that all sales would result from arms-length negotiations with terms and conditions determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

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 address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of 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 Meridian's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 on January 23, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2290 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-107-NG]

Natural Gas Marketing & Storage Co.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 17, 1991, of an application filed by Natural Gas Marketing & Storage Company (NGMS) requesting blanket authorization to export up to 275 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. NGMS intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. NGMS states that it will submit quarterly reports detailing each transaction.

The application was 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, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: NGMS, a Texas corporation with its principal place of business in Houston, Texas, is engaged in the business of marketing natural gas. NGMS is a wholly-owned subsidiary of Houston Pipe Line Company, which in turn is a wholly-owned subsidiary of Enron Corporation.

NGMS expects to export the natural gas under spot and/or short term sales and on a firm or interruptible basis to end users, local distribution companies, state-owned entities, and pipeline companies located in Mexico. NGMS states that all sales would result from arms-length negotiations with terms and conditions determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority.

The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

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 address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, or 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 question 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 NGMS's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 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, on January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2291 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-118-NG]

Phillips Gas Marketing Co.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 26, 1991, of an application filed by Phillips Gas Marketing Company (PGMC) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. PGMC intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. PGMC states that it would submit quarterly reports detailing each transaction.

The application was 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, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: PGMC, a Delaware corporation with its principal place of business in Houston, Texas, engages in the natural gas marketing business. PGMC is a wholly-owned subsidiary of Phillips 66 Natural Gas Company, which in turn is a wholly-owned subsidiary of Phillips Petroleum Company. PGMC intends to export the natural gas for its own account as well as for the account of others. PGMC states that it will sell the requested natural gas volumes on a short-term or spot basis and the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

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 address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of 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 PGMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 on January 23, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2292 Filed 1–29–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–925–DR]

Marshall Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA–925–DR), dated December 6, 1991, and related determinations.

DATES: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, effective January 4, 1992, and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I have appointed Thomas P. Credle of the Federal Emergency Management Agency as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Major P. May as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-2268 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-931-DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA-931-DR), dated January 22, 1992, and related determinations.

DATES: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated January 22, 1992, the President declared a major disaster under the authority of the Robert. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from severe storms and flooding on January 5-6, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose A. Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

The municipalities of Adjuntas, Aguas Buenas, Aibonito, Arroyo, Barceloneta, Barranquitas, Caguas, Canovanas, Cayey, Cidra, Coamo, Comerio, Dorado, Fajardo, Guayama, Humacao, Jayuya, Juana Diaz, Lajas, Loisza, Luquillo, Maunabo, Naguabo, Naranjito, Orocovis, Patillas, Ponce,Salinas, San Lorenzo, Santa Isabel, Toa Baja, Utuado, Villalba, and Yabucoa for Individual Assistance.

The municipalities of Adjuntas, Aguas Buenas, Aibonito, Arroyo, Barceloneta, Barranquitas, Caguas, Canovanas, Cayey, Cidra, Coamo, Comerio, Dorado, Fajardo, Guayama, Humacao, Jayuya, Luquillo, Maunabo, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Santa Isabel, Toa Baja, Utuado, Villalba, and Yabucoa for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster (Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-2269 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATED: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Callahan, Freestone, Gillespie, Hamilton, Houston, Kerr, Mills, and Wise for Individual Assistance. (Previously designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-2270 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-02-M

Advisory Committee for the National Urban Search and Rescue System; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463) (5 U.S.C. App 1 *et seq.*), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue System.

Dates of Meeting: February 13-14, 1992.

Place: Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Washington, DC 20472.

Time: February 13—8:30 a.m. to 5 p.m. February 14—8:30 a.m. to 5 p.m.

Proposed Agenda: The Advisory Committee will discuss: (1) A draft White Paper on the state of the Federal Urban Search and Rescue (US&R) program; (2) a public outreach campaign to inform local and State representatives of the program and what US&R assets are available and how they may be accessed during times of emergency; (3) the status of the FEMA-developed training courses, including the orientation training course developed for Task Force leadership; (4) a review of the Montgomery County, Maryland, and Fairfax County, Virginia, Task Force deployment exercise; (5) FEMA US&R program update; and (6) organizational updates by the Advisory Committee members.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting must contact Mrs. Kimberly S. Caulfield Vasconez, FEMA, Operations Planning and Response Branch, 202-646-4335, no later than February 11

Minutes of the meeting will be prepared and will be available for public viewing in Operations Planning and Response Branch (SL-OE-FR-OP), Federal Emergency Management Agency, 500 C Street, SW., room 613, Washington, DC, 20472. Copies of the minutes will be available upon request 30 days after the final day of the meeting.

Dated: January 24, 1992.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-2267 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

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.: 224-200606.

Title: North Carolina State Ports Authority/D.B. Turkish Cargo Lines Marine Terminal Agreement.

Parties:

North Carolina State Ports Authority
D. B Turkish Cargo Lines

Synopsis: This Agreement, filed January 21, 1992, provides for throughput rates on loaded and empty containers and defines the services and inclusive charges pertaining to those rates. The Agreement is for a period of three years.

Agreement No.: 224-200605.

Title: Port of Portland/SAGA Forest Carriers (Intl.) S/A Terminal Use Agreement.

Parties:

Port of Portland ("Port")
SAGA Forest Carriers (Intl.) S/A ("SAGA")

Synopsis: This Agreement, filed January 17, 1992, provides that in return for SAGA agreeing to use the Port as a designated Pacific Northwest port-of-call for specific services, the Port will share wharfage and dockage revenue with SAGA on revenue in excess of $120,000. The Agreement is for one year with options to renew.

Agreement No.: 203-011075-019.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nexos Line
Nordana Line, Inc.
Concorde Shipping, Inc.
Tropical Shipping and Construction Co. Ltd.
Central America Shippers, Inc.
Great White Fleet, Ltd.
Naviera Consolidada S.A.
Thompson Shipping Co., Ltd.
King Ocean Central America, S.A.
Network Shipping Ltd.

Synopsis: The proposed amendment adds Empresa Naviera Santa as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 202-011213-025.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
d'Amico Societa de Navigazione, S.p.A.
Nordana Line A/S
Sea-Land Service, Inc.

Synopsis: The proposed amendment provides that no member may withdraw from the Agreement prior to June 30, 1992, unless notice of withdrawal was submitted before January 14, 1992.

Agreement No.: 202-011241-011.

Title: USA-North Europe Rate Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Hapag Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

Synopsis: The proposed amendment extends the March 31, 1992 expiration date to July 1, 1992 of Articles 16.1 and 16.2 of the Agreement which apply to specific arrangements between ACL and Wallenius.

By Order of the Federal Maritime Commission.

Dated: January 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2213 Filed 1-29-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Bessemer Group, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bessemer Group, Incorporated, Woodbridge, New Jersey; to engage *de novo* in participating in loans made by its subsidiary banks, Bessemer Trust Company and Bessemer Trust Company, N.A., to their trust customers pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2225 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

Casper Bocina, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Casper Bocina, Short Hills, New Jersey, to acquire an additional 3.7 percent for a total of 8.89 percent; Robert S. Bohrer, West Orange, New Jersey, to acquire an additional 0.18 percent for a total of 1.97 percent; Frank P. Farinella, Jr., Springfield, New Jersey, to acquire an additional 3.0 percent for a total of 11.74 percent; Mark S. Fogt, Bedminster, New Jersey, to acquire an additional 0.18 percent for a total of 1.06 percent; Bruce E. Goldman, Denville, New Jersey, to acquire an additional 0.3 percent for a total of 0.47 percent; Seymour Lehrhoff, South Orange, New Jersey, to acquire an additional 1.3 percent for a total of 8.33 percent; C. Thomas Thomas, Short Hills, New Jersey, to acquire an additional 1.2 percent for a total of 4.39 percent; Jerome N. Waldor, South Orange, New Jersey, to acquire an additional 5.3 percent for a total of 11.17 percent; and Nazario L. Paragano, Bernardsville, New Jersey, to acquire an additional 21.3 percent for a total of 34.78 percent of the voting shares of Inter Community Bancorp, Springfield, New Jersey, and thereby indirectly acquire Inter Community Bank, Springfield, New Jersey.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Ross Maxwell Whipple, Arkadelphia, Arkansas; to acquire 40.43 percent of the voting shares of Central Arkansas Bancshares, Inc., Malvern, Arkansas, and thereby indirectly acquire Bank of Malvern, Malvern, Arkansas; Bank of Hot Springs, Hot Springs, Arkansas; and Merchants & Planters Bank & Trust Co., Arkadelphia, Arkansas.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2227 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

First Commonwealth Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 20, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to acquire 100 percent of the voting shares of Central Bank, Claysburg, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Bancshares, Inc., New London, Wisconsin; to become a bank holding company by acquiring 95 percent of the voting shares of First State Bank, New London, Wisconsin.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2228 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0034]

Duramed Pharmaceuticals, Inc.; Withdrawal of Approval of Seven Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of seven abbreviated new drug applications (ANDA's) held by Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213 (Duramed). Duramed has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of untrue statements, discrepancies, and omissions concerning information used to support approval of the applications.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of untrue statements, discrepancies, and omissions that relate to batches of drug products used to support approval of the following ANDA's held by Duramed:

ANDA 70-308; Propranolol HC1 Tablets, 40 milligrams (mg);

ANDA 70-309; Propranolol HC1 Tablets, 60 mg;

ANDA 70-310; Propranolol HC1 Tablets, 80 mg;

ANDA 88-967; Trifluoperazine HC1 Tablets, 1 mg;

ANDA 88-968; Trifluoperazine HC1 Tablets, 2 mg;

ANDA 88-969; Trifluoperazine HC1 Tablets, 5 mg; and
ANDA 88-970; Trifluoperazine HC1 Tablets, 10 mg.

After careful review of inspectional findings, Duramed's own internal audit results, and letters from the firm, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the products listed above. Duramed was notified in writing of these determinations and, in accordance with 21 CFR 314.150(d), was offered an opportunity to permit FDA to withdraw approval of the applications. Subsequently, in a letter dated November 8, 1991, Duramed requested that approval of these ANDA's be withdrawn.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective January 30, 1992.

Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2233 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0033]

Duramed Pharmaceuticals, Inc.; Withdrawal of Approval of 35 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 35 abbreviated new drug applications (ANDA's) held by Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213 (Duramed). Duramed requested in writing that approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a letter dated November 8, 1991, Duramed requested that FDA withdraw approval of the applications listed below. The applicant has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
70-165	Tolazamide Tablets, 100 milligrams (mg).
70-166	Tolazamide Tablets, 250 mg.
70-167	Tolazamide Tablets, 500 mg.
70-306	Propranolol Hydrochloride Tablets, 10 mg.
70-307	Propranolol Hydrochloride Tablets, 20 mg.
70-326	Indomethacin Capsules, 25 mg.
70-327	Indomethacin Capsules, 50 mg.
70-894	Diazepam Tablets, 2 mg.
70-895	Diazepam Tablets, 5 mg.
70-896	Diazepam Tablets, 10 mg.
71-006	Methyldopa Tablets, 250 mg.
71-009	Methyldopa Tablets, 500 mg.
71-126	Propranolol Hydrochloride and Hydrochlorothiazide Tablets, 40 mg/25 mg.
71-127	Propranolol Hydrochloride and Hydrochlorothiazide Tablets, 80 mg/25 mg.
71-216	Haloperidol Tablets, 0.5 mg.
71-217	Haloperidol Tablets, 1 mg.
71-218	Haloperidol Tablets, 2 mg.
71-219	Haloperidol Tablets, 5 mg.
71-220	Haloperidol Tablets, 10 mg.
71-221	Haloperidol Tablets, 20 mg.
71-327	Propranolol Hydrochloride Tablets, 90 mg.
71-708	Temazepam Capsules, 15 mg.
71-709	Temazepam Capsules, 30 mg.
88-182	Aminophylline Tablets, 100 mg.
88-183	Aninophylline Tablets, 200 mg.
88-232	Cyproheptadine Hydrochloride Tablets, 4 mg.
88-593	Hydroxyzine Pamoate Capsules, 25 mg.
88-594	Hydroxyzine Pamoate Capsules, 50 mg.
88-595	Hydroxyzine Pamoate Capsules, 100 mg.
88-918	Chlorpropamide Tablets, 100 mg.
88-919	Chlorpropamide Tablets, 250 mg.
88-948	Phentermine Hydrochloride Capsules, 30 mg.
88-394	Prednisone Tablets, 5 mg.
88-395	Prednisone Tablets, 10 mg.
88-396	Prednisone Tablets, 20 mg.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective March 2, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2234 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0208]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). This action is being taken because the applications contain untrue statements of material fact, and the drugs covered by these applications lack substantial evidence of effectiveness and have not been shown to be safe. Chelsea has withdrawn its request for a hearing on these products.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1990 (55 FR 25712), FDA offered an opportunity for a hearing (NOOH) on a proposal to issue an order under section 505(e)(2), (e)(3), and (e)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)(2), (e)(3), and (e)(5)) withdrawing approval of the following ANDA's held by Chelsea:

ANDA 70-421, Verapamil Hydrochloride Tablets, 80 milligrams (mg);
ANDA 70-422, Verapamil Hydrochloride Tablets, 120 mg;
ANDA 71-020, Disopyramide Phosphate Capsules, 100 mg;
ANDA 71-021, Disopyramide Phosphate Capsules, 150 mg;
ANDA 71-558, Perphenazine & Amitriptyline Hydrochloride Tablets, 4 mg/50 mg;
ANDA 71-661, Oxazepam Capsules, 10 mg;
ANDA 71-662, Oxazepam Capsules, 15 mg;
ANDA 71-663, Oxazepam Capsules, 30 mg; and
ANDA 89-700, Perphenazine Tablets, 8 mg.

The basis for the proposal stemmed from the discovery of discrepancies, false statements, and omissions regarding the manufacture and processing of batches of drug product used to support approval of the ANDA's. Identification of these discrepancies, false statements, and omissions raised

substantial questions about the reliability of the data, including the bioequivalence data, submitted in support of the applications.

On July 22, 1990, Chelsea requested a hearing, and on August 21, 1990, Chelsea submitted data and information in support of its hearing request. Subsequently, in a letter dated December 6, 1991, Chelsea requested the withdrawal of the applications listed above and withdraw its hearing request.

Therefore, the Director of the Center for Drug Evaluation and Research, under section 505(e) of the act, and under authority delegated to him (21 CFR 5.82), finds that the applications listed above contain untrue statements of material fact (21 U.S.C. 355(e)(5)); that new evidence of clinical experience, not contained in the applications or not available until after the applications were approved, shows that the drugs have not been shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and that on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the application were approved, there is a lack of substantial evidence that the drug will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Pursuant to the foregoing findings, approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective January 30, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Section 505(j)(6)(C) of the act requires that FDA immediately remove from its approved product list ("Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to this withdrawal. Notice is hereby given that the drugs covered by these applications are removed from the list.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2232 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0499]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4295) has been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petition proposes to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers. (21 CFR 178.2010) to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 22, 1992.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-2300 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0035]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). Chelsea notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8038.

SUPPLEMENTARY INFORMATION: Chelsea, the holder of the ANDA's listed in the table in this document, has informed FDA that these drug products are no longer marketed and has requested that FDA withdraw approval of the applications. Chelsea has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
18-369	Furosemide Tablets, 20 and 40 milligrams (mg).
62-402	Nystatin Oral Tablets, 500,000 Units.
85-552	Probenecid and Colchicine Tablets, 500 mg/0.5 mg.
85-876	Diphenoxylate Hydrocholoride and Atropine Sulfate Tablets, 2.5 mg/.025 mg.
85-894	Prompt Phenytoin Sodium Capsules, 100 mg.
86-231	Butalbital, Aspirin, and Caffeine Capsules, 50 mg/325 mg/40 mg.
87-275	Acetaminophen and Codeine Phosphate Tablets, 300 mg/60 mg.
87-276	Acetaminophen and Codeine Phosphate Tablets, 300 mg/30 mg.
87-277	Acetaminophen and Codeine Phosphate Tablets, 300 mg/15 mg.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective March 2, 1992.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2231 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0036]

Superpharm Corp., et al.; Withdrawal of Approval of 18 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 18 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
70-008	Metronidazole tablets USP, 250 milligrams (mg).	Superpharm Corp., 1769 fifth Ave., Bayshore, NY 11706.
70-009	Metronidzaole tablets USP, 500 mg.	Do.
70-488	Indomethacin capsules USP, 50 mg.	Do.
70-622	Metoclopramide injection USP, 5 mg/milliliter (mL) (ampule).	Smith & Nephew Solopak, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
70-634	Nitroglycerin injection USP, 5 mg/mL (ampule).	Do.
71-517	Propranolol hydrochloride tablets USP, 40 mg.	Superpharm Corp.
71-518	Propranolol hydrochloride tablets USP, 80 mg.	Do.
71-727	Clorazepate dipotassium capsules, 3.75 mg.	G.D. Searle & Co., 4901 Searle Parkway, Skokie, IL 60077.
71-728	Clorazepate dipotassium capsules, 7.5 mg.	Do.
71-729	Clorazepate dipotassium capsules, 15 mg.	Do.
88-431	Quinidine gluconate sustained release tablets, 324 mg.	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, Oh 43216-6532
88-986	Chlordiazepoxide hydrochloride capsules USP, 10 mg.	Superpharm Corp.
88-987	Chlordizaepoxide hydrochloride capsues USP, 5 mg.	Do.
88-988	Chlordiazepoxide hydrochloride capsules USP, 25 mg.	Do.
89-031	Hydroxyzine pamoate capsules USP, 25 mg.	Do.
89-032	Hydroxyzine pamoate capsules USP, 50 mg.	Do.
89-033	Hydroxyzine pamoate capsules USP, 100 mg.	Do.
89-137	Spironolactone and hydrochlorothiazide tablets, 25 mg/25 mg.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective March 2, 1992.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2230 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 18, 19, and 20, 1992, 8 a.m., Grand Ballroom, Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD. If room reservations are made at the Bethesda Marriott, please refer to the FDA Breast Implant meeting to obtain a special group rate.

Type of Meeting and Contact Person

Open public hearing, February 18, 1992, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; if necessary, closed presentation of data and/or closed committee deliberations, 4 p.m. to 6 p.m.; open committee discussion, February 19 and 20, 1992, 8 a.m. to 4 p.m.; if necessary, closed presentation of data and/or closed committee deliberations, 4 p.m. to 6 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

General Function of the Committee

The committee reviews and evaluates data and information on marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present information or views on new issues pending before the committee. Those desiring to make oral presentations must, by February 7, 1992, notify the contact person and submit a copy of their proposed statements in writing, along with the names and addresses of proposed participants. Those wishing to present only written testimony must also submit it by February 7, 1992, to allow all written statements to be submitted to and reviewed by the Panel in advance of the meeting. This open public portion of the meeting will be considered an addendum to the full day of open public testimony during the previous panel meeting on November 12, 13, and 14, 1991, the proceedings of which will be incorporated into this meeting. Restatements of positions expressed at the November 1991 meeting are therefore inappropriate for this meeting. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the Panel.

Open Committee Discussion

On January 6, 1992, the Commissioner of Food and Drugs called for a voluntary moratorium on the distribution and use of silicone gel-filled breast implants after receiving new information regarding these devices that amplified the agency's concerns about their safety. In light of this information, the committee will reassess its previous recommendation that the 180-day review period for premarket approval applications for these breast prostheses be extended and that the devices remain available during the extended review period to meet a public health need. The committee will also consider what advice should be provided to women who currently have these devices implanted.

Closed Presentation of Data

The committee may be presented with and discuss trade secret or confidential commercial information regarding the silicone gel-filled breast prostheses. This portion of the meeting will be closed to the extent necessary to permit discussion of this information (5 U.S.C. 552b(c)(4); 21 CFR 14.25 and 14.27).

Closed Committee Deliberations

The committee may discuss trade secret or confidential commercial information regarding the silicone gel-filled breast prostheses. This portion of the meeting will be closed to the extent necessary to permit discussion of this information (5 U.S.C. 552b(c)(4); 21 CFR 14.25 and 14.27).

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed to the extent necessary. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 28, 1992.

David A. Kessler,

Commissioner for Food and Drugs.

[FR Doc. 92-2393 Filed 1-28-92; 3:06 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3235; FR-2988-N-02]

Public Housing Resident Management Program Technical Assistance Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Public Housing Resident Management Program Technical Assistance. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: Date of NOFA publication in the Federal Register: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3611. The TDD number for the hearing impaired is (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide assistance to public housing Resident Councils (RCs) or Resident Management Corporations (RMCs), and RMCs/Resident Organizations (ROs) of Indian housing, to fund training and other activities for the resident management of public and Indian housing.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a Federal Register Notice published on March 25, 1991 (56 FR 12426). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $4,999,945 was awarded to 96 public and Indian housing resident organizations. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

NOFA for the Public Housing Resident Management Program Technical Assistance

Resident leader		Grant amount	Organization
Augie Kochsten	Dora Circle, Box 1227, Dutch Harbor, AK 99692	40000	Cape Cheerful Resident Council.
Darryl G. Turner	7862 Wisdom Way, Pinson, AL 35126	35330	Dixi Manor Resident Council.
Mrs. Melba Jones	602-A Dr. Thomas Drive, Mobile, AL 36610	40000	Mobile City-Wide Resident Council
Mr. Michael Nakai, Sr	P.O. Box 1436 Window Rock, AZ 86515	40000	Desert Hills Townhouses TA.
Tiki Hadley	988 Ellsworth, San Francisco, CA 94110	40000	Alemany RMC, Inc.
Mr. Michael Ward	290 East El Roblar Dr. #603, Meiners Oaks, CA 93023	40000	Area Tri-Council Organization.
Jewel Green	131 Middlepoint Road, San Francisco, CA 94124	40000	Hunter's View RMC, Inc.
Emory Cenance	209 E. 103rd Street, #699, Los Angeles, CA 90002	20000	Jordan Downs Res. Advisory Council.
Ms. Nora King	1593 E. 114th Street, #1108, Los Angeles, CA 90059	7000	Nickerson Gardens RMC.
Ms. Alicia Rodriguez	1305 South Concord, Unit 18, Los Angeles, CA 90023	7000	United Residents of Estrada Court.
Ms. Edna Harrison	240 Maple Way, Alameda, CA 94501	32009	Esperanza RMC.
Minnie Conict	1212 South Federal Blog. #8, Denver, CO 80204	40000	Central Resident Council.
Ms. Willie Ann Cooper	3096 Champa Street, Denver, CO 80205	40000	Curtis Park Resident Council.
Lorraine James	44 Pequot Lane, Stamford, CT 06902	40000	Southfield Village Resident Council.
Robert Perry	333 Valley St., New Haven, CT. 06515	40000	Valley Townhouses RC.
Ivory Walters	507 51st Street N.E., Washington, D.C. 20019	100000	Dept. of PGA Hsg. Res. Ad Bd.
Jacqueline Massey	916 Varney Street, S.E. #23, Washington, D.C. 20032	40000	Valley Green Resident Council.
Susan Farley	1266-76 Whiteoak Road, Dover, DE 19901	40000	Dover Resident Advisoary Council.
Mr. Michael Stevenson	10770 Anders Boulevard, Jacksonville, FL 32216	40000	Anders Park Tenant Org.
Ms. Gussie Livingston	2205 East 32nd Avenue #360, Tampa, FL 33610	40000	College Hill RMC.
Ms. Doris Bell	4224 Michigan Avenue, Fort Myers, FL 33916	40000	Ft. Myers Resident Advisory.
Joan Riggins	1051 Third Avenue, St. Petersburg, FL 33705	40000	James Park Residents Assn.
Ms. Thelma A. Foster	321 Lakeside Park, Avon Park, FL 33825	40000	Lakeside Resident Council.
Ms. Rosemary Charles	54 William Clark Court, Sanford, FL 32771	40000	Sharc, Inc.
Ms. Margaret Greenway	821 Play Lane, NW, Atlanta, GA 30314	39500	Eagan Homes Tenant Assn.
Ms. Barbara Walker	1260 Gault Street, SE. #149, Atlanta, GA 30315	39500	Englewood Manor Tenant Assn.
Mr. Danny Moore	150 Tenth Street, No. NE #405, Atlanta, GA 30308	40000	Juniper/Tenth St. Highrise TA.
Margie Smith	522 Techwood Drive #497, Atlanta, GA 30313	40000	Techwood/Clark Howell TA.
Mr. Douglas E. McDonald	337 Palm Street #4, Wahiawa, HI 96786	27445	Wahiawa Terrace.
Mary Harris	117 West Third Street, Muscatine, IA 52761	40000	Clark House/Sunset Park RCS.
Marissia Shaw	401 Longview Place, Decatur, IL 62521	100000	Resident Employment & Mgmt. Co.
Mrs. Hallie Amey	252 W. 39th Street, Chicago, IL 60609	12000	Wentworth Gardens RC.
Mr. William Depriest	663 Cross Street, Evansville, IN 47713	100000	Fulton/Caldwell RC.
Ms. Emma Wiley	549 Marshall Court, Bldg. 40, Louisville, KY 40202	100000	Clarksdale Resident Corp.
Ms. Cynthia Wiggins	2300 Erato Street, New Orleans, LA 70113	40000	Guste Homes Low-Rise RC.
Dorothy Harrison	82 Curwin Circle, Lynn, MA 01905	40000	Curwin Circle Resident Council.
Myrtle L. Berry	78 Maplewood Park, Gloucester, MA 01930	40000	Maplewood Park Tenant Org.
Elly Saraceni	9 New Street, East Boston, MA 02128	100000	Maverick Tenants' ORG.
Ms. Hattie Dudley	81 Prentiss Street, Boston, MA 02120	100000	Mission Hill RC.
Ms. Gloria Beoks	131 Washington Street, Cambridge, MA 02139	40000	Pisani Center Tenant Council.
Ms. Mary Baker	4140 Tenth Street, Baltimore, MD 21225	40000	Brooklyn Homes Tenant Council.
Ms. Dellyne Camper	714 Greenwood Avenue, Cambridge, MD 21613	40000	Calvin Mowbray/ Stephen Camperpk.
Ms Lena Bivens	3455 Woodward Avenue, Detroit, MI 48201	100000	United Tenant Speaks RC.
Marilyn Holman	90 S. Marys Avenue, SE, Minneapolis, MN 55414	50000	Glendale Residents AC & RMC.

Resident leader		Grant amount	Organization
Linda Richardson	1062 East 4th Street, Kansas City, MO 64106	100000	Guinotte Manor Resident Assn.
Mellanie Simmons	1102 Euclid, Kansas City, MO 64106	100000	Wayne Miner TMC
Gwendolyn McNair	621 45 Place, Meridian, MS 39301	40000	Meridian RC.
Laura Burns	560 Country Club Drive, Jackson, MS 39209	40000	Parents and Youth Inc.
Catherine Lonzo	274 Magnolia Drive, Yazoo City, MS 39194	40000	Yazoo Housing Authority.
Maxecine Mitchell	839 Airport Road, Chapel Hill, NC 27514	40000	Airport Gardens RA.
Johnnie M. Ingram	1400 Oak Street, Winston-Salem, NC 27105	100000	Kimberly Park RC.
Evelyn Taylor	1805-D Drive, Greensboro, NC 27401	100000	Morningside Homes RC.
Grace Howard	1006 Aycock Street, Box 4717, Rocky Mount, NC 27803	100000	Rocky Mount RC.
Rose Simmons	7 Hockman Drive, Apt. 8C, Jersey City, NJ 07305	38300	Curries Woods Tenants Task Force.
Ms. Elizabeth Perez	837 Sofield Avenue, Perth Amboy, NJ 08861	40000	Delaney/Dunlap Tenant Assoc.
Ms. Janice Minney	25 Beakes Street, Trenton, NJ 08638	57605	Donnelly Page Homes RC.
Ms. Gloria D. Pace	610 Hoffman Avenue, Trenton, NJ 08618	58000	Wilson-Haverstick RC.
Harry H. Clark	P.O. Box 658, Shiprock, NM 87420	40000	Beclabito Mutual Help RO.
Ms. Brenda Johnson	17 Buffalo Avenue #1-B, Freeport, NY 11520	40000	Moxey A. Rigby TA.
Ms. Sandra B. Morris	150 Moeller Street, Binghamton, NY 13904	40000	Carlisle Team.
Ms. Terriciena A. Brown	221 Smith Street, Poughkeepsie, NY 12601	67200	Hudson Gardens TC.
Ms. Shirley Colbert	585 Armory Avenue, Cincinnati, OH 45214	100000	Laurel Homes RC.
Ms. Janice Nichols	410 Court Street, Portsmouth, OH 45662	40000	United TC of Scioto County.
Blance Wilson	1130 E. Independence, Apt. 410, Shawnee, OK 74801	40000	Working to Improve Shawnee Homes.
Philip Handsaker	2654 11th Street, North Bend, OR 97459	40000	Airport Heights TC.
Ms. Ruby Foust	8920 N. Woolsey Avenue, Portland, OR 97203	39996	Columbia Villa/Tamarack RC.
Ms. Joyce V. Richardson	1953 Nedro Avenue, Philadelphia, PA 19141	100000	Champost Homes TMC.
Ms. Thelma Grady	1621 East 20th Street, Erie, PA 16510	40000	Erie Tenant Council.
Judie Barr	407 Fairview Street, Phoenixville, PA 19460	40000	Fairview Tenant Council.
Lenore Williams	1240 N. 10th Street, Philadelphia, PA 19122	40000	Harrison Tenant Council.
Ms. Nellie Reynolds	2500 West Norris St., Philadelphia, PA 19121	100000	Johnson Tenant Council.
Ms. Corliss Gray	313 West Penn Street, Philadelphia, PA 19144	100000	Queen Lane Tenant Council.
Clara Rushing	3210 B. McMichael St., Philadelphia, PA 19129	100000	Abbottsford Homes TMC.
Ethel Branch-Cooper	412 Narragansett St., Philadelphia, PA 19144	34200	United Morton Homes TC.
Ms. Branda Robinson	1201 Luelia, Fort Worth, TX 76102	40000	Butler Place Addition RC.
Mr. Cyrus L. Martin	424 Robert William, Dibolt, TX 75941	40000	Dibolt Cooperative RC.
Elaine Barker	8916 Forest Hollow Dr., Houston, TX 77078	40000	Forest Green RC.
Ms. Tillie Baylor	2801 Pueblo, Dallas, TX 75212	100000	George Loving Place RC.
Arturo Guerrero	84 Ala A. Dale, Brownsville, TX 78521	40000	Poinsettia RMC.
Ms. Clarice Rose	5712 Pilgrim Drive, Dallas, TX 75215	50000	Rhoads Terrace RMC.
Johnnie Robinson	1919 Runnels, Apt. 344, Houston, TX 70003	40000	Clayton Homes RC.
Tressie Bush	500 Meadow, Apt. 404, Houston, TX 77020	40000	Kennedy Place RC.
Dianne Sheffield	3271 Alabama, Houston, TX 77004	40000	Cuney Homes RC.
Mrs. Glenda Robinson	4A William T. Jarratt Ct., Petersburg, VA 23804	40000	Cedar Lawn RC.
Angela Darlene Carter	Centennial Hts., Mgmt., Office, E-7	6000	Centennial Hts. Assembly.
Ms. Janice Lee	P.O. Box 1328, Lebanon, VA 24266	40000	Fox Meadow Concerned TA.
Louis Ruffin	1122 Barbour Drive, Portsmouth, VA 23704	100000	Ida Barbour TC.
Shirley Freeman	2731 Monrovia Drive, Norfolk, VA 23504	100000	Roberts Village TMC.
Alma Marie Barlow	2233 Selden Street, Richmond, VA 23223	40000	Richmond Inc.
Ms. Jackie Cook	833 Smith Street, Norfolk, VA 23501	40000	Young Terrace TMC.
Laverne M. Jackson	102 Hillside Court, Lynchburg, VA 24501	40000	Birchwood RC.
Ms. Doris Cuneo	838 Locust Street, Everett, WA 98201	98860	Grandview RC.
Laurett Ortloff	611 S. Camus Avenue, Wapato, WA 98951	40000	Yakima Nation RC.
Mrs. Jeanie P. Wines	1912 Cameron Avenue, Parkersburg, WV 26101	40000	Homecrest Manor RC.
Darlene Thompson	905 Griffin Drive, Apt. 13, Charleston, WV 25312	40000	Orchard Manor RC.
Ms. Kay McMillen	1985 East A Street, Casper, WY 82601	40000	RC-HA City of Casper, Inc.

Dated: January 21, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-2187 Filed 1-29-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-910-92-GP2-4111-15-410; NMNM 27639]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 31082-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 27639, covering the following described land located in Chaves County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 4, lots 3 and 4, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 12, SW¼SE¼;
Sec. 19, SW¼SE¼;
Sec. 22, NW¼, W½SW¼;
Sec. 28, N½NE¼.
Containing 679.440 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1994 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-FB-M

[NM-910-92-GP2-4111-15-411; NMNM 29824]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 29824, covering the following described land located in Chaves County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 33, N½NW¼.
Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1995 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[NM-910-92-GP2-4111-15-412; NMNM 30638]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 30628, covering the following described land located in Eddy County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 19, lots 1 to 4, E½W½;
Sec. 30, lots 1 to 4, E½W½;
Sec. 31, lots 1 to 4, E½W½.
Containing 973.53 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of 16 ⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1996 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-02—4212-13; WYW106566]

Amendment to Realty Action; Exchange, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action, exchange of public lands in Sheridan County for private lands in Sheridan County.

SUMMARY: The realty action published in the **Federal Register**, 55 FR 28689, on July 12, 1990 indicating the exchange of 44.02 acres of public land for 40 acres of private land in Sheridan County, Wyoming is hereby amended to reflect a change in the proponent. The original Notice designates First Interstate Bank of Sheridan, Trustee for the Woods Sheridan Trust as the proponent. This has been changed to show that Giles Pritchard-Gordon is now the proponent of record for this action.

FOR FURTHER INFORMATION CONTACT: Dave Pomerinke, Area Manager, Buffalo Resource Area, BLM, 189 Cedar Street, Buffalo, Wyoming 82834, (307) 684-5586.

Dated: January 22, 1992.

James W. Monroe,

District Manager.

[FR Doc. 92-2245 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-12-M

[CO-942-92-4730-12]

Colorado: Filing of Plats of Survey

January 22, 1992.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 22, 1992.

The plat representing a metes-and-bounds survey between certain lots in sections 19 and 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 11, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 18, and a metes-and-bounds survey between certain lots in sections 18 and 19, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 982, was accepted December 19, 1991.

The plat representing the dependent resurvey of a portion of Homestead Entry Survey 238, the subdivision of section 9, and a metes-and-bounds survey of portions of Public Land Tracts 38, 39, and 40, T. 4 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 982, was accepted December 18, 1991.

The plat (in three sheets) representing the dependent resurvey of portions of the east boundary, subdivisional lines, and certain mineral claims; the subdivision of certain sections; and the metes-and-bounds survey of portions of certain lots in sections 35 and 36, the north and south right-of-way of Interstate 70 in sections 26 and 27, and of the north right-of-way of Colorado State Highway No. 9 in sections 35 and 36, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado Group No. 968, was accepted December 18, 1991.

The plat (in two sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and a metes-and-bounds survey between certain lots in sections 5 and 8, T. 7 S., R. 77 W., Sixth Principal Meridian, Colorado, Group No. 982, was accepted December 20, 1991.

The plat (in three sheets) representing the dependent resurvey of portions of the east boundary, the subdivisional lines, and the subdivision of section 22; the subdivision of a portion of section 22; a metes-and-bounds survey of a portion of the south right-of-way of U.S. Highway 6 in section 22; a metes-and-bounds survey between certain lots in sections 22, 23, and 24, t. 5 S., R. 77 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 11, 1991.

The plat representing the dependent resurvey of portions of Tracts 37 and 38 and a metes-and-bounds survey of Public Land Tracts 40 and 41, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 12, 1991.

The plat representing a metes-and-bounds survey of Public Land Tract 40, T. 6 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 12, 1991.

The supplemental plat creating new lots 36, 37, 38, 39, 40, and 41, in the NE¼ of section 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, was accepted December 11, 1991.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat creating new lots 24 and 25 in the NW¼ of section 13, T. 15 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted October 16, 1991.

The supplemental plat creating new lots 22, 23, 24, 25, and 26 in section 34, T. 43 N., R. 9 W., New Mexico Principal Meridian, Colorado, was accepted December 4, 1991.

The supplemental plat creating new lots 28 and 29 in section 1 and new lot 23 in section 2, T. 12 S., R. 72 W., Sixth Principal Meridian, Colorado, was accepted November 25, 1991.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92-2250 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-02-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 18, 1992.

New Mexico Principal Meridian, New Mexico

T. 20 N., R. 12 W., accepted September 25, 1991, for group 872 NM.
T. 27 N., R. 10 W., accepted December 19, 1991, for group 846 NM.
T. 21 N., R. 12 W., accepted September 25, 1991, for group 872 NM.
T. 8 N., R. 5 E., accepted November 26, 1991, supplemental plat.

Indian Meridian, Oklahoma

T. 9 N., R. 22 W., accepted September 19, 1991, for group 65 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: January 13, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92-2258 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-4214-11; IDI-15061, et al.]

Proposed Continuation of Withdrawals, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that nine withdrawals for the Boise and Payette-Boise Projects be continued for an additional 100 years. The lands involved, totalling 8,611.34 acres, would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received by April 29, 1992.

ADDRESSES: Comments should be sent to State Director, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3000.

FOR FURTHER INFORMATION CONTACT: Larry Lievasy, BLM, Idaho State Office, 208-384-3166.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawals for the Boise and Payette Projects be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are located within the following-described sections:

Boise Meridian

Boise Reclamation Project

IDI-15061 (SO dated August 19, 1925)

T. 11 N., R. 6 E.,
Secs. 12 and 13.
T. 11 N., R. 7 E.,
Secs. 5 to 9 inclusive, and 17 to 19, inclusive.

IDI-15063 (SO dated September 10, 1925)

T. 11 N., R. 6 E.,
Sec. 1.
T. 12 N., R. 6 E.,
Sec. 36.

T. 12 N., R. 7 E.,
Secs. 29 to 32, inclusive.

IDI-15065 (SO dated January 14, 1922)

T. 7 N., R. 1 E.,
Secs. 19 and 28.

IDI-15062 (SO dated January 18, 1922)

T. 7 N., R. 1 W.,
Sec. 26.

IDI-15058 (SO dated February 29, 1904)

T. 7 N., R. 1 W.,
Secs. 23 to 25, inclusive.

IDI-14892 (SO dated February 28, 1903)

T. 1 N., R. 7 E.,
Secs. 9, 10, 14, 15, and 23 to 26, inclusive.
T. 1 S., R. 8 E.,
Sec. 6.
T. 1 N., R. 8 E.,
Secs. 19, 30, and 31.

IDI-08956 (BLM O dated October 24, 1958)

T. 6 N., R. 3 W.,
Sec. 10.

Payette-Boise Project

IDI-14993 (SO dated March 5, 1903)

T. 7 N., R. 1 W.,
Sec. 26.

IDI-14994 (SO dated February 29, 1904)

T. 7 N., R. 1 E.,
Secs. 17 to 19, inclusive, 21, 28, and 29

The withdrawn lands in the described sections contain 8,611.34 acres in Elmore, Valley, and Gem Counties.

The withdrawals are essential for protection of the Reclamation Projects. The withdrawals close the described lands to surface entry and mining, but not to mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 16, 1992.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 92-2180 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1561-92]

Memorandum of Preliminary Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778

AGENCY: Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice promulgates a memorandum providing preliminary guidance to federal agencies regarding the implementation of those provisions of Executive Order No. 12778 (56 FR 55195, October 24, 1991) that concern the conduct of civil litigation with the United States Government, including the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. The guidelines issued here are interim guidelines. The Attorney General requests comments from federal agencies so that final guidelines may be drafted in light of the agencies' experience in applying the Order.

DATES: This action is effective January 24, 1992.

Comments are requested from federal agencies on or before July 20, 1992.

ADDRESSES: Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, Main Building, room 3137, 10th & Pennsylvania Ave., NW., Washington, DC 20530, (202) 514-3309.

FOR FURTHER INFORMATION CONTACT: Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, Main Building, room 3137, 10th & Pennsylvania Ave., NW., Washington, DC 20530, (202) 514-3309.

SUPPLEMENTARY INFORMATION: Executive Order No. 12778, which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 56 FR 55195 (October 25, 1991). The Order, *inter alia*, mandates reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order requires agencies to implement civil justice reforms applicable to each agency's civil litigation. It provides that the Attorney General has both the duty to coordinate efforts by federal agencies to implement the litigation process reforms and the authority to issue further guidelines as to the implementation and scope of the Order. (Exec. Order No. 12778, sections 4(a), (b) and 7(d).) Final guidelines, however, can most usefully be issued only after agencies and litigation counsel have had experience in applying the Order. That experience will offer a valuable basis for deciding how the final guidelines can best refine the operation of the Order.

The present guidelines, therefore, are offered as interim direction for applying the Order. Agencies and litigation counsel are requested to provide comments, on or before July 20, 1992, concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, who has been designated as the Justice Department's coordinator for advice about implementing the Order.

Agencies should note in particular the Order's requirements concerning the designation of persons within each agency to act on litigation documents. First, each agency must establish "a coordinated procedure" that shall include review by a "senior lawyer" of any request for document discovery in litigation to determine that it meets the substantive criteria of section 1(d)(2). Second, the Executive Order mandates that each agency designate a "sanctions officer" to review motions for sanctions that are filed either by or against litigation counsel on behalf of the United States. (section 1(f)(2).) Third, the Attorney General recommends that each agency designate a specific individual to serve as the agency coordinator for implementation of the Executive Order. Details regarding these designations and other guidelines are contained in the memorandum.

By virtue of the authority vested in me by law, including Executive Order No. 12778 (56 FR 55195, October 25, 1991), I hereby issue the following memorandum:

Introduction

Executive Order No. 12778, which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." (56 FR 55195, October 25, 1991). The Order, *inter alia*, mandates

reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order authorized the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. Final guidelines, however, can most usefully be issued only after agencies have had experience in applying the Order. That experience will offer a valuable basis for deciding how the final guidelines can best refine the operation of the Order.

The present guidance, therefore, is offered as an interim direction for applying the Order's provisions concerning the conduct of civil litigation with the United States Government. Agencies are requested to provide comments, on or before July 20, 1992, concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice (202-514-3309), who has been designated as the Justice Department's coordinator for advice about implementing the Order. Each agency is requested to designate its own coordinator for implementing the Order.

Pre-filing Notice of a Complaint

(Section 1(a))

The objective of sec. 1(a) of Executive Order No. 12778 is to ensure that a reasonable effort is made to notify persons against whom civil litigation is contemplated of the government's intent to sue and to provide disputants with an opportunity to settle the dispute without litigation.

This section requires either the agency or litigation counsel to notify each disputant of the contemplated action unless an exception to the notice requirement (set forth in 7(b)) applies. "Disputants" means persons from whom relief is sought in the contemplated civil action. The notifying persons shall offer to attempt to resolve the dispute without litigation. However, it is not appropriate to compromise litigation by providing pre-filing notice if the notice would defeat the purpose of the litigation.

Notice adequate to comply with section 1(a) can be provided either by the referring agency or by litigation counsel. If the referring agency provides the notice, it should supply the documentation of the notice to litigation counsel.

The section requires a "reasonable" effort to provide notification and to attempt to achieve a settlement. Both the timing and the content of a reasonable effort depend upon the particular circumstances. However, unless an exception set forth in section 7 (or otherwise provided for by the Attorney General) is applicable, complete failure to make an effort could not be deemed "reasonable."

If pre-complaint settlement efforts by government counsel require information in the possession of proposed defendants, litigating counsel or client agency counsel may request such information from defendants as a condition to settlement efforts. If proposed defendants refuse, or fail, to provide such information upon request within a reasonable time, counsel shall have no further obligation to attempt to settle the case prior to filing.

The Department of Justice retains authority to approve or disapprove any settlements proposed by the client agency or litigation counsel, consistent with existing law, guidelines, and delegations. The Order confers no litigating or settlement authority on agencies beyond any existing authority under law or explicit agreement with the Department.

Settlement Conferences

(Section 1(b))

As soon as adequate information is available to permit an accurate evaluation of the government's litigation position, litigation counsel shall evaluate the possibilities of settlement. Thereafter, litigation counsel has a continuous obligation to evaluate settlement possibilities. Litigation counsel is to offer to participate in a settlement conference or, when it is reasonable to do so, move the court for such a conference.

Prior to any such conference, litigation counsel should consult with the affected agency and with litigation counsel's supervisor. At the conference, litigation counsel should clearly state the terms upon which litigation counsel is prepared to recommend that the government conclude the litigation, but should not be expected to obtain authority to bind the government finally at settlement conferences. Final settlement authority is the subject of applicable regulations and may be exercised only by the officials designated in those regulations. The Executive Order does not change those regulations regarding final settlement authority.

The Executive Order does not constrain the government's full discretion to determine which government counsel represents the government at settlement conferences. Normally, a trial attorney assigned to the case will attend on behalf of the United States.

Section 1(b) does not permit settlement of litigation on terms that are not in the interest of the government; while "reasonable efforts" to settle are required, no unreasonable concession or offer should be extended or accepted. Likewise, this section does not countenance evasion of established agency procedures for development of litigation positions.

Alternative Methods of Resolving The Dispute In Litigation

(Section 1(c))

Section 1(c) encourages prompt and proper settlement of disputes.

The Executive Order does not permit litigation counsel to agree that ADR will result in a binding determination as to the government, without exercise of an agency's discretion. Likewise, the use of ADR does not authorize litigation counsel to agree to resolve a dispute in any manner or on any terms not in the interest of the United States.

Each agency should seek to use the skills of litigation counsel to bring about a reasonable resolution of disputes. Attorneys should bring the same high level of expertise to ADR proceedings as they bring to formal judicial proceedings. Disputes will be resolved reasonably if an ADR technique is used when the technique holds out a likelihood of success. Litigation counsel should consult with the affected agency as to the desirability of using ADR if resort to ADR is a reasonable prospect.

When evaluating whether proceeding with ADR is likely to lead to a prompt, fair, and efficient resolution of the action and thus be in the best interest of the government, government counsel should consider the amount and allocation of the cost of employing ADR.

Disclosure of Core Information

(Section 1(d)(1))

Section 1(d)(1) requires litigation counsel to make the offer to participate at an early stage of the litigation in a mutual exchange of core information as defined in sec. 1(d)(1). Reasonable efforts shall be made to obtain the agreement of other parties to such an exchange. When making the offer, litigation counsel should emphasize that the government is willing to be bound to exchange core information as defined in the section if, and only if, other parties agree to exchange this same information

and the court adopts the agreement as a stipulated order.

A mutually agreed-upon exchange of "core information" should occur reasonably early in the litigation, so as to serve its purpose of expediting and streamlining discovery. However, when the government is plaintiff, disclosure of "core information" need not be requested prior to receipt of opposing parties' answers to the complaint. Litigation counsel should not permit the core information disclosure offer requirement to delay the initiation of discovery.

Core information offers are not mandated if a dispositive motion is pending or if the exceptions to the ADR and core disclosure provisions set forth in section 7(c) (involving asset forfeiture proceedings and debt collection cases involving less than $100,000) apply. Nothing in section 1(d)(1) requires disclosure of information that litigation counsel does not consider reasonably relevant to the claims for relief set forth in the complaint.

In cases involving multiple opposing parties, the government may agree to disclose "core information" with individual opposing parties. It need not delay disclosure pending agreement by all of the parties unless individual exchange of core information would unfairly undermine the government's case.

All referrals from agencies requesting litigation counsel to file suit should include the "core information" described in this subsection. The identification of the location of documents most relevant to the case should be specific enough to enable litigation counsel to locate and, if necessary, retrieve the documents, and should specify the name, business address, and telephone number of the custodians of the documents. The identification of individuals having information relevant to the claims and defenses should include, where possible, current or last-known telephone numbers at which such persons can be reached.

In determining the extent to which compliance with this subsection is "practicable" in a given case, litigation counsel shall consider, *inter alia*, the utility of early issue-narrowing motions and devices, the scope and complexity of the disclosure that will be required, the time available to comply with the requirement, the extent to which disclosure of "core information" will expedite or limit the scope of subsequent discovery, and the cost to the government of compliance.

In cases where the government takes the position that the scope of judicial review of one or more issues involved in the litigation is limited to an agency's administrative record, identifying and affording access to the administrative record shall satisfy the requirements of this subsection with respect to such issues.

Litigation counsel is entitled to rely in good faith on the representations of agency counsel as to the existence, extent, and location of "core information."

Nothing in section 1(d)(1) prevents government counsel from seeking other discovery pursuant to the Federal Rules of Civil Procedure simultaneously with providing, or seeking, "core information" disclosure.

Review of Proposed Document Requests

(Section 1(d)(2))

Document discovery shall be pursued by government counsel only after complying with review procedures designed to ensure that the proposed document discovery is reasonable under the circumstances of the litigation.

When an agency's attorneys act as litigation counsel, that agency must establish a coordinated procedure, including review by a senior lawyer, before service or filing of any request for document discovery. The senior lawyer is to determine whether the proposed discovery meets the substantive criteria of section 1(d)(2). Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials of equivalent rank, and United States Attorneys, are authorized pursuant to this Memorandum to designate one or more senior lawyers for these purposes. While no particular title, level, or grade of senior lawyer is mandated, the persons designated should have substantial experience with regard to document discovery and should have supervisory authority. This designation should be made forthwith. If the designated senior lawyer is personally preparing the document discovery, further oversight is not necessary.

The designated senior lawyer reviewing document discovery proposals should determine whether the requests are cumulative or duplicative, unreasonable, oppressive, or unduly burdensome or expensive, and in doing so shall consider the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained in a manner that is more convenient, less burdensome, or less expensive than pursuit of the documentary discovery as proposed. Consideration of whether documents can be obtained from "more convenient, less burdensome, or less expensive" sources shall include consideration of the convenience, burden, and expense to both the government and the opposing parties.

In conducting this review of document requests, the senior lawyer is entitled to rely in good faith upon factual representations of agency counsel and the trial attorney. The review system should not be permitted to deter the pursuit of reasonable document discovery in accord with the procedures established in the Executive Order

Discovery Motions

(Section 1(d)(3))

The court shall not be asked to resolve a discovery dispute, including imposition of sanctions as well as the underlying discovery dispute, unless litigation counsel first attempts to resolve the dispute with opposing counsel or *pro se* parties. If pre-motion efforts at resolution are unsuccessful or impractical, a description of those efforts shall be set forth in the government's motion papers.

Litigation counsel, however, should not compromise a discovery dispute unless the terms of the compromise are reasonable.

Expert Witnesses

Section 1(e)

The function of section 1(e) is to ensure that litigation counsel proffer only reliable expert testimony in judicial proceedings. This practice, already widely used by the government, will enhance the credibility of the government's position in litigation and improve the prospects for a reasonable outcome of disputes warranting utilization of expert witnesses.

Litigation counsel shall use experts who have knowledge, background, research, or other expertise in the particular field of the subject to their testimony, and who base conclusions on widely accepted explanatory theories, i.e., those that are propounded by at least a substantial minority of experts in the relevant field.

In cases requiring expert testimony on newly emerging issues, litigation counsel shall ensure that the proffered expert and his or her testimony are reliable and meet the requirements of Rule 702 of the Federal Rules of Evidence. In evaluating the reliability of an expert's conclusions in new areas where there are no established majority or minority views, it is important for the trial attorney to keep in mind that only that theory, not the conclusion based on the theory, need be "widely accepted." Litigation

counsel may offer a "widely accepted explanatory theory" to support a conclusion in a novel area based on the qualifications of the expert to testify on that issue, the extent of peer acceptance or recognition of the expert's past work in the field, particularly of any work that is related to the issue on which the testimony is to be offered, and any other available indicia of the reliability of the proffered testimony. However, if an expert is unable to support the conclusion of "widely accepted" theories, the expert's testimony shall not be offered.

Litigation counsel shall offer to engage in mutual disclosure of expert witness information pertaining to experts a party expects to call at trial. "Expert witness information" within the meaning of this subsection should ordinarily include the expert's resume or curriculum vitae, a list of the expert's relevant publications, data, test results, or other information on which the expert is expected to rely in the case at issue, and any written reports or other materials prepared by the expert that the party expects to offer into evidence. The offer of mutual disclosure requirement (section 1(e)(3)) can be satisfied by an agreement to take depositions of experts that the parties plan to call to testify.

Litigation counsel shall not offer to pay an expert witness based on the success of the litigation. Similarly, litigation counsel should ordinarily object to testimony on the part of an expert whose compensation is linked to a successful outcome in the litigation and bring out on cross-examination of the expert such compensation arrangements or agreements. (See section 1(e)(4).)

Sanctions Motions

Section 1(f)

Litigation counsel shall take steps to seek sanctions against opposing counsel and parties where appropriate, subject to the procedures set forth in section 1(f) regarding agency review of proposed sanction filings. Before filing a motion for sanctions, litigation counsel should normally attempt to resolve disputes with opposing counsel. Of course, sanctions motions like all pleadings, should be filed only when there is a well-founded basis for the motion.

The Executive Order mandates that each agency which has attorneys acting as litigation counsel designate a "sanctions officer" to review proposed sanctions motions and motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers. (Section 1(f)(2).) The Executive Order requires that the sanctions officer or designee "shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a state court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States." The sanctions officer or his or her designee should be a senior lawyer with substantial litigation experience and supervisory authority.

The persons acting as sanctions officers within each agency should be designated specifically title or name. Action must be taken forthwith to designate sanctions officers within each agency. Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials of equivalent rank, and United States Attorneys are authorized pursuant to this Memorandum to designate sanctions officers meeting the criteria of this Memorandum.

Improved Use of Litigation Resources

Section 1(g)

Litigation counsel are to use efficient case management techniques and make reasonable efforts to expedite civil litigation as set forth in section 1(g)(1)–(4) of the Order.

In appropriate case, litigation counsel should move for summary judgment to resolve litigation on narrow the issues to be tried.

Litigation counsel should seek to stipulate to facts that are not in dispute and move for early trial dates where practicable. Referring agencies should identify facts not in dispute and inform litigation counsel of the fact of dispute and the basis of concluding that there is no factual dispute, as soon as it is feasible to do so. Litigation counsel should seek agreement to fact stipulations as early as practicable, taking into account the progress of discovery and after exercising sound judgment to determine the most appropriate and efficient timing for such stipulations.

At reasonable intervals, litigation counsel should review and revise submissions to the court and should apprise the court and all counsel of any narrowing of issues, resulting from discovery or otherwise. This requirement is not intended to suggest that litigation counsel should concede facts or issues as to which there is reasonable dispute, uncertainty, or inability to corroborate.

Fees and Expenses

Section 1(h)

Section 1(h) of the Executive Order provides that litigation counsel shall offer to enter into a two-way fee shifting agreement with opposing parties in cases involving disputes over certain federal contracts or in hay civil litigation initiated by the United States. Under such an agreement, the losing party would pay the prevailing parties's fees and costs, subject to reasonable terms and conditions. However, this section is to be implemented only "(t)o the extent permissible by law." The Executive Order requires the Attorney General to review the legal authority for entering into such agreements. Because no legislation currently provides specific authority for those agreements, litigation counsel shall not offer to enter into a two-way fee shifting agreement until legislation is enacted or other authority is provided by the Attorney General.

Principles to Promote Just and Efficient Administrative Adjudications

(Section 3)

Section 3 encourages agencies to implement the Administrative Conference's recommendations entitled "Case Management as a Tool for Improving Agency Adjudication" to the extent it is reasonable and practicable to do so (and to the extent it does not conflict with any provision of the Executive Order). The agency proceedings within the ambit of section 3 are adjudications before a presiding officer, such as an administrative law judge.

No Private Rights Created

(Section 6)

The Executive Order explicitly states that it does not create a private right of any kind or a right to judicial review. (section 6.) The qualifications stated in section of the Executive Order apply to this Memorandum as well.

Nothing in the Executive Order is designed to alter the substantive litigation position of the United States or its agencies.

The Executive Order assumes that litigation counsel will exercise professional judgment when representing the United States, its agencies, its officers, or any other persons.

Dated: January 24, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-2253 Filed 1-29-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Tidewater, Inc. and Zapata Gulf Marine Corp., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Tidewater, Inc. and Zapata Gulf Marine Corporation.*

The Complaint of the United States in this cases alleges that the proposed acquisition by Tidewater, Inc. ("Tidewater") of Zapata Gulf Marine Corporation ("Zapata Gulf") may substantially lessen competition in the Gulf anchor-handling market in violation of section 7 of the Clayton Act. The Gulf anchor-handling market is defined as the provision of anchor-handling services for semi-submersible drilling rigs by anchor handling/towing supply ("AHTS") vessels of at least approximately 6,000 brake horsepower in the United States Gulf of Mexico. AHTS vessels must be Jones Act-qualified to provide anchor-handling services in the United States Gulf of Mexico, and Tidewater and Zapata Gulf operate the two largest fleets of Jones Act-qualified AHTS vessels of at least approximately 6,000 brake horsepower.

Anchor-handling and other offshore marine services are purchased by oil companies in connection with the offshore exploration for crude oil and natural gas in the United States Gulf of Mexico ("Gulf"). AHTS vessels are specially designed, built, and equipped to move and adjust the mooring systems of semi-submersible drilling rigs. They vary in their ability to handle the mooring systems of various sizes of semi-submersible drilling rigs and to do so in various water depths and sea conditions, depending predominantly on the brake horsepower ("BHP") of the AHTS vessel. AHTS vessels of at least approximately 6,000 BHP (5,600 BHP—6,140 BHP) generally are required to provide anchor-handling services for semi-submersible drilling rigs in water depths between 500 and 2,000 feet in the Gulf. It is in these water depths in which most semi-submersible drilling rigs operate in the Gulf.

The proposed Final Judgment requires Tidewater to divest two AHTS vessels by August 10, 1992. The vessels to be divested are the Gulf Fleet 54 and one of the following vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55 or Gulf Fleet 59. If tidewater does not sell these assets by then, a trustee will be appointed to conduct the divestiture.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark C. Schechter, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, room 9403, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001 (202/307–6349).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

January 13, 1992.

[Civil Action No. 92–0106

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form of hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. The parties shall abide by and comply with the provisions of the Final Judgment pending its entry, and shall, from the date of the filing of this Stipulation, comply with all terms and provisions thereof as though the same were in full force and effect as an order of the Court;

4. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: January 13, 1992.

For Defendant Tidewater: Jones, Walker, Waechter, Poitevent, Carrere & Denegre.

By: A Member of the Firm, David G. Radlauer, 201 St. Charles Avenue, New Orleans, Louisiana 70170, (504) 582–8000.

For Defendant Zapata Gulf Marine Corp.: Cravath, Swaine & Moore.

By: A Member of the Firm, Allen F. Maulsby, 825 Eighth Avenue, New York 10019–7415, (212) 474–1452.

Stipulation approved for Filing

Done this _____ day of January, 1992.

United States District Judge

For Plaintiff United States of America:

James F. Rill,

Assistant Attorney General,

J. Mark Gidley,

John W. Clark,

Mark C. Schechter,

Roger W. Fones,

Angela L. Hughes,

Charles W. Corddry,

Burney P. C. Huber,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street, NW., Washington, DC 20001, (202) 307–6410.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint here on January 13, 1992, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment: A. *Tidewater* means defendant Tidewater, Inc.; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. *The divestiture assets* means the anchor handling/towing supply vessels designated the Gulf Fleet 54 and one of the following vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55, or Gulf Fleet 59.

C. *Person* means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. *Pool of divestiture assets* means the following anchor handling/towing supply vessels: Gulf Fleet 54, Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55, and Gulf Fleet 59.

E. *Zapata Gulf* means defendant Zapata Gulf Marine Corporation; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

III. Applicability

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Divestiture of Assets

A. Defendant Tidewater is hereby ordered and directed to divest to a purchaser or purchasers prior to August 10, 1992, all of its direct and indirect ownership and control of the divestiture assets. The obligation to divest shall be satisfied if, by August 10, 1992, defendant Tidewater enters into a binding contract for sale of the divestiture assets to a purchaser or purchasers approved by plaintiff, according to terms approved by plaintiff, that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than October 10, 1992, and if sale is completed pursuant to the contract.

B. If defendant Tidewater has not accomplished the required divestiture prior to August 10, 1992, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed two months, if defendant Tidewater requests such an extension and demonstrates to plaintiff's satisfaction that it has made bona fide efforts to sell the divestiture assets and that there is a reasonable expectation that the assets can be sold in the requested extended time period, but that the divestiture cannot be completed prior to August 10, 1992.

C. Defendant Tidewater agrees to take all reasonable steps to accomplish quickly said divestiture. In carrying out the obligation to divest assets, defendant Tidewater may divest these assets alone, or may divest along with these assets other assets of defendant Tidewater.

D. In accomplishing the divestiture ordered by this Final Judgment, defendant Tidewater promptly shall make known in the United States, by usual and customary means, the availability of the divestiture assets, for sale. Defendants shall notify any person making an inquiry regarding the possible purchase of the divestiture assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchases of the divestiture assets, subject to customary confidentiality assurances, all pertinent information regarding the divestiture assets. Defendants shall provide such information to the plaintiff no later than the time they furnish such information to any other person. Defendants shall permit prospective purchasers of the divestiture assets to have access to personnel knowledgeable about the divestiture assets, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the divestiture assets.

E. Divestiture required by section IV. of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the purchaser or purchasers have the capability and present intent to operate the divestiture assets as part of a viable, ongoing business capable of providing anchor-handling services in the United States Gulf of Mexico. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that the purchaser will keep the divestiture assets Jones Act-qualified during the four-year period following purchase, and has the managerial, operational, and financial capability to compete effectively in the provision of anchor-handling services in the United States Gulf of Mexico.

F. Divestiture required by section IV. of the Final Judgment shall not be made to Seacor Holdings Inc., Ensco Marine Company, or Penrod Drilling Corporation; any of their parents; or any of their affiliates or subsidiaries.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and material liens, other than any inchoate statutory, admiralty, maritime, or common law liens for obligations not yet due and payable. Defendant Tidewater shall indemnify the purchaser or purchasers of any assets divested pursuant to this Final Judgment for any such outstanding liens.

V. Appointment of Trustee

A. If defendant Tidewater has not accomplished the divestiture required by section IV. of the Final Judgment by July 10, 1992, defendants shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to section IV. B., whichever is later, plaintiff shall provide defendant Tidewater with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff will in good faith seek to assure that at least one of the nominees shall be a person knowledgeable and experienced in the offshore marine service industry. Defendant Tidewater shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant Tidewater, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant Tidewater, it shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties

have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of the nominees proposed by plaintiff and defendant Tidewater. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant Tidewater has not accomplished the divestiture required by section IV. of this Final Judgment at the expiration of the time period specified in section IV. A, or IV. B. of this Final judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the divestiture assets; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendant Tidewater has notified plaintiff pursuant to section VI. of this Final Judgment of a proposed divestiture of the divestiture assets and plaintiff has not filed a written notice that it objects to said proposed divestiture. If divestiture of the undesignated vessel is not made by defendant Tidewater prior to the appointment of the Trustee, defendant Tidewater shall designate the identity of the vessel to be divested in addition to the Gulf Fleet 54 no later than five days prior to the effective date of the trustee's appointment.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestiture to a purchaser or purchasers acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant Tidewater shall not object to a sale of the divestiture assets by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendant Tidewater must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant Tidewater of the proposed sale in accordance with section VI. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant Tidewater, shall receive compensation based on a fee arrangement providing an incentive based on price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the divestiture assets and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant Tidewater and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the divestiture assets, and defendants shall develop such financial or other information relevant to the divestiture assets as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these assets.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section V. of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why any required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI. Notification

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to section IV. or V. of this Final Judgment, defendant Tidewater or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant Tidewater. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to acquire, or expressed an interest in acquiring or desire to acquire any ownership interest in the divestiture assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant Tidewater and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant Tidewater and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant Tidewater and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant Tidewater's limited right to object to the sale under the proviso in section V.C. Upon objection by plaintiff, a divestiture proposed under section IV. shall not be consummated. Upon objection by plaintiff, or by defendant Tidewater under the proviso in section V.C., a divestiture proposed under section V. shall not be consummated unless approved by the Court.

VII. Affidavits

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V. of this Final Judgment, defendant Tidewater shall deliver to plaintiff an affidavit as to the fact and manner of compliance with section IV. of this Final Judgment. Each such affidavit of defendant Tidewater shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such affidavit, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. Defendant Tidewater shall maintain full records of all efforts made to divest these operations.

VIII. Financing

Defendant Tidewater shall not finance all or any part of any purchase made pursuant to sections IV. or V. of this Final Judgment without plaintiff's prior consent.

IX. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant Tidewater shall take all steps necessary to assure that the pool of divestiture assets are maintained as separate, distinct, and salable assets, apart from other assets of defendant Tidewater. Defendant Tidewater shall use all reasonable efforts, including utilizing the pool of divestiture assets to perform contractual obligations, to maintain these assets in a condition which makes them usable for providing anchor-handling services.

B. Defendant Tidewater shall not sell, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the pool of divestiture assets.

C. Defendant Tidewater shall preserve the pool of divestiture assets in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books, and records relating to any of the vessels in the pool of the divestiture assets until the date of divestiture.

D. Defendants shall refrain from taking any action that would jeopardize the sale of the divestiture assets.

E. Defendant Tidewater may, by notifying plaintiff, exclude up to four vessels other than the Gulf Fleet 54 from the pool of divestiture assets. Upon such notification, the requirements of this Section will thereafter no longer apply to the excluded vessel(s). Once excluded, a vessel may not reenter the pool of divestiture assets.

X. Notice of Proposed Acquisition

If defendant Tidewater proposes to acquire one or more Jones Act-qualified anchor handling/towing supply vessels of at least 5,600 brake horsepower, or the assets or stock of a company that owns or operates such a vessel, and such proposed acquisition is not reportable under 15 U.S.C. 18a, defendant Tidewater shall provide to plaintiff, prior to the acquisition, the following information regarding that proposed acquisition:

1. The name, address, and phone number of, and contact person for, the company that owns or operates the vessel or vessels;

2. The name, U.S. Coast Guard Official Number, Lloyd's identification number, former names, and brake horsepower of the vessel;

3. The proposed acquisition price of the vessel, stock or assets; and

4. The proposed acquisition date.

This information must be provided at least 30 days prior to the proposed acquisition date.

XI. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted:

1. access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XI. shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

This Final Judgment will expire on the third anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the

proposed Final Judgment submitted for entry with the consent of Tidewater, Inc. and Zapata Gulf Marine Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 13, 1992, the United States filed a Complaint alleging that the proposed acquisition of Zapata Gulf Marine Corporation (hereafter "Zapata Gulf") by Tidewater, Inc. (hereafter "Tidewater") would violate section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition in the Gulf anchor-handling market, defined as the provision of anchor-handling services for semi-submersible drilling rigs in the United States Gulf of Mexico ("Gulf"). Anchor-handling/towing supply ("AHTS") vessels of at least approximately 6,000 brake horsepower are required to provide the relevant service. AHTS vessels must be Jones Act-qualified to provide anchor-handling services in the Gulf, and Zapata Gulf and Tidewater are the two largest operators of Jones Act-qualified AHTS vessels of at least 6,000 brake horsepower. Both companies provide anchor-handling services to semi-submersible drilling rigs with AHTS vessels in the Gulf. Anchor-handling and other offshore marine services are purchased by oil companies in connection with the offshore exploration for crude oil and natural gas in the Gulf.

On January 13, 1992, the United States and defendants also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Tidewater would be required to sell, by August 10, 1992, certain AHTS vessels. If it should fail to do so, a trustee appointed by the Court would be empowered to sell these vessels.

The United States, Tidewater, and Zapata Gulf have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

On June 19, 1991, Tidewater and Zapata Gulf entered into a merger agreement under which Tidewater would exchange approximately $310 million worth of its stock for all of the stock of Zapata Gulf. In addition, Tidewater agreed to assume approximately $90 million in Zapata Gulf debt.

One of Tidewater's major divisions, Tidewater Marine, provides support services to the domestic and foreign offshore petroleum industry through a fleet of marine vessels. As of June 30, 1991, Tidewater's fleet consisted of 238 U.S. flagged and 69 foreign flagged vessels. In its fiscal year 1990, Tidewater derived approximately $151 million in worldwide revenues from its marine operations.

Zapata Gulf operates a U.S. and foreign-flagged marine service fleet consisting of about 270 vessels. Of the vessels that are wholly owned or leased by Zapata Gulf, 146 vessels are U.S. flagged and 103 are foreign flagged. In its fiscal year ended September 30, 1990, Zapata Gulf derived approximately $195 million in worldwide revenues from its marine operations.

Tidewater and Zapata Gulf provide offshore marine service vessels, including AHTS vessels, to operators of semi-submersible drilling rigs. Semi-submersible rigs are used to explore for natural gas and oil in the Gulf. These rigs are moored by a system of eight anchors, each of which is attached to the rig by chain, cable, and wire. When the rig is moved to a new drilling location, the mooring system is handled by an AHTS vessel. AHTS vessels are generally between 185 and 225 feet in length and 40 to 50 feet in width, and are fitted with high powered engines, winches and other anchor-handling equipment. They are specially designed, built, and equipped to provide anchor-handling services for semi-submersible drilling rigs. An anchor can weigh as much as 40,000 pounds, and the added weight of the chain, cable, and wire dragging along the ocean floor can require an AHTS vessel to handle several hundred thousand pounds.

Two AHTS vessels are almost always used to provide anchor-handling services to a semi-submersible drilling rig when it is moved. Once the rig has been moved to its new drilling location, one AHTS vessel often remains on charter while the rig is in operation to reset an anchor if one becomes dislodged, to be available when the rig is ready to be moved at the completion of the drilling operation, and to ferry supplies to the rig. These supplies include liquid drilling "mud", which is carried in the vessel's below-deck storage tanks. The vessel that remains with the rig during the drilling operation is hired at a charter rate that ranges between $3,400 and $8,000 per day, depending on the size of the vessel. The second vessel used to assist on the move of the rig may be hired on a spot basis at a rate approximately twice the charter rate.

AHTS vessels vary in their ability to handle the mooring systems of various sizes of semi-submersible drilling rigs and to do so in various water depths and sea conditions, depending predominantly on the brake horsepower ("BHP") of the AHTS vessel. AHTS vessels of at least approximately 6,000 BHP (5,600 BHP–6,140 BHP) generally are required to provide anchor-handling services for semi-submersible drilling rigs in water depths between 500 and 2,000 feet in the Gulf, which is where most semi-submersible drilling rigs operate in the Gulf. There is no substitute for these AHTS vessels to which lessees and operators of semi-submersible rigs in the Gulf would turn to obtain anchor-handling services in the event of a small but significant and nontransitory price increase.

AHTS vessels that are used to provide anchor-handling services for semi-submersible drilling rigs in the Gulf must be Jones Act-qualified, that is, eligible to operate in the unrestricted U.S. coastwise trade under the Merchant Marine Act of 1920, 46 U.S.C. 883. About 36 percent of the Jones Act-qualified fleet of AHTS vessels of at least approximately 6,000 BHP currently are operating in the Gulf, with little idle capacity. The remainder are deployed outside the Gulf. Tidewater and Zapata Gulf own the two largest fleets of such vessels. Together they account for about 61 percent of the total 42 vessel fleet, and about 85 percent of the fleet deployed outside of the Gulf.

The Complaint alleges that the provision of anchor-handling services for semi-submersible drilling rigs by AHTS vessels of at least approximately 6,000 BHP is a relevant product market for antitrust purposes. The Complaint further alleges that the United States Gulf of Mexico is a relevant geographic market within the meaning of section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Gulf anchor-handling market."

Tidewater and Zapata Gulf are direct competitors in the Gulf anchor-handling market. They are two of only six firms capable of providing anchor-handling services in this market. Based upon the 15 AHTS vessels of at least approximately 6,000 BHP competing in the Gulf, Tidewater and Zapata Gulf have 13 and 7 percent, respectively, of capacity.

The Gulf anchor-handling market is highly concentrated and would become substantially more concentrated as a result of the proposed transaction.

Market concentration is measured by the Herfindahl-Hirschaman Index ("HHI"). The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The HHI, which takes into account the relative size and distribution of the firms in the market, ranges from virtually zero to 10,000. The HHI approaches zero when a market is occupied by a large number of firms of relatively equal size. The HHI increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-acquisition HHI of 1800 is highly concentrated.

The HHI for the Gulf anchor-handling market, based on capacity, is 2,892. Following the proposed transaction, the HHI would rise to 3,070—an increase of 178. The combination of Tidewater and Zapata may increase the likelihood of coordinated anticompetitive conduct in the Gulf anchor-handling market. There is insufficient excess capacity among AHTS vessels in the Gulf to mitigate this risk of anticompetitive conduct.

Successful new entry into the Gulf anchor-handling market would not be induced by a small but significant nontransitory price increase. Neither are a sufficient number of the AHTS vessels deployed outside the Gulf likely to return to the Gulf in response to a small but significant nontransitory price increase.

III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of Zapata Gulf by Tidewater may be substantially to lessen competition, in violation of section 7 of the Clayton Act, in the Gulf anchor-handling market. The risk to competition posed by this transaction, however, substantially would be eliminated were sufficient AHTS vessels to be sold to a purchaser or purchasers that could operate them as active, independent and financially viable competitors in the Gulf anchor-handling market. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of certain vessels capable of performing services in the market to such a purchaser or purchasers and prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Tidewater, by August 10, 1992, to divest two AHTS vessels to a purchaser or purchasers that have the capability and present intent to operate the vessels as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. The vessels are the Gulf Fleet 54 and a second vessel to be selected by Tidewater from the following group of AHTS vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55 or Gulf Fleet 59. These vessels, as well as the Gulf Fleet 54, are Jones Act-qualified AHTS vessels of approximately 6,0000 BHP. They are the newest Jones Act-qualified AHTS vessels in the Tidewater and Zapata Gulf fleets and are equipped with liquid mud capacity so that they can not only handle the mooring systems of semi-submersible drilling rigs, but also provide supply services to the rigs during the drilling operations. The ability of AHTS vessels to serve these dual functions is an important criterion to Gulf customers in choosing AHTS vessels. Section IV. F. of the proposed Final Judgment bars the divestiture of the vessels to three competitors of Tidewater and Zapata Gulf: SeaCor Holdings, Inc., Ensco Marine Company, and Penrod Drilling Corporation.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the divestiture of the specified assets, and shall cooperate with bona fide prospective purchasers by supplying all information relevant to the proposed sale. Should Tidewater fail to complete its divestiture by August 10, 1992, the Court will appoint, pursuant to section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional two months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Tidewater will be required to pay for all of the trustee's sale-related expenses. If divestiture of the undesignated vessel is not made by Tidewater prior to the appointment of the Trustee, the proposed Final Judgment requires Tidewater to designate the identity of the vessel to be divested in addition to the Gulf Fleet 54 no later than five days prior to the effective date of the trustee's appointment.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Tidewater or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchasers prior to consumation. Upon objection by the United States to a sale of the divestiture assets by the defendant Tidewater, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, such sale shall not be consummated unless approved by the Court.

Pursuant to section V. G., should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems apropriate to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

Under section IX of the proposed Final Judgment, defendant Tidewater must take certain steps to ensure that, until the required divestiture has been completed, the pool of divestiture assets, defined as the Gulf Fleet 54 and the five AHTS vessels from which Tidewater will designate a vessel to be divested, will be maintained as distinct salable assets. Until such divestiture, defendant Tidewater must also preserve and maintain the pool of divestiture assets as salable assets, making all reasonable efforts to maintain the vessels in a condition which makes them usable as part of a viable and active business providing anchor-handling services. Tidewater may, by notifying plaintiff, exclude a vessel other than the Gulf Fleet 54 from the pool of divestiture assets. Upon that notification, the requirements of section IX will no longer apply to that vessel. Once excluded, a vessel may not reenter the pool of divestiture assets.

Section X requires Tidewater to provide certain information about any proposed acquisition of one or more Jones Act-qualified AHTS vessels of at least 5,600 BHP, or of the stock or assets of a company owning such a vessel, if the acquisition is not reportable under the Hart-Scott-Rodino premerger notification law. 15 U.S.C. 18a. This information must be provided at least 30 days prior to the acquisition, and includes data about the current owner of the vessel, the vessel, and the transaction. Section XIII of the proposed Final Judgment provides that it will expire on the third anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may

bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Commenting on the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark C. Schechter, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., room 9403, Washington, DC 20001.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser or purchasers with the capability and present intent of operating them as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. Thus, compliance with the proposed Final Judgment and the completion of the sale or sales required by the Judgment should resolve the competitive concerns raised by the proposed transaction, and assure that the divestiture assets would be used as part of a viable and active competitor to Tidewater's provision of anchor-handling services.

Litigation is, of course, always an alternative to a consent decree in a section 7 case. The United States rejected this alternative because the sale required under the proposed Final Judgment should prevent the acquisition by Tidewater of Zapata Gulf from having a significant anticompetitive effect in the relevant market alleged, the Gulf anchor-handling market.

While the number of AHTS vessels operated in the Gulf by Tidewater and Zapata Gulf has varied over time, since June of 1990 Zapata Gulf has provided anchor-handling services in the Gulf with two AHTS vessels. Thus, by requiring the divestiture of two AHTS vessels, Zapata Gulf will be effectively replaced as a competitor in the Gulf.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: January 13, 1992.

Respectfully submitted,

Angela L. Hughes,

Charles W. Corddry,

Burney P. C. Huber,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street, NW., room 9810, Washington, DC 20001, (202) 307-6410.

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BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for JTPA Titles II–A and III, and for the JTPA Title II–B summer youth program in Calendar Year (CY) 1992; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1992.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact the Office of Employment and Training Programs, room N4703, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert J. Litman, Acting Director, U.S. Employment Service, room N4470, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0157. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY 1992) (July 1, 1992–June 30, 1993) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1992 for JTPA Title II–B; and, in accord with section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1992. The allotments and estimates are based on the appropriations for DOL for Fiscal Year (FY) 1991 and FY 1992.

Attached are a list of the allotments for PY 1992 for programs under JTPA Titles II–A and III, a list of the allotments for the CY 1992 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1992 allotments for title II–A and Title III, and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1992, Public Law 102–170, for FY 1992. The CY 1992 allotments for Title II–B are based on funds appropriated by the Department of Labor Appropriations Act, 1991, Public Law 101–517, for FY 1991.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1991 data, and published in the **Federal Register** at a later date.

JTPA Title II-A Allotments

Attachment No. I shows the PY 1992 JTPA Title II-A allotments by State on a total appropriation of $1,773,484,000. The amount is composed entirely of PY 1992 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in computing the allotments:

—Data for areas of substantial unemployment (ASUs) are averages for the 12-month period, July 1990 through June 1991.
—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.
—The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas, including the Freely Associated States, are based on estimated unemployment. The estimated unemployment data were developed using the 1980 Decennial Census unemployment data as a base, updated according to relative shifts in the population. A 90-percent relative share "hold-harmless" of the Title II-A allotments for these areas and a minimum allotment of $125,000 were also applied in determining the allotments.

PY 1992 Title II-A funds are to be distributed among designated Service Delivery Areas (SDAs) according to the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title II-B Allotments

Attachment No. II shows the CY 1992 JTPA Title II-B Summer Youth Program allotments by State based on a total FY 1991 available appropriation of $682,880,001. The data used for these allotments are the same data as were used for Title II-A allotments. The amount allotted is composed entirely of PY 1991 formula funds.

For the Insular Areas, the amount is based on the percentage of Title II-B funds each area received during the previous summer.

CY 1992 Title II-B funds are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title III Allotments

Attachment No. III shows the PY 1992 JTPA Title III Dislocated Worker Program allotments by State, from a total of $526,986,000. The total includes 80 percent allotted by formula to the States ($421,588,800), and 20 percent for the National Reserve, including funds allotted to the Insular Areas.

Title III formula funds are to be distributed to State and substate grantees in accordance with the provisions in section 302(c) and (d) of JTPA.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the September 1990 through August 1991 period. Long-term unemployed data used were for CY 1990.

Allotments for the Insular Areas are based on the proportion of title II-A funds these jurisdictions received.

A reallotment of these published Title III formula amounts, as provided for by section 303 of JTPA, will be completed on or about October 1, 1992, based on expenditure reports submitted by the States. Title III allotments will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates

Attachment No. IV shows planning estimates which have been produced using the formula set forth at section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1991 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued within 90 days, based on Calendar Year 1991 data, as required by the Wagner-Peyser Act.

The total planning estimate reflects $19,389,950 or 2.36 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of Employment Service business.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, $24,066,542 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds are distributed in two steps to States which have lost in relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year but which do not meet the size and density criteria for step one. The technical change introduced in PY 1991 remains in effect. The change redefined a "losing" State as one losing in relative share of total current available resources under the Wagner-Peyser base formula allocation as compared to its relative share of the prior year's total allotment.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices; services for groups with special needs; and for the extra costs of exemplary models for delivery job services.

Signed at Washington, DC, this 13th day of January, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1992 JTPA TITLE II-A ALLOTMENTS TO STATES

State	Dollars
Alabama	36,214,646
Alaska	5,204,355
Arizona	22,290,580
Arkansas	22,289,062
California	209,066,542
Colorado	22,429,467
Connecticut	15,325,411
Delaware	4,421,957
District of Columbia	5,523,623
Florida	84,405,599
Georgia	39,963,105
Hawaii	4,421,957
Idaho	6,802,412
Illinois	81,904,495
Indiana	32,561,946
Iowa	12,445,884
Kansas	7,782,977
Kentucky	31,667,644
Louisiana	56,225,835
Maine	9,808,914
Maryland	25,062,622
Massachusetts	54,129,683
Michigan	90,109,035
Minnesota	20,814,847
Mississippi	29,892,936
Missouri	34,490,254
Montana	6,012,732
Nebraska	4,579,233
Nevada	5,377,709
New Hampshire	7,647,298
New Jersey	44,928,373
New Mexico	12,896,941
New York	119,745,592
North Carolina	32,993,823
North Dakota	4,421,947
Ohio	71,995,138
Oklahoma	20,162,996
Oregon	16,250,351
Pennsylvania	74,315,528
Puerto Rico	71,614,008
Rhode Island	8,126,463
South Carolina	26,025,576
South Dakota	4,421,957
Tennessee	31,563,749
Texas	128,449,893
Utah	6,928,602
Vermont	4,421,957

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1992 JTPA TITLE II-A ALLOTMENTS TO STATES

State	Dollars
Virginia	31,372,937
Washington	29,619,095
West Virginia	19,038,720
Wisconsin	22,174,294
Wyoming	4,421,957
American Samoa	141,674
Guam	1,189,938
Marshall Islands	505,231
Micronesia	1,189,375
Northern Marianas	125,000
Palau	125,000
Virginia Islands	1,425,113
Total	1,773,484,000

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1991 JTPA TITLE II-B ALLOTMENTS TO STATES

State	Dollars
Alabama	13,713,266
Alaska	1,924,501
Arizona	8,286,413
Arkansas	8,282,854
California	79,191,693
Colorado	8,317,009
Connecticut	5,805,410
Delaware	1,673,311
District of Columbia	3,435,734
Florida	31,971,110
Georgia	15,139,901
Hawaii	1,673,311
Idaho	2,511,180
Illinois	31,031,871
Indiana	12,334,478
Iowa	4,512,128
Kansas	2,949,650
Kentucky	11,778,038
Louisiana	20,812,945
Maine	3,715,655
Maryland	9,501,451
Massachusetts	20,501,811
Michigan	34,137,792
Minnesota	7,885,741
Mississippi	11,105,137
Missouri	13,065,191
Montana	2,277,891
Nebraska	1,687,149

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1991 JTPA TITLE II-B ALLOTMENTS TO STATES—Continued

State	Dollars
Nevada	2,036,968
New Hampshire	2,896,235
New Jersey	17,018,959
New Mexico	4,799,018
New York	45,365,688
North Carolina	12,501,187
North Dakota	1,673,311
Ohio	27,277,618
Oklahoma	7,501,369
Oregon	6,156,410
Pennsylvania	28,152,434
Puerto Rico	27,132,153
Rhode Island	3,078,045
South Carolina	7,587,385
South Dakota	1,673,311
Tennessee	11,958,441
Texas	48,666,629
Utah	2,559,623
Vermont	1,673,311
Virginia	11,885,126
Washington	11,222,124
West Virginia	7,211,903
Wisconsin	8,400,961
Wyoming	1,673,311
American Samoa	51,840
Guam	632,251
Marshall Islands	18,632
Micronesia	44,154
Northern Marianas	24,250
Palau	7,312
Virgin Islands	358,495
Native Americans	12,418,726
Total	682,880,001

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1992 JTPA TITLE III ALLOTMENTS TO STATES

State	Dollars
Alabama	7,546,002
Alaska	1,095,337
Arizona	3,679,217
Arkansas	4,821,391
California	53,396,196
Colorado	4,111,191
Connecticut	5,166,429
Delaware	1,108,377
District of Columbia	1,250,041

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1992 JTPA TITLE III ALLOTMENTS TO STATES—Continued

State	Dollars
Florida	22,316,933
Georgia	9,485,638
Hawaii	528,231
Idaho	1,535,745
Illinois	22,245,871
Indiana	7,906,667
Iowa	2,979,518
Kansas	2,452,743
Kentucky	7,032,754
Louisiana	7,142,859
Maine	2,516,947
Maryland	5,982,960
Massachusetts	15,467,683
Michigan	23,266,180
Minnesota	5,718,393
Mississippi	5,611,193
Missouri	8,891,617
Montana	1,421,994
Nebraska	624,258
Nevada	1,431,532
New Hampshire	2,375,797
New Jersey	12,581,054
New Mexico	2,829,299
New York	30,941,227
North Carolina	7,454,570
North Dakota	496,462
Ohio	18,842,800
Oklahoma	4,691,208
Oregon	4,643,080
Pennsylvania	20,621,009
Pureto Rico	11,233,391
Rhode Island	2,362,681
South Carolina	4,704,548
South Dakota	492,392
Tennessee	6,343,707
Texas	28,467,253
Utah	1,354,312
Vermont	961,117
Virginia	6,628,328
Washington	6,142,633
West Virginia	5,332,266
Wisconsin	4,817,509
Wyoming	538,260
American Samoa	33,769
Guam	283,677
Marshall Islands	120,446
Micronesia	283,543
Northern Marianas	29,711
Palau	29,711
Virgin Islands	339,743
National Reserve	104,276,600
Total	526,986,000

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1992 WAGNER-PEYSER ALLOTMENTS TO STATES

State	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	11,340,436	0	494,977	494,977	11,835,413
Alaska	7,612,415	1,108,078	0	1,108,078	8,720,493
Arizona	9,412,598	0	399,685	399,685	9,812,283
Arkansas	6,797,537	0	373,473	373,437	7,171,010
California	88,688,251	0	0	0	88,688,251
Colorado	9,632,266	0	378,325	378,325	10,010,591
Connecticut	10,020,327	0	74,877	74,877	10,095,204
Delaware	2,173,349	0	67,386	67,386	2,240,735
District of Columbia	4,570,061	0	422,780	422,780	4,992,841
Florida	38,224,895	0	0	0	38,224,895
Georgia	18,066,559	0	529,485	529,485	18,596,044
Hawaii	2,680,088	0	86,394	86,394	2,766,482
Idaho	6,342,497	923,226	0	923,226	7,265,723

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1992 WAGNER-PEYSER ALLOTMENTS TO STATES—Continued

State	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Illinois	35,198,973	0	866,037	866,037	36,065,010
Indiana	16,039,026	0	188,835	188,835	16,227,861
Iowa	8,080,978	0	545,792	545,792	8,626,770
Kansas	7,039,161	0	32,254	32,254	7,071,415
Kentucky	10,495,311	0	255,356	255,356	10,750,667
Louisiana	11,768,692	0	1,088,731	1,088,731	12,857,423
Maine	3,893,187	427,670	0	427,670	4,320,857
Maryland	14,267,279	0	0	0	14,267,279
Massachusetts	19,805,623	0	0	0	19,805,623
Michigan	29,090,598	0	603,942	603,942	29,694,540
Minnesota	13,330,701	0	47,867	47,867	13,378,568
Mississippi	7,546,518	0	293,034	293,034	7,839,552
Missouri	15,534,326	0	0	0	15,534,326
Montana	5,183,121	754,465	0	754,465	5,937,386
Nebraska	6,229,093	906,718	0	906,718	7,135,811
Nevada	5,038,540	733,419	0	733,419	5,771,959
New Hampshire	3,770,891	0	0	0	3,770,891
New Jersey	23,205,867	0	0	0	23,205,867
New Mexico	5,816,373	846,643	0	846,643	6,663,016
New York	50,366,154	0	2,273,898	2,273,898	52,640,052
North Carolina	19,166,110	0	0	0	19,1661,110
North Dakota	5,277,967	768,271	0	768,271	6,046,238
Ohio	31,468,099	0	419,779	419,779	31,887,878
Oklahoma	10,766,676	0	996,035	996,035	11,762,711
Oregon	8,560,951	0	297,016	297,016	8,857,967
Pennsylvania	34,717,002	0	0	0	34,717,002
Puerto Rico	8,909,933	0	472,945	472,945	9,382,878
Rhode Island	3,170,197	0	36,008	36,008	3,206,205
South Carolina	9,834,789	0	0	0	9,834,789
South Dakota	4,878,055	710,059	0	710,059	5,588,114
Tennessee	13,838,728	0	6,900	6,900	13,845,628
Texas	49,508,413	0	2,049,842	2,049,842	51,558,255
Utah	10,668,900	1,552,985	0	1,552,985	12,221,885
Vermont	2,285,161	332,632	0	332,632	2,617,793
Virginia	18,156,365	0	0	0	18,156,365
Washington	14,190,257	0	270,592	270,592	14,460,849
West Virginia	5,583,416	812,733	0	812,733	6,396,149
Wisconsin	14,168,637	0	66,499	66,499	14,235,136
Wyoming	3,784,631	550,899	0	550,899	4,335,530
Formula Total	776,195,978	10,427,798	13,638,744	24,066,542	800,262,520
Guam	375,376	0	0	0	375,376
Virgin Islands	1,580,154	0	0	0	1,580,154
Indicia Postage	19,389,950	0	0	0	19,389,950
National Total	797,541,458	10,427,798	13,638,744	24,066,542	821,608,000

[1] Funds are allocated to the 13 States whose relative share decreased from PY 1991 to the PY 1992 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1991 relative share.
[2] The Balance of the 3% funds are distributed to the remaining 28 States losing in relative share from PY 1991 to their 1992 total allotment amount.
[3] Hold harmless provisions required under section 6(B) of the Wagner-Peyser Act, as amended, are maintained at the revised allotment level.

[FR Doc. 92-2033 Filed 1-29-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-09]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: February 20, 1992, 9 a.m. to 5 p.m.; and February 21, 1992, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Caleb Hurtt and is composed of 27 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda: Thursday, February 20, 1992

9 a.m.—Opening Remarks.

9:15 a.m.—Overview and 1992 Forecast, NASA Program Offices.
5 p.m.—Adjourn.
Friday, February 21, 1992
8:30 a.m.—Overview and 1992 Forecast, NASA Program Offices, Continued.
9:15 a.m.—NAC Committee Reports.
11 a.m.—Council Actions.
Noon—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2184 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-08]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: March 18, 1992, 2 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 400 Maryland Avenue, SW., room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur V. Palmer, Code Q-1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8971).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Norman R. Parmet and is composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.

Agenda: Wednesday, March 18, 1992

2 p.m.—Presentation of the findings and recommendations of the Aerospace Safety Advisory Panel.
3:30 p.m.—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2183 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice (92-10)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee.

DATES: February 10, 1992, 8:30 a.m. to 10 p.m.; February 11, 1992, 8 a.m. to 10 p.m.; February 12, 1992, 8 a.m. to 5:30 p.m.; and February 13, 1992, 8 a.m. to noon.

ADDRESSES: Holiday Inn Hotel, 1217 Wildwood Avenue, Sunnyvale, CA 94089.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1570).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee (SSSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss reports from the participating groups and organizations, updates on programs, and splinter group discussions. The Subcommittee is chaired by Dr. Charles A. Fuller and is composed of 19 members. The meeting will be closed to the public from 6:30 p.m. to adjournment on February 11, 1992, for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 522b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

Monday, February 10
8:30 a.m.—Opening Remarks and Subcommittee Business.
9:30 a.m.—Organizational Updates.
10:30 a.m.—Multilateral Science Working Group: Past and Present.
11 a.m.—OSSA Payload Traffic Model.
11:30 a.m.—Hardware Development Subgroup Report.
1 p.m.—Overview of OSSA Issues and Concerns.
2:30 p.m.—Office of Aeronautics and Space Technology Update.
3 p.m.—Office of Commercial Programs Update.
3:30 p.m.—Vibroacoustic Plans and Allocations.
4 p.m.—Venting.
6:30 p.m.—Organizations and Technical Status.
10 p.m.—Adjourn.
Tuesday, February 11
8 a.m.—Customer Data and Operations Systems Update.
9 a.m.—Tracking and Data Relay Satellite System Availability Update.
9:30 a.m.—Data Systems Capability Update.
11 a.m.—Telescience: European Space Agency Meeting Review.
11:30 a.m.—Latency: Projected Capabilities.
Noon—Data Management Systems Workshop Plans.
1:30 p.m.—Attached Payload Capability Status.
2 p.m.—Environment Update.
2:30 p.m.—Splinter Sessions: Data and Communications, Attached Payloads, Pressurized Volume.
6:30 p.m.—Closed Session.
10 p.m.—Adjourn.
Wednesday, February 12
8 a.m.—Discussion of Upcoming Meetings.
8:15 a.m.—Japanese Experiment Module Workshop Report.
8:45 a.m.—Status of Collaborative Discussions: Microgravity and Life Sciences.

10:45 a.m.—Reports from the International Partners.
1:30 p.m.—Italian Space Agency/NASA Memorandum of Understanding.
5:30 p.m.—Adjourn.
Thursday, February 13
8 a.m.—Splinter Group Reports and Discussion.
Noon—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2185 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice (92-12)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee.

DATES: February 11, 1992, 8:30 a.m. to 5:30 p.m..

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, S.W., room 226, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Roger F. Crouch, Code SN, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1490.

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Microgravity Science and Applications Advisory Subcommittee provides advice to the Microgravity Science and Applications Division (MSAD) concerning all of its programs in the microgravity sciences. The Subcommittee will meet to review the current status of the MSAD, the Discipline Working Group (DWG) plans, proposed augmentation for Satellite Test of the Equivalence Principle (STEP) and Low Temperature Research Facility (LTRF), MSAD Strategic Plan, and long-range research. The Subcommittee is chaired by Dr. Dudley Saville and is composed of 8 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Subcommittee members). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda

Tuesday, February 11
8:30 a.m.—MSAD Overview.
10 a.m.—DWG Plans.
1 p.m.—Proposed Augmentation for STEP and LTRF.
2 p.m.—MSAD Strategic Plan.
3 p.m.—Long-Range NASA-Wide Microgravity Research.
5 p.m.—Action Items for May 26, 1992, Meeting.
5:30 p.m.—Adjourn.

Dated: January 24, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2252 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice [92-11]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95-454 (section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register.**

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee.

Samuel W. Keller, Chairperson, Associate Deputy Administrator, NASA Headquarters.

John E. O'Brien, Assistant Deputy Administrator, NASA Headquarters.

Spence M. Armstrong, Associate Administrator for Human Resources and Education, NASA Headquarters.

Thomas P. Murphy, Non-NASA Member.

Performance Review Board.

John E. O'Brien, Chairperson, Assistant Deputy Administrator, NASA Headquarters.

Ann P. Bradley, Executive Secretary, Director, Personnel Division, NASA Headquarters.

Gary L. Tesch, Deputy General Counsel, NASA Headquarters.

Robert W. Brown, Deputy Associate Administrator for Human Resources and Education, NASA Headquarters.

Thomas N. Tate, Non-NASA Member.

Jerry J. Fitts, Deputy Associate Administrator for Space Communications, NASA Headquarters.

Robert Rosen, Deputy Associate Administrator for Aeronautics and Space Technology, NASA Headquarters.

Thomas E. Utsman, Deputy Associate Administrator for Space Flight, NASA Headquarters.

Stuart J. Fordyce, Deputy Director, NASA Lewis Research Center.

J. Wayne Littles, Deputy Director, NASA Marshall Space Flight Center.

Victor L. Peterson, Deputy Director, NASA Ames Research Center.

Peter T. Burr, Deputy Director, NASA Goddard Space Flight Center.

Paul J. Weitz, Deputy Director, NASA Johnson Space Center.

Dated: January 23, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-2251 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: February 16-17, 1992, Commissioners' Retreat. Sunday, February 16, 10 a.m. through Monday, February 17, 12 Noon.

ADDRESSES: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 22090.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, N.W., #7121, Washington, DC 20005 (202) 275-6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92-2222 Filed 1-29-92; 8:45 am]

BILLING CODE 6820-07-M

Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Thursday, February 27, 1992, Public Hearing.

TIME: 9 a.m.-4 p.m., Friday, February 28, 1992, Commission Meeting.

TIME: 10 a.m.-3 p.m.

ADDRESSES: General Services Administration, 26 Federal Plaza, room 305 A, B & C, New York, NY 10278, (212) 264-9290.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005, (202) 275-6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92-2223 Filed 1-29-92; 8:45 am]

BILLING CODE 6820-07-M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.[1]

ACTION: Meeting notice.

DATES: Wednesday, February 12, 1992, 3 to 4 p.m.

ADDRESSES: Federal Deposit Insurance Corporation (FDIC), 550 17th Street, NW., Sixth floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bonnie Limbach, Director, Corporate Communications, 1777 F Street, NW., Washington, DC 20232, (202) 786-9672.

SUPPLEMENTARY INFORMATION: Discussion Agenda:

- RTC Update
- National Advisory Board Recommendations
- Other agenda items to be determined.

Closed session to follow.

Dated: January 27, 1992.

Jill Nevius,

Committee Management Officer.

[FR Doc. 92-2278 Filed 1-29-92; 8:45 am]

BILLING CODE 2222-01-M

[1] Under section 302(a), Public Law 102-233, 105 Stat. 1761, 1767, as of February 1, 1992 the Oversight Board's new name will be the Thrift Depositor Protection Oversight Board.

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2648, Redetermination of Withdrawal Liability Upon Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212-0034) contained in its regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648). Current approval of the collection of information expires on February 29, 1992.

DATES: The PBGC is requesting that OMB approve or disapprove the collection of information by February 29, 1992.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0034), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW, Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

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: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648).

Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the PBGC to prescribe regulations for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a plan termination due to the withdrawal of every employer or a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. The regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal is issued pursuant to this statutory requirement.

The regulation requires a plan to give employers timely notice of a mass withdrawal and to advise them of their rights and liabilities arising therefrom. Included in the notices to employers is a demand for payment, which initiates the employer liability assessment and collection process and triggers an employer's rights to review of its assessment. The required notices to the PBGC identify the plan as having experienced a mass withdrawal and provide certifications that the plan has determined and assessed mass withdrawal liability. This enables the PBGC to monitor the plan's compliance with the mass withdrawal liability provisions of ERISA and the regulation. By assuring compliance with these rules, the PBGC guards against the increased risk of plan insolvency (with resulting benefit losses to participants and claims against the insurance program) caused by the mass withdrawal. If this information were not provided, the PBGC would be significantly hindered in the performance of its statutory duties.

The multiemployer plans subject to this regulation are those that experience a mass withdrawal and have unfunded vested benefits. Based on its experience, the PBGC estimates that fewer than one plan per year meets these requirements.

The estimated total annual reporting and recordkeeping burden resulting from this collection of information is 28 hours.

Issued at Washington, DC, this 27th day of January, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-2284 Filed 1-2-92; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30277; File No. SR-DTC-91-19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving DTC's Proposed Trade Adjustment System for Participants Trading Collateralized Mortgage Obligations

January 22, 1992.

On July 31, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will permit DTC to provide a new trade adjustment service for Participants trading collateralized mortgage obligations ("CMO's").[2] Notice of the proposal was published in the **Federal Register** on August 23, 1991.[3] No comments were received. As discussed below, the Commission is approving DTC's proposal.

I. Description

The proposed rule change establishes DTC's Trade Adjustment System ("TAS") for Participants trading CMO's.[4] CMO's have been eligible in DTC's Next-Day Funds Settlement ("NDFS") system since 1983.[5] Most, but not all DTC eligible CMO's are now in the Same-Day Funds Settlement ("SDFS") system.[6]

TAS will adjust automatically the cash balances between sellers and buyers of CMO's when the actual factor [7] used to calculate principal and interest payments (the "true factor") differs from the factor the parties used on trade date to calculate the CMO price and accrued interest (the "trade factor").[8] On trade date, the parties to the trade deliver to DTC the deliver order instructions, with the necessary trade information (*i.e.*, the CUSIP number, the dollar value of the trade, the number of shares to be traded, and the settlement date). The Participants may submit the trade factor used in calculating the price of the securities, or they may refrain from offering a trade factor.[9] If the parties offer no trade factor, DTC automatically uses the last publicly known true factor as the trade factor and compares it to the true factor when it becomes known to make the trade adjustment.[10]

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[1] 15 U.S.C. 73s(b)(1).

[2] CMO's also known as fast pay/slow pay bonds and serialized mortgage-backed securities, are debt investment vehicles, permitting short, medium, and long term investments in trust like entities which pass income from a collateral mortgage pool through to investors. Unlike other pass through securities, CMO's pay down principal to only one class of investors at a time, until that class is retired, when the next class begins to be paid down. This continues until all classes are paid down and a residual class remains to receive the remaining cash flow from the collateral. CMO's typically have monthly, quarterly, or semi-annual payments. Public Securities Association, PSA Uniform Practices ("PSA"), (1990), Chapter 5, at 5-1. Gregory J. Parseghian, "Collateralized Mortgage Obligations, "The Handbook of Fixed Income Securities (1987), at 404.

[3] Securities Exchange Act Release No. 29577 (August 16, 1991), 56 FR 41872.

[4] CMO products eligible at DTC include "private label" CMO's backed by Government National Mortgage Association pass-throughs or "whole-loans" and a few issue of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation that are not eligible for the Federal Reserve Bank's book-entry system. Similar asset-backed products, such as automobile, credit card, and other consumer loan backed securities are also eligible.

[5] DTC eligibility requirements for CMO's include that DTC receive a copy of the disclosure documents, and that the trustee agree to comply with DTC's "Operational Arrangements." See Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 (order describing DTC's operational arrangements necessary for an issue settling in next-day funds to be eligible for DTC) and Securities Exchange Act Release No. 25948 (July 27, 1988), 53 FR 29294 (order describing and clarifying prerequisites for an issue being eligible for DTC's SDFS system). If the CMO is book-entry only, DTC also requires a letter of representation from the issuer and the trustee. Finally, if DTC cannot obtain accurate prices to determine the daily market value of a CMO, DTC may limit its eligibility to DTC's NDFS system. Letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division, Commission (September 5, 1991).

As of January, 1992, 16% of the CMO's held at DTC were in the NDFS system. Telephone conversation between Particia Trainor, Associate Counsel, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[6] CMO's currently represent the largest principal amount of any SDFS security at DTC. As of June 1991, 3,409 CMO's valued at $138.2 billion were SDFS eligible and 62 CMO underwriting distributions (316 tranches) had been completed during the year. Each day, DTC calculates the collateral value of these securities, based on the market prices supplied by Trepp Information Services, Inc. ("Trepp"), to collateralize Participants' SDFS positions in CMO's. DTC, "Program Agenda Proposals and Report" (September 1991).

As of January, 1992, 84% of the CMO's held at DTC were in the SDFS system. Telephone conversation between Particia Trainor, Associate Counsel, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[7] Since a CMO is a mortgage-backed security, its par value is reduced by the amount of the underlying mortgage obligation which has been paid during each payment period. The "true factor" represents the actual amount of principal remaining on the mortgages underlying the CMO on trade date. Since on trade date this amount is often not yet public, the parties substitute an estimated factor, the "trade factor", representing their estimate of the amount of principal paid on schedule, prepaid principal, and mortgage principal considered defaulted on during the relevant prior period.

[8] Assume, for example, that on July 1, buyer S buys a newly issued $1,000 CMO which pays 12% interest per annum. Assume further, that during July, homeowners prepay their home mortgages so that $100 prepayment is allocated to S's CMO. August 1 is the record date for the September 1 payable date, and S is the record owner on August 1.

On August 10, S sells the CMO to buyer B for $1,000. Since the true factor is not yet public, the parties use the trade factor of 1.00 (the last known true factor, which was available at the date of issuance, July 1). B pays S the $1,000 sales price plus $3.33 accrued interest ($1,000×10/360×12% interest for the period from August 1 to August 10).

On August 28, the true factor for the month of July is announced at 0.9 ($1,000 original principal minus $100 prepayment during July divided by the original $1,000 principal amount). Upon receiving the true factor of 0.9, TAS would compute the value of the trade. The $1,000 sales price on August 10 would be adjusted to $900 ($1,000×0.9). The $3.33 accrued interest paid by B to S would be adjusted to $3.00 ([900×10/360]×12%).

On September 1, the income payable date for August 1, the issuer pays S (the record owner on August 1) $100 prepayment of principal due to the July prepayments. The issuer pays S, the record owner on August 1, $10 interest. On September 1, TAS would automatically debit S's account $100 (the sales price times the difference between the trade factor and the true factor on August 10) and $0.33 (the difference between the accrued interest paid by B to S and the actual accrued interest on August 10 ([$1,000×10/360-$900×10/360]×12%). On September 1, TAS would automatically credit B's account $100.33 to account for the prepayments and excess interest paid.

[9] The new factors will be received on a daily basis from Trepp, a subsidiary of The Thomson Corporation. Trepp was established in 1987, under a charter from the Public Securities Association, an independent organization of securities dealers and other professionals. Trepp obtains its information directly from the prospectus, underwriter, and trustee/manager of the CMO's. Trepp offers daily reports, via CPU to CPU delivery, including daily updates of paydown factors, monthly updates of basic descriptive information of structured securities, and monthly updates of record information date information on structured securities. See, enclosures contained in letter from Patricia Trainor, Associate Counsel, DTC to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (September 5, 1991).

Between a CMO's record date and beneficial date (the date as of which all holders of the CMO have a right to all principal and interest payments for a given period) and the factor availability date, CMO's incur a "blackout period." During the blackout period, it is not yet known how much principal and interest was paid (or prepaid) during the previous period, so the true value of the CMO is not certain. Instead, parties trading CMO's generally use the previous period's factor, and then settle the difference between the trade factor and the true factor on trade date. The current procedures for settling this difference are done outside of DTC, and in many cases do not account for the interest lost during this interval.

[10] Currently, availability of CMO factors varies and there is no fixed date on which each factor is available. The nature of the underlying assets has no effect on the availability of the factor. TAS does not purport to affect or standardize current factor availability. Trepp does not warrant to DTC, not does DTC warrant to Participants, that the information received from Trepp is accurate. DTC believes it would have no liability if the information received from Trepp were incorrect, although in such a case DTC would assist Participants by

Continued

TAS will automatically perform the price adjustment by charging the deliverer's DTC settlement account on the later of the day immediately following receipt of the true factor for the relevant trade date or the next income payment date on the CMO CUSIP.[11] In the rare instance where the true factor is greater than the trade factor, the seller will have been underpaid. TAS will then charge the receiver's DTC settlement account and credit the deliverer's settlement account for the cash adjustment.

The trigger mechanism for adjustment of the trade price is the receipt of the new factor. DTC will adjust all the trades identified during the relevant blackout period on an overnight batch basis, refactoring all trades based on the new factor information. The participants to TAS will be able to access an online trade inquiry system through PTS, permitting them to view deliver orders, factors used, and adjustments for the period beginning 60 business days prior to their inquiry. This will permit Participants to both observe and challenge any DTC TAS adjustment made during that prior period.

II. Discussion

The Commission believes that proposed rule change is consistent with section 17A of the Act and section 17A(b)(3)(A) of the Act in particular [12] because it promotes the prompt and accurate clearance and settlement of securities transactions by centralizing a previously decentralized procedure for the adjustment to trades settled at DTC. The centralization of the CMO trade adjustment process should facilitate a more efficient and more accurate process for trade adjustments than the current process where each party has to adjust each of its trades bilaterally and independently of DTC.

In addition, TAS offers standard procedures for the adjustments to trades. By using TAS, Participants are agreeing in advance to an acceptable basis for their trade adjustment information and to the process through which funds will flow upon settlement and adjustment. TAS establishes Trepp as the accepted source for CMO factor information and the later of payment date or the day after factor availability date as the date on which the adjustments will occur. Just as important, TAS standardizes the procedures by which the adjustments themselves occur, by permitting DTC to make the adjustments by book-entry, rather than forcing the trading parties to use independent methods, such as mailing checks to adjust the transactions upon factor availability.

DTC, as the record owner of the CMO's, independently receives factor information directly from the CMO's trustees. As a result, DTC could, based solely on its own computations, properly credit Participants with the appropriate principal and interest payments. Because Trepp can provide factor information to DTC in a readily useable format, DTC has determined that the Trepp service will expedite the trade adjustment process, permitting adjustments to be done in a more efficient and timely manner. Trepp is a leading independent source of factors for structured securities and is the most widely used independent source of factor information among DTC Participants. Virtually all of DTC's Participants currently use Trepp for factor information.[13] Therefore, DTC's decision to use Trepp services for factor information was both reasonable and appropriate in light of Trepp's significant current role in providing this information to the industry.[14]

During the first six months [15] of TAS, DTC will compare the Trepp supplied factors with DTC's results based on information supplied by CMO trustees. Thereafter, DTC will continue to compare a sampling of the Trepp supplied factors with their own results to monitor Trepp's continued accuracy.[16]

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-91-19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2192 Filed 1-29-92; 8:45 am]

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processing adjustments based on current information. Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (September 5, 1991).

[11] For example, if a trade settles on January 15, the true factor becomes known on January 20, and the next income payment date is on February 1, DTC will make (and alert the parties to the true factor) the adjustment on February 1, as part of its normal debiting and crediting of these accounts. If the true factor does not become known until February 5, DTC will adjust the trade on February 6 (and alert the parties of the true factor on that date).

[12] 15 U.S.C. 78q-1(b)(3)(A).

[13] Telephone conversation between Patricia Trainor, Associate Counsel, DTC, Anthony DiMurro, Director, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[14] Also, due to DTC Participants' current reliance on Trepp for factor information, and TAS trade adjustments needed to be later corrected as a result of Trepp error should not cause significant problems or Participant complaints to DTC.

[15] DTC intends to begin TAS as a pilot, for an initial period of approxmately four weeks. After the initial four week period, DTC will consider offering TAS on a wider scale, basing its decision on the results of their initial pilot. During the first six months that TAS is in operation, including the pilot period, DTC will keep a record of, and report to the Commission about, how many times it is necessary to make an adjustment to Participants' accounts after settlement of a CMO because the factor information used for settlement adjustment was incorrect. Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (January 15, 1992).

[16] Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (January 15, 1992).

[Release No. 34-30283; File No. SR-DTC-91-16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to a DTC's Proposed Deposit and Withdrawal at Custodian ("DWAC") Service

January 23, 1992.

I. Introduction

On July 17, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-91-16) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] relating to DTC's proposed Deposit and Withdrawal at Custodian ("DWAC") service. On October 29, 1991, DTC amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on November 25, 1991, to solicit comments from interested persons.[3] No comments were received.

[1] 15 U.S.C. 78s(b).

[2] The amendment revises the form of agreement that transfer agents must sign to be able to use the DWAC service for securities issues that are eligible for deposit at DTC. The amendment also revises DTC's procedures to clarify that a custodian in the DWAC service must either accept or reject DWAC deposit and withdrawal instructions from DTC participants on the same day those instructions are received. Letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Jr., Esq., Branch Chief, Division of Market Regulation, Commission (October 29, 1991).

[3] Securities Exchange Act Release No. 29952 (November 18, 1991), 56 FR 60137.

As discussed below, this order approves the proposal.

II. Description of the Proposal

The proposed rule change establishes a DWAC service that would supplement DTC's current deposit and withdrawal procedures.[4] The proposal would provide participants the opportunity to make deposits and withdrawals directly with a transfer agent for an issue evidenced by a balance certificate [5] registered in the name of Cede & Co. and held for DTC by a transfer agent ("DTC Custodian").[6] Only issues eligible under DTC's Fast Automated Securities Transfer ("FAST") Program [7] and certain other issues (including U.S. book- entry-only ("BEO") issues [8] and certain limited certificate issues) [9] are eligible for DTC's DWAC service. Participants may initiate a DWAC deposit or withdrawal request using DTC's Participant Terminal System ("PTS").[10]

To use DWAC for deposits or withdrawals of securities, participants must determine whether the appropriate DTC Custodian participates in the DWAC system and what its requirements are with respect to deposits and withdrawals of DWAC eligible securities. To facilitate this determination, DTC will maintain a list of participating DTC Custodians and provide the same to participants on a regular basis. DTC recommends that a participant contact the DTC Custodian regarding the custodian's procedures for the acceptance of DWAC deposits or withdrawals, including any fee charged by the DTC Custodian, before submitting DWAC deposits or withdrawals. This will minimize the possibility of rejected deposits or withdrawals being rejected.

To make a deposit through DWAC, the participant notifies DTC over PTS that it has delivered or is delivering securities to the DTC Custodian for deposit to the participant's DTC account. For non-certificated deposits, the participant notifies DTC that a deposit has been or will shortly be made into DTC's account at the DTC Custodian on behalf of the DTC participant. DTC would then make this deposit information available to the DTC Custodian over PTS. The DTC Custodian has until 6:30 p.m. that day to either approve or disapprove the deposit by acknowledging to DTC the acceptance or rejection of the deposit through PTS.[11] If the DTC Custodian accepts the deposit, it would effect a transfer of ownership that results in an increase in DTC's account on the issuer's books and the balance certificate held for DTC.[12] Once notified of the acceptance of the deposit by the DTC Custodian, DTC would credit the participant's account by the amount deposited and contemporaneously increase DTC's record of securities on the balance certificate held by the DTC Custodian.

To make a withdrawal of securities through DWAC, the participant would instruct DTC through PTS to withdraw the securities from its account. After DTC receives the instruction from a participant, DTC checks the participant's account to determine whether the participant has a sufficient quantity of securities required for such a withdrawal. If so, DTC would debit the participant's account for subject securities and credit an internal DTC account to reflect a pending withdrawal. DTC would forward the withdrawal instruction through PTS to the appropriate DTC Custodian. The DTC Custodian has until 6:30 p.m. that day to either approve or disapprove the withdrawal by acknowledging to DTC the acceptance or rejection of the withdrawal instruction through PTS.[13] By approving the withdrawal, the DTC Custodian acknowledges that it has completed the withdrawal request and has decreased the amount of securities held for DTC, as evidenced by the balance certificate.[14] Once accepted by the DTC Custodian, DTC would make the appropriate entries on its records and notify the participant that DTC has debited the participant's DTC account and that the DTC Custodian, in its capacity as transfer agent, has received the instructions to credit securities to another account. If the issue is certificated, the participant may collect its certificates from the DTC Custodian; otherwise, the participant may obtain a confirmation of position from the transfer agent.

Finally, DTC proposed to charge participants initiating DWAC deposits and withdrawals $0.62 for each deposit and withdrawal.

III. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act and, specifically with sections 17A(b)(3)(A) and (F).[15] Sections 17A(b)(3)(A) and (F) of the Act require a clearing agency to be so organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities in DTC's possession or under its control. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

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[4] The proposed rule change supplements current physical deposit and withdrawal procedures and replaces current procedures for Direct Transfer Agent Deposit ("DTAD") and for Certificate on Demand Exceptional Instruction ("CODX"). Therefore, participants may continue to deposit and withdraw securities at DTC under existing DTC rules and procedures.

[5] A balance certificate is held in the custody of and is maintained by a DTC Custodian and represents the balance of securities held in the name of Cede & Co. The total number of shares or units represented by a balance certificate increases and decreases daily based upon the amount of deposited or withdrawn securities.

[6] At present, all DTC Custodians intending to participate in DTC's DWAC service are transfer agents registered under the Act. If DTC decides to allow the non-registered transfer agents to act as DTC Custodians, that decision must be submitted for review in accordance with Section 19(b) of the Act. See letter from Patricia Trainer, Associate Counsel, DTC, the Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (January 21, 1992).

[7] Under DTC's FAST (Fast Automated Securities Transfer) program, instead of securities being on deposit at DTC, DTC leaves securities in the custody of transfer agents in the form of balance certificates registered in the name of Cede & Co., DTC's nominee name (Securities Exchange Act Release No. 13342 (March 16, 1977), 42 FR 14792). Typically FAST transfer agents are banks. In cases where a non-bank FAST transfer agent participates in DWAC, the FAST procedures governing non-bank FAST transfer agents apply and the balance certificate in the custody of such transfer agent would not evidence the entire Cede & Co. position but must be limited to a minority of the quantity of securities registered in the name of Cede & Co.

[8] BEO securities are certificated securities that are evidenced by one balance certificate registered in the name of Cede and Co. Beneficial owners generally cannot obtain negotiable certificates evidencing their ownership interests.

[9] An example of a limited certificate issue is where part of a global issue is represented in the U.S. by one certificate in the custody of a DTC custodian and the remainder is evidenced by one or more other certificates located elsewhere. See letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (September 11, 1991).

[10] PTS is DTC's electronic system that enables DTC and its participants to communicate. Securities Exchange Act Release No. 20519 (December 30, 1984), 49 FR 966.

[11] According to DWAC procedures, if the DTC Custodian fails to act on an instruction by the end of the day, the instruction would be dropped and the participant must resubmit the instruction over PTS the next business day to allow the custodian to act on the instruction. The failure of a DTC Custodian to act on an instruction by the end of the day is deemed to be a rejected transfer and the DTC Custodian may not debit or credit DTC's account to reflect such instruction. See supra note 2.

[12] Prior to participation in the DWAC program, a DTC Custodian must sign an agreement that states it understands the effect of an approval of a DWAC instruction. *Id.*

[13] See supra note 11.

[14] See supra note 12.

[15] 15 U.S.C. 78q-1(b)(3)(A) and (F).

The purpose of DWAC is to supplement the current DTC deposit and withdrawal services by providing DTC participants the ability to effect deposits and withdrawals of securities directly with DTC Custodians. For some participants it may be more convenient to deliver and pick up certificates directly from the DTC Custodian rather than through DTC. This service may be especially beneficial when the DTC Custodian and the participant reside outside the New York city area. In many cases it may be easier and more efficient for the DTC participant to deliver the securities or pick up the securities at the transfer agent then for the participant, in the case of deliveries, and the DTC Custodian, in the case of withdrawals, to deliver certificates to DTC. In addition, the proposal will reduce the movement of securities between DTC and its Custodians. Thus, the proposal is consistent with sections 17A(a)(1)(C) and 17A(e) of the Act.[16]

The addition of DWAC allows participants to choose, on a transaction by transaction basis, the various deposit and withdrawal services available at DTC based upon the efficiency and cost of the service. Accordingly, the proposal will promote the prompt and accurate clearance of securities transactions as required under sections 17A(b)(3)(A) and (F).

DTC will not provide immediate credit for deposits of certificates through DWAC, as it does for securities deposits made at DTC.[17] This will help assure that DTC's agents have received the securities and that DTC has good title to those securities. In addition, the DWAC service is designed to prevent the unauthorized movements of securities to or from a participant account at DTC and from DTC's balance order account at the DTC Custodian. All DWAC instructions will be processed through DTC, and a DTC Custodian can not withdraw from or make deposits to DTC's balance order account except upon DTC's instructions. Moreover, a DTC Custodian must notify DTC of the acceptance or rejection of the DWAC instruction on the day the transfer agent received the instruction.[18] Finally, the elimination of the movement of securities to and from DTC will reduce the potential instances of lost or stolen securities. Accordingly, the Commission believes that the DWAC proposal will facilitate the safeguarding of securities and funds in its custody or control or for which it is responsible as required by sections 17A(b)(3)(A) and (F) of the Act.[19]

DTC plans to charge participants $0.62 for each DWAC instruction.[20] The Commission believes that the proposed fee of $0.62 to be charged in connection with each DWAC deposit or withdrawal is consistent with section 17A(b)(3)(D) of the Act,[21] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that DTC's proposed rule change (SR-DTC-91-16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2277 Filed 1-29-92; 8:45 am]

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[16] 15 U.S.C. 78q-1(a)(1)(C) and 78q-1(e).

[17] Currently DTC gives a participant immediate credit, subject to transfer agent acceptance of the certificate for transfer, while under DWAC a DTC Custodian will have until the end of the day to either accept or reject the certificates. This will help assure that DTC's Custodians have received the securities and that DTC has good title to those securities.

[18] For example, as noted above, if a DTC Custodian fails to act on an instruction by the end of the day, the instruction would be dropped and the participant must resubmit the instruction over PTS the next business day to allow the custodian to act on the instruction. The failure of a DTC Custodian to act on an instruction by the end of the day is deemed to be a rejected transfer the DTC Custodian may not debit or credit DTC's account to reflect such instruction. See *supra* note 11.

[19] 15 U.S.C. 78q-1(b)(3)(A) and (F).

[20] The Commission notes that DTC's rules do not prohibit DTC Custodians from imposing and collecting additional transfer fees for DWAC deposits and withdrawals that will not be collected by DTC. Thus, a DWAC deposit or withdrawal may cost participants more than $0.62.

[21] 15 U.S.C. 78q-1(b)(3)(D).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 C.F.R. 200.30-3(a)(12).

[Release No. 34-30278; File No. SR-MBSCC-90-08]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Revising Standards for Letter of Credit Issuers

January 22, 1992.

On October 30, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will modify MBSCC's rules relating to the standards by which MBSCC approves issuers of letters of credit used for Participants Fund purposes. On August 19, 1991, MBSCC amended the proposed rule change and then corrected that amendment on November 15, 1991.[2] Notice of the proposal was published in the **Federal Register** on November 27, 1991.[3] No comments were received. As discussed below, the Commission is approving MBSCC's proposal.

I. Description

The proposed rule change will revise and strengthen MBSCC's standards for approval of issuers of letters of credit used for Participants Fund purposes. MBSCC has conducted a comprehensive review of its risk management system with the goal of further minimizing related operational and financial risks. MBSCC's management has placed particular emphasis on letters of credit generally and letter of credit issuer eligibility standards.[4] The new standards are proposed to go into effect, promptly upon Commission approval of this proposed rule change.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 initially clarified and corrected the original proposal to state that MBSCC management and/or the Board of Directors will have the authority to accept letters of credit issued by banks that do not meet the basic standards outlined in this Order, provided the letters of credit issued by such banks do not exceed 5% of the total Participants Fund deposits of all Participants. This figure was later changed, pursuant to MBSCC Board approval, to provide that such letters of credit do not exceed 0.5% (½ of 1%) of the total Participants Fund deposits of all Participants. *See,* letter from Jeffrey E. Lewis, Associate Counsel and Assistant Secretary, MBSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (November 15, 1991).

[3] Securities Exchange Act Release No. 29973 (November 20, 1991), 56 FR 60137.

[4] MBSCC requires banks issuing letters of credit to honor drafts in accordance with MBSCC's instructions by 4:30 p.m. (Eastern time) on the day of presentation, notwithstanding any contrary provision of commercial law. See Securities Exchange Act Release No. 29906 (January 22, 1991), 56 FR 3129.

[5] Each current letter of credit issuer has been notified of the proposed standards. MBSCC currently accepts letters of credit as collateral from 19 issuers, each of which meets the proposed standards. In the event an issuer were to be downgraded by either Standard & Poor's or Moody's or otherwise failed to meet these standards, MBSCC would promptly notify the Participant of the need to replace the letter of credit. The Participant would then have a reasonable period of time, usually a week to ten days, to either provide a new letter of credit from a qualified issuer or replace the existing letter of credit with an equivalent amount of cash or securities. MBSCC will monitor issuer compliance with the proposed standards by subscribing to both Standard & Poor's and Moody's reporting services which offer both daily notice of changes in issuer debt ratings as well as more complete monthly

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Under the proposed rule change, issuers of letters of credit will be required to maintain prescribed Standard & Poor's, as well as Moody's, long-term debt ratings.[6] In the absence of available long-term debt ratings, MBSCC will substitute an issuer's Moody's or Standard & Poor's long-term deposit ratings. The proposed new standards for letter of credit issuers are:

1. Letter of credit issuers must have and maintain a Moody's long-term debt rating of at least A−3 and a Standard & Poor's long-term debt rating of at least A−.

2. In the event that a current or prospective letter of credit issuer does not have a Moody's or Standard & Poor's long-term debt rating, the long-term deposit rating must be at least A−3 in the case of Moody's and at least A− in the case of Standard & Poor's.

3. In the event that a prospective letter of credit issuer has neither a Standard & Poor's nor a Moody's long-term debt or long-term deposit rating of A− or A−3, respectively, MBSCC's management and/or the Board of Directors, in consultation with the Risk Management Committee, may determine to accept a letter of credit, from that issuer, provided that in no event will the aggregate value of the letters of credit of all such issuers accepted by MBSCC exceed 0.5% (½ of 1%) of the total Participant's Fund deposit of all Participants.

Even if an issuer meets the above requirements (Moody's long-term debt or long-term debt deposit rating of A−3 or better and a Standard & Poor's long-term debt or long-term deposit rating of A− or better), MBSCC will not accept a letter of credit by that bank or trust company, if, upon acceptance of the letter of credit, more than 25% of the overall collateral deposits to the Participants Fund would consist of letters of credit issued by the bank or trust company.

As an additional restriction on issuers, any letter of credit issued by a parent/holding or affiliate company of an MBSCC Participant will only be accepted if the letter of credit has been confirmed by an unaffiliated bank or trust company that meets MBSCC's issuer standards.[7] As the prior standards dictated, each letter of credit must continue to be irrevocable.[8] In addition, the letters of credit must each commit the issuer to pay a specified amount upon demand to MBSCC at any time prior to expiration of the letter of credit.

II. Discussion

The Commission believes that MBSCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes MBSCC's proposal "promotes the prompt and accurate clearance and settlement of securities transactions" and assures "the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible." [9]

Under its rules, deposits to the MBSCC Participants Fund, in excess of the basic deposit,[10] may be made by delivery to MBSCC of an irrevocable letter of credit issued by an approved bank or trust company. MBSCC's rules permit MBSCC to approve as an issuer of a letter of credit any domestic or foreign bank or trust company meeting the requirements set forth in the Procedures.[11] Under the Procedures in place prior to approval of this proposed rule change, an approved letter of credit issuer had to have a Moody's long-term debt rating of at least A-3. The proposed rule change therefore, among other things, adds as an additional requirement a Standard & Poor's long-term debt (or in its absence, a long-term deposit) rating of at least A-. The new standards therefore give MBSCC management the flexibility of reviewing the opinions of two independent rating agencies, rather than just one. This additional requirement should result in a more thorough inspection of proposed letter of credit issuers.

The proposal helps to ensure the credit quality of letters of credit MBSCC receives from members in partial satisfaction of their Participants Fund contribution requirements, which will facilitate MBSCC's ability to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to MBSCC. In particular, the proposed 25% limit on the acceptance of letters of credit from any one issuer will help MBSCC to ensure the liquidity of the Participants Fund by preventing too heavy a concentration of letters of credit from one financial institution, particularly if the failure of that financial institution coincides with an immediate funding requirement, such as a member default.

MBSCC's Board of Directors will have discretion to accept letters of credit issued by otherwise financially sound institutions that do not meet the rating criteria generally required for MBSCC acceptance. The proposed rule, however, appropriately limits MBSCC's exposure by limiting these letters of credit issuers to 0.5% (½ of 1%) of the value of all deposits to the Participants Fund. Thus, the proposed rule provides MBSCC with greater flexibility in approving letter of credit issuers while reducing risks to the clearing agency.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-MBSCC-90-08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2193 Filed 1-29-92; 8:45 am]

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reports rating debt issuers. Telephone conversation between Jeffrey E. Lewis, Associate Counsel and Assistant Secretary, MBSCC, and Jack Drogin, Staff Attorney, Division of Market Regulation, Commission (January 16, 1992).

[6] Standard and Poor's Corporation ("Standard & Poor's") and Moody's Investor Service, Inc. ("Moody's") issue credit ratings (such as A− in the case of Standard & Poor's and A−1, A−2, A−3 in the case of Moody's) to recommend the creditworthiness of various financial institutions with regard to certain financial obligations. These agencies may look at many factors, including profitability, capital, asset quality, liquidity, and interest rate management before assigning a rating to the obligations of a financial institution.

Under MBSCC's current procedures, both foreign and domestic issuers must demonstrate a Moody's long-term debt rating of at least A−3.

[7] The Uniform Commercial Code defines a "confirming" bank as "one which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank." U.C.C. 5-103(f) (1991).

[8] Each letter of credit must also state that it is subject to either the Uniform Customs and Practices of Documentary Credit (1983 Revision) International Chamber of Commerce Pub. No. 400 or the Uniform Commercial Code.

[9] Section 17A(b)(3)(F) of the Act, 15 U.S.C. 78q-1(b)(3)(F).

[10] MBSCC's rules defines "Basic Deposit" as a required minimum deposit to the Participants Fund. It is currently not less than $10,000 for each account in certain account groups held by Participant broker-dealers. MBSCC rules article IV, rule 1.

[11] MBSCC article IV, rule 2, section 7.

[Rel. No. IC-18494; 812-7792]

Equus Investments II, L.P. et al.; Application

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Equus Investments II, L.P. (the "Partnership"), Equus II Incorporated (the "Fund"), Equus Capital Corporation ("ECC"), and Equus Capital Management Corporation ("ECMC").

RELEVANT ACT SECTIONS: Order requested under section 57(c) to permit a reorganization otherwise prohibited under section 57(a).

SUMMARY OF APPLICATION: Applicants propose a reorganization under which the Partnership will transfer all of its assets, including all securities and cash (subject to liabilities), to the Fund in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership.

FILING DATE: The application was filed on September 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. On February 17, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2929 Allen Parkway, suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. The Partnership, a business development company ("BDC") as defined in section 2(a)(48) of the Act, was organized as a Delaware limited partnership on June 2, 1986. The investment objective of the Partnership is to achieve capital appreciation by making equity and equity-oriented investments in leveraged buy-outs of established medium-sized companies or divisions thereof located in the United States. On June 26, 1986, the Partnership filed a registration statement under the Securities Act of 1933. In the public offering that ensued, 1,844,041 units of limited partnership interest were sold for an aggregate sales price of $36,821,728. The net proceeds of the offering have been invested primarily in leveraged buy-out investments.

2. ECC and its controlling corporation, ECMC, are both registered as investment advisers under the Investment Advisers Act of 1940. ECC and ECMC both provide investment advisory services to the Partnership. ECC serves as the managing general partner of the Partnership and is responsible for approving the Partnership's investments, arranging financing for leveraged buy-out transactions, and providing management assistance to portfolio companies. ECMC serves as the partnership's management company.

3. The Fund, a closed-end management investment company, was organized as a Delaware corporation on August 16, 1991. The investment objective of the Fund is substantially the same as that of the Partnership. The Fund is more fully described in the Registration Statement filed under the Securities Act on Form N–14 on September 6, 1991 (File No. 33–42621). The Fund has elected BDC status pursuant to the provisions of sections 2(a)(48)(c) and 54(a) of the Act.

4. Applicants wish to enter into an agreement and plan of exchange (the "Exchange") under which the Partnership will transfer to the Fund all of the assets of the Partnership, including all securities and cash (subject to liabilities), in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership. Immediately following the Exchange, the former partners of the Partnership will hold the only outstanding Fund shares. These shares will include 60 shares that represent the initial capital contributed to the Fund by the Partnership. The Fund shares will then be distributed by the Partnership to the partners, with each partner receiving a pro rata distribution of the Fund shares for the partnership interest held prior to the Exchange. Following this distribution, the Partnership will be liquidated and dissolved.

5. As compensation for its services to the Partnership, ECC is allocated a portion of the Partnership's net realized capital gains or losses, as the case may be, for each calendar year until it has received: (a) 10% of the Partnership's net realized capital gains calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital gains on that cumulative basis; or (b) 5% of the Partnership's net realized capital losses calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital losses on that cumulative basis ("Special Allocation"). In addition, ECC, together with the other general partners and the limited partners, receives allocations and distributions of the Partnership's net realized capital gains or losses in excess of ECC's Special Allocation and all other profits, losses, deductions, and credits, in proportion to its capital contribution to the Partnership.

6. Pursuant to a management agreement between ECMC and the Partnership, ECMC receives an annual management fee of 2% of the net assets of the Partnership and an incentive fee equal to 10% of the Partnership's cumulative net realized capital gains over the life of the Partnership. The cumulative and annual amount of the ECMC incentive fee will be determined at the end of each fiscal year and upon termination of the Partnership. If, at the end of any year or upon termination of the Partnership, net payments previously made to ECMC exceed 10% of the Partnership's cumulative net realized capital gains less unrealized capital depreciation, ECMC would be required to repay all or a portion of the ECMC incentive fee previously received. In addition to the investment advisory services to be provided by ECMC, ECMC also provides, on behalf of ECC, certain administrative services to the Partnership. As additional compensation for such services, ECMC currently is paid annually (i) the sum of $10,000, (ii) the sum of $15 per limited partner account in excess of 3,000, and (iii) reimbursement of certain out-of-pocket expenses relating to such services.

7. The Fund intends to enter into a management agreement with ECMC (the "Fund Management Agreement") whereby ECMC will render services to the Fund substantially the same as those services ECMC currently renders to the Partnership. ECMC intends to enter into a sub-adviser agreement with ECC whereby ECC will render services to the Fund substantially the same as those services ECC currently renders to the Partnership.

8. In return for its services and the expenses that ECMC assumes under the Fund Management Agreement, the Fund will pay ECMC, on a quarterly basis, a management fee equal to 0.5% of the net

assets of the Fund on the last day of each calender quarter (2% per annum). The management fee is payable quarterly in arrears.

9. In addition to the management fee, the Fund will pay ECMC quarterly and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 20% of the net realized capital gains less unrealized capital depreciation of the Fund and the Partnership on a cumulative basis from October 23, 1987 through the end of the calendar quarter, less the aggregate amount of the incentive fee payments in prior periods. If the amount of the incentive fee in any quarter is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any fiscal quarter is less than such amount calculated at the end of the previous fiscal quarter, ECMC will be required to repay to the Fund all or a portion of the incentive fee previously paid.

10. In return for its services, ECMC will pay ECC quarterly and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 10% of the net realized capital gains less unrealized capital depreciation of the Fund and the Partnership on a cumulative basis from October 23, 1987 through the end of each calendar quarter, less the aggregate amount of the incentive fee payments in prior periods. If the amount of the incentive fee in any quarter is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any quarter is less than such amount calculated at the end of the previous quarter, ECC will be required to repay to ECMC all or a portion of the incentive fee previously paid.

11. At a meeting of the general partners of the Partnership, including all of the independent general partners, held in September 1991, ECC recommended that the general partners consider, and the general partners approved, the Exchange. The board of directors of the Fund, including all of the independent directors, also considered and approved the Exchange. Both the general partners and the directors found that the Exchange would be in the best interests of the Partnership and the Fund, and that the Exchange will not result in dilution of the financial interests of the limited or general partners of the Partnership when their interests are converted to Fund shares.

12. The Exchange must be approved by a majority interest of the limited partners of the Partnership, in accordance with the Delaware Revised Uniform Limited Partnership Act. Solicitation of limited partner approval of the Plan will be made by means of a proxy statement/prospectus, an example of which is in the N-14 registration statement. The proxy statement/prospectus will describe the nature of and reasons for the Exchange, the tax and other consequences to the limited partners of the Partnership, and other relevant matters, including comparisons of the Fund and the Partnership in terms of their investment objectives and policies, fee structures, management structures, and other aspects of their operations, as well as the financial information required by Form N-14.

13. The Exchange will establish the Fund as a successor investment vehicle to the Partnership. The Exchange will permit partners to pursue as shareholders of the Fund the same investment objectives and policies they were expecting from the Partnership without sacrificing the pass-through tax features of the Partnership. The Exchange will also provide the partners the increased liquidity that arises from the corporate form of organization, which is more familiar to possible investors in the secondary market. When the Partnership was organized, BDCs could not qualify as "regulated investment companies" under the Internal Revenue Code of 1986 (the "Code"). The only way to provide the investors in a BDC with distributions free from double taxation was by use of the partnership format. However, the Technical and Miscellaneous Revenue Act of 1988 amended the Code to provide that BDCs may qualify as regulated investment companies. It is also believed that organization as a corporation will prove beneficial in that the Fund will be simpler and less expensive to operate than the Partnership.

14. The Exchange will not be effected unless and until each of the following conditions is satisfied: (a) The N-14 Registration Statement has been declared effective; (b) the Exchange has been approved by a majority in interest of the limited partners of the Partnership; (c) the SEC has issued an order relating to the application; and (d) the Fund has received opinions of counsel that the Exchange will have specified tax consequences.

15. ECC and ECMC are bearing a portion of the expenses of the Exchange by providing services of their employees in designing and effectuating the Exchange and in preparing the application. The terms of the Exchange provide that the other expenses of the Exchange (including, without limitation, fees and disbursements of attorneys and auditors and printing costs of proxy soliciting material, but excluding up to $50,000 in fees and expenses that may be paid by the Partnership to an independent soliciting agency to solicit proxies from the Partnership's limited partners) will be borne by the Partnership up to the amount of $100,000. Any amount in excess of $100,000 will be allocated to ECC and ECMC. As of the time of the filing of the amended application, ECC estimates that the $100,000 level will be exceeded by approximately $10,000. The directors of the Fund and general partners of the Partnership believe that, in view of the expected benefits to applicants, it is reasonable to allocate expenses of the Exchange in the foregoing manner.

Applicants' Legal Conclusions

1. Applicants seek an exemption pursuant to section 57(c) of the Act from the provisions of section 57(a) of the Act to the extent necessary to permit the Exchange. Section 57(a), in pertinent part, prohibits certain affiliated persons of a BDC from selling to or purchasing from the BDC any security or other property. Section 57(a) of the Act disallows the Exchange because the Partnership is the sole shareholder of the Fund, and therefore controls the Fund as that term is used in section 56(b)(2) of the Act. Section 57(a) also applies to the Exchange because FCC, in addition to being an interest holder in the Partnership, will be an investment adviser of the Fund.

2. Applicants believe that the terms of the Exchange meet the criteria contained in section 57(c) of the Act, *i.e.*, (a) that the terms of the proposed transaction are reasonable and fair to all parties and do not involve overreaching of the Partnership or the Fund on the part of any person concerned, (b) that the proposed transaction is consistent with the policies of the Partnership and the Fund, and (c) that the proposed transaction is consistent with the general purposes of the Act. Applicants offer the following arguments in support of this conclusion:

(a) Given the similarity of investment objectives and policies of the Fund and the Partnership, the Fund will be attempting to assemble a portfolio of securities substantially similar to that held by the Partnership. The same investment adviser that selected the investments for the Partnership will be selecting them for the Fund.

(b) No brokerage commission, fee, or other remuneration will be paid in connection with the Exchange. Neither the limited partners nor FCC will receive any financial benefit from the Exchange apart from their pro rata interests in

Fund shares and other property distributed by the Partnership upon dissolution.

(c) If effected in the manner described in the application, the Exchange will result in no gain or loss being recognized by partners of the Partnership. Thus, as a body, the partners will become investors in an entity that offers greater liquidity than the Partnership without immediate tax consequences and without having incurred brokerage charges in order to do so.

(d) A majority of the members of the board of directors of the Fund and a majority of the general partners of the Partnership, including a majority of the prospective independent directors and a majority of the independent general partners, have approved the Exchange.

(e) Fund shares will be issued at their net asset values. At the time the Exchange is effected, there will be no Fund shares outstanding, except for the shares issued when seed capital was contributed. Thus, the question of whether Fund shareholders will be diluted as a result of the exchange does not arise.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2194 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18496; No. 811-5394]

Mony Legacy Variable Account A

January 23, 1992.

AGENCY: Securities and Exchange Commission "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mony Legacy Variable Account A.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272-2676, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811-5394) under the Act on November 20, 1987.

2. The Applicant also filed three registration statements pursuant to the Securities Act of 1933. On November 20, 1987, the Applicant filed a registration statement on Form N-4 (Reg. No. 33-18626) for an indefinite amount, in accordance with Rule 24f-2, of flexible premium variable annuity contracts, which became effective on December 17, 1987, the date on which the initial public offering commenced. On March 25, 1988, the Applicant filed two registration statements on Form N-4 (Reg. Nos. 33-20839 and 33-20840, respectively) for an indefinite amount, in accordance with Rule 24f-2, of flexible payment variable annuity contracts, both of which became effective on August 1, 1988, the date on which their respective initial public offerings commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account A ("MONY VA-A") (Reg. No. 811-6216), and Mutual of New York became the depositor of, and obligated under, the flexible payment variable annuity contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA-A.

5. Each security holder of the Applicant had the same interest in the MONY VA-A immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation ad transfer to MONY VA-A as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of he 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC-18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2272 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18495; No. 811-4275

Mony Legacy Variable Account L

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mony Legacy Variable Account L.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272-2676, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811-4275) under the 1940 Act on April 3, 1985.

2. The Applicant also filed a registration statement under the Securities Act of 1933 on April 3, 1985 (Reg. No. 2-96860) for an indefinite amount, in accordance with Rule 24f-2, of flexible premium variable life insurance contracts, which became effective on February 14, 1986, the date on which the initial public offering commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account L ("MONY VA-L") (Reg. No. 811-6215), and Mutual of New York became the depositor of, and obligated under, the flexible payment variable life insurance contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to the Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA-L.

5. Each security holder of the Applicant had the same interest in the MONY VA-L immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation and transfer to MONY VA-L as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of the 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC-18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2273 Filed 1-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18497; No. 811-5132]

Mony Legacy Variable Account S

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mony Legacy Variable Account S.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272-2676, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811-5132) thereunder on April 29, 1987.

2. The Applicant filed a registration statement under the Securities Act of 1933 on April 29, 1987 (Reg. No. 33-13850), for an indefinite amount, in

accordance with Rule 24f-2, of variable life insurance with additional premium option contracts, which became effective on August 25, 1987, the date on which the initial public offering commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account S ("MONY VA-S" (Reg. No. 811-6217), and Mutual of New York became the depositor of, and obligated under, the variable life insurance with additional premium option contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to the Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA-S.

5. Each security holder of the Applicant had the same interest in the MONY VA-S immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation and transfer to MONY VA-S as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of the 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC-18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2274 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18489; 811-3951]

Pilgram Corporate Cash Fund; Notice of Deregistration

January 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pilgram Corporate Cash Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1991 and amended on January 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 18, 1992, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 10111 Santa Monica Boulevard, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a California corporation and open-end diversified management company registered under the Act. On January 26, 1984, the Fund filed a registration statement on Form N-1A, thereby registering under section 8(b) of the Act and under the Securities Act of 1933. The Fund's registration statement became effective on March 21, 1986 and its initial public offering commenced on this date.

2. On September 6, 1988 the Fund's Board of Directors approved an Agreement for the Transfer of Assets and Liabilities (the "Agreement") between the Fund and the PAR Fund, a series of Pilgram Adjustable Rate Fund (File No. 811-3645) (the "Company").

3. The Board of Directors, on behalf of the Fund, filed proxy materials dated October 7, 1988 with the SEC to obtain shareholder approval of the proposed Agreement. At a meeting on November 11, 1988, a majority of the Fund's shareholders approved the Agreement.

4. On November 11, 1988, the date of the transfer of assets and liabilities, (the "Closing Date") the Fund had 1,085,040 shares outstanding with an aggregate net asset value of $10,800,315 and a net asset value per share of $9.95. On the Closing Date, all of the assets of the Fund were transferred to the Company in exchange for equivalent interests in shares of the Company, which in turn were issued to the owners of the Fund. Pursuant to the exchange, the Fund received 610,877 shares of the Company with an aggregate net asset value of $10,800,315 and a net asset value per share of $17.68.

5. All expenses incurred in connection with the transfer of assets and liabilities and the liquidation of the Fund, consisting of legal fees, accounting fees, and printing and mailing costs of the proxy solicitation, were paid by First Capital Holdings Corp. ("First Capital"), the parent corporation of Pilgrim Management Corporation, the Fund's investment adviser, and an affiliated person of the Fund within the meaning of section 2(a)(3) of the Act. The Fund incurred no expenses in connection with the transfer of assets and liabilities and liquidation.

6. At the time of filing of the application, the Fund had no shareholders, assets or liabilities. The Fund is not a party to any litigation or administrative proceedings. The Fund is current on its filings of Form N-SAR. The Fund is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. The Fund

intends to file a Certificate of Dissolution with the Department of State of the state of California.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2195 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18499; File No. 811-5456]

RSVP Variable Life Account One

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: RSVP Variable Life Account One of Anchor National Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 16, 1991 and amended on October 2, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by 5:30 p.m., on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Susan L. Harris, Esq., Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058 or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant filed a notification of registration on Form N-8A and an initial registration statement on Form N-8B-2 on January 22, 1988. Applicant filed a registration statement on Form S-6 pursuant to the Securities Act of 1933 on January 22, 1988 and a pre-effective amendment on May 16, 1988. The registration statement became effective on June 1, 1988. An indefinite number of securities were registered pursuant to Rule 24f-2 under the Act.

2. Applicant was originally established by Integrated Resources Life Insurance Company pursuant to Iowa insurance law on January 15, 1988. Applicant was assumed intact by Anchor National Life Insurance Company ("Anchor National") on January 18, 1990, as part of an assumption reinsurance transaction by which Anchor National assumptively reinsured the variable life insurance policies (the "Policies") issued by the Applicant. Anchor National reestablished Applicant as a separate account under California insurance law.

3. Applicant invests exclusively in the Anchor Series Trust, an open-end diversified management company registered under the Act (File No. 811-3836).

4. On September 27, 1990, the Executive Committee of the Board of Directors of Anchor National unanimously approved a resolution authorizing the assumptive reinsurance of the Applicant. On February 15, 1991, Anchor National transferred, on behalf of Applicant, and Phoenix Mutual Life Insurance Company ("Phoenix Mutual") acquired intact, on behalf of its Phoenix Mutual Variable Universal Life Account ("Phoenix VUL Account), all twelve sub-accounts of the Applicant, and the assets and offsetting liabilities contained therein. Phoenix Mutual assumed all the liabilities, obligations and guarantees of the Policies as of that date. No Policy owner vote or consent was required either under the terms of the Policies or of Anchor Series Trust or otherwise under the 1940 Act or state law, with respect to the assumption reinsurance transaction.

5. Phoenix VUL Account is a unit investment trust created pursuant to Connecticut insurance law and registered under the 1940 Act. On October 9, 1990, the Phoenix VUL Account filed a registration statement pursuant to the Securities Act of 1933 for the reinsured Policies (File No. 33-37129). The registration statement became effective on February 15, 1991. Anchor Series Trust remains the investment fund for the reinsured Policies.

6. Applicant has no assets. Applicant has no debts or other liabilities outstanding. Applicant is not party to any litigation or administrative proceedings. Applicant has no securityholders. All filings with the Commission required under the federal securities laws to be made by the Applicant have been made.

7. Applicant is not now engaged nor does it intend to engage in any business activity other than that necessary for the winding-up of its affairs.

8. All expenses incurred in connection with the assumption reinsurance of the Applicant were borne by Anchor National. No brokerage fees were incurred in connection with the assumption reinsurance of the Applicant.

9. All filings and other actions required by state insurance law have been completed. The assumption reinsurance transaction has been approved by the appropriate state regulatory authorities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2275 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18500; File No. 811-4610]

Variable Life Account One

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Variable Life Account One of Anchor National Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 16, 1991 and amended on October 2, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be

received by 5:30 p.m., on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Susan L. Harris, Esq., Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058 or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant filed a notification of registration on Form N-8A and an initial registration statement pursuant to the Act on March 13, 1986.

Applicant filed a registration statement on Form S-6 pursuant to the Securities Act of 1933 on March 13, 1986 and a pre-effective amendment on August 11, 1986. The registration statement became effective on January 16, 1987. An indefinite number of securities were registered pursuant to Rule 24f-2 under the Act.

2. Applicant was originally established by Integrated Resources Life Insurance Company as "ICAP Variable Life Account One" pursuant to Iowa insurance law on August 28, 1985. Applicant was assumed intact by Anchor National Life Insurance Company ("Anchor National") on January 18, 1990, as part of an assumption reinsurance transaction by which Anchor National assumptively reinsured the variable life insurance policies (the "Policies") issued by the Applicant. Anchor National reestablished Applicant as a separate account under California insurance law.

3. Applicant invests exclusively in the Anchor Series Trust, an open-end diversified management company registered under the Act (File No. 811-3836).

4. On September 27, 1990, the Executive Committee of the Board of Directors of Anchor National unanimously approved a resolution authorizing the assumptive reinsurance of the Applicant. On February 15, 1991, Anchor National transferred, on behalf of Applicant, and Phoenix Mutual Life Insurance Company ("Phoenix Mutual") acquired intact, on behalf of Phoenix Mutual Variable Universal Life Account ("Phoenix VUL Account"), all twelve sub-accounts of the Applicant, and the assets and offsetting liabilities contained therein. Phoenix Mutual also assumed all the liabilities, obligations and guarantees of the Policies. No Policy owner vote or consent was required either under the terms of the Policies or of Anchor Series Trust or otherwise under the Act or state law, with respect to the assumption reinsurance transaction.

5. Phoenix VUL Account is a unit investment trust created under Connecticut insurance law and registered under the Act. On October 23, 1990, the Phoenix VUL Account filed a registration statement pursuant to the Securities Act of 1933 for the reinsured Policies (File No. 33-37330). The registration statement became effective on February 15, 1991. Anchor Series Trust remains the investment fund for the reinsured Policies.

6. Applicant has no assets. Applicant has no debts or other liabilities outstanding. Applicant is not party to any litigation or administrative proceedings. Applicant has no securityholders. All filings with the Commission required under the federal securities laws to be made by Applicant have been made.

7. Applicant is not now engaged nor does it intend to engage in any business activity other than that necessary for the winding-up of its affairs.

8. All expenses incurred in connection with the assumption reinsurance of the Applicant were borne by Anchor National. No brokerage fees were incurred in connection with the assumption reinsurance of the Applicant.

9. All filings and other actions required by state insurance law have been completed. The assumption reinsurance transaction has been approved by the appropriate state regulatory authorities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2276 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **FEDERAL REGISTER** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 2, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, telephone (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Application for Certificate of Competency; Monthly Cash Flow Projection; SBA Plant Survey.

Form No.: SBA Forms, 74, 74A, 74B, 183.

Frequency: On Occassion.

Description of Respondents: Small Business.

Annual Responses: 1708.

Annual Burden: 18,635.

Richard Sadowski,

Director, Office of Administrative Services.

[FR Doc. 92-2212 Filed 1-29-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice 1562]

Determination Under FAA Section 620(q); Subject: Assistance to Senegal

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (the

Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to Senegal is in the national interest of the United States.

This determination is effective immediately and shall expire on September 30, 1992.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register**.

Dated: January 21, 1992.

Lawrence Eagleburger,

Deputy Secretary of State.

[FR Doc. 92-2181 Filed 1-29-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Alliance Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 92-1-40, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Alliance Air, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: January 23, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-2210 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164; Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the twelfth meeting of Special Committee 164 to be held February 24-26, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the eleventh meeting's minutes; (3) Technical presentations; (4) Review of task assignments from last meeting; (5) Review of the sixth draft of the MOPS; (6) Working group sessions; (7) Assignment of tasks; (8) Other business; (9) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2240 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for a meeting of the RTCA Technical Management Committee to be held February 18, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 1 p.m.

The agenda for this meeting is as follows: (1) Opening remarks and introductions; (2) Approve minutes of January 14, 1992, meeting; (3) Establish committee administrative procedures: (a) Balloting in lieu of meeting; (b) TMC alternate members; (4) Review and approve revised Terms of Reference for Special Committee SC-173, "Minimum Operational Performance Standards for Airborne Doppler Weather Radar With Forward-Looking Windshear Detection Capability"; (5) Review and approve Terms of Reference for proposed Special Committee to update FAA Specification G-2100; (6) Review of special committee progress; (7) Take action on recommendations of Ad Hoc Committee on RTCA Technical Matters, RTCA paper no. 610-91/TMC-2; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 21, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2241 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 173; Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the third meeting of Special Committee 173 to be held February 20-21, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approval of minutes of second meeting held October 24-25, 1991, RTCA paper no. 353-91/SC173-5 (previously distributed); (4) Review of task assignments; (5) Status report of FAA Windshear Program; (6) Status report of Radome Working Group; (7) Review of second draft of MOPS for Airborne Weather Radar With Forward Looking Windshear Capability, RTCA paper no. 627-91/SC173-15 (enclosed); (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on January 21, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2242 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 24, 1992.

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: 1545-0217.
Form Number: IRS Form 5735 and Schedule P (Form 5735).
Type of Review: Revision.
Title: Possessions Corporation Tax Credit Allowed Under section 936 Allocation of Income and Expenses Under section 936(h)(5).
Description: Form 5735 is used to compute the possessions tax credit under 936. Schedule P is used by corporations that elect to share the income or expenses with their affiliates. Each form provides the IRS with information to determine if the corporations have correctly computed the tax credit and the cost-sharing of profit-split method.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 1,371.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hours, 43 minutes
Learning about the law or the form—2 hours, 5 minutes
Preparing and sending the form to IRS—2 hours, 22 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 22,397 hours.

OMB Number: 1545-0731.
Regulation ID Numbers: PS-1-83 NPRM, PS-259-82 TEMP, and PS-262-82 NPRM.
Type of Review: Extension.
Title: Certain Elections Under the Subchapter S Revision Act of 1982 PS-1-83); Certain Elections Under the Subchapter S Revision Act of 1982 (PS-259-82); and Definition of S Corporation (PS-262-82).
Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress.
Respondents: Individual or households, Businesses or other for-profit.
Estimated Number of Respondents: 1,250.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (non-recurring).
Estimated Total Reporting Burden: 1,252 hours.

OMB Number: 1545-0735.
Regulation ID Number: LR-189-80 Final.
Type of Review: Extension.
Title: Amortization of Reforestation Expenditures.
Description: Section 194 of the Internal Revenue Code allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Internal Revenue Service to determine if the election is proper and allowable.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 12,002.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,001 hours.

OMB Number: 1545-0768.
Regulation ID Number: EE-178-78 Final.
Type of Review: Extension.
Title: Employers' Qualified Educational Assistance Programs.
Description: The affected public includes employers who maintain educational assistance programs and their employees. The employer must set forth the terms of the program in a separate written plan. Eligible employees must be given notification of the terms and availability of the program. Employees may be required to substantiate eligibility to receive benefits.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,200.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 615 hours.

OMB Number: 1545-0955.
Regulation ID Number: LR-12-86 Final.
Type of Review: Extension.
Title: Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax.
Description: Section 3321 imposes a tax (railroad unemployment repayment tax) on every rail employer with respect to rail wages paid to the employees of such employer and on every employee representative with respect to rail wages received by such employee representative.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,457.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 681 hours.

OMB Number: 1545-1142.
Regulation ID Number: INTL-0939-86 NPRM.
Type of Review: Extension.
Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.
Description: The information is required to determine the location of movable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a Controlled Foreign Corporation (CFC) to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business.

The respondents will be businesses or other for-profit institutions.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
OMB Number: 1545-1196.
Regulation ID Number: CO-005-90 NPRM.
Type of Review: Extension.
Title: Returns Relating to Certain Changes in Corporate Control or Capital Structure.
Description: These proposed regulations concern the reporting requirements of section 6043(c) of the Internal Revenue Code. They require that a corporation file a return on (new) Form 8820, generally, if control of the corporation is acquired by any person or if the corporation has a substantial change in capital structure.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1 hour.
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. 92-2263 Filed 1-29-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 24, 1992.

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. On January 24, 1992, the Department requested an expedited approval by the Office of Management and Budget by January 25, 1992.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: ATF F 3350.5 and 3350.6.
Type of Review: New Collection.
Title: Knowledge and Attitudes Survey for the Gang Resistance Education and Training (GREAT) Program Project Outreach.
Description: Forms 3350.5 and 3350.6 will be used to assess the effectiveness of Project Outreach which is an effort to educate high risk youths in the Phoenix, Arizona area about the dangers of joining street gangs. The task force consists of ATF agents, Phoenix area law enforcement agencies, and community leaders.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of response: Two times.
Estimated Total Reporting Burden: 5,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 92-2264 Filed 1-29-92; 8:45 am]
BILLING CODE 4810-31-M

[Number: 102-05]

Maximum Entry Age for Original Appointment to a Law Enforcement Officer Position

January 17, 1992.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b) and 5 U.S.C. 3307 (d) and (e), *it is ordered,* That:

1. The date immediately preceding an individual's 37th birthday is the maximum entry age for original appointment to a position within the Department of the Treasury as a law enforcement officer, as that term is defined in 5 U.S.C. 8331(20) or in 5 U.S.C. 8401(17).

2. Exceptions to the maximum entry age may be made in situations involving especially qualified individuals, or where skill short-ages arise in specific law enforcement positions or in certain areas of the country. In those cases, the date immediately preceding an individual's 40th birthday will be the maximum entry age for original appointment to a position as a law enforcement officer.

3. The Assistant Secretary (Management) shall issue any necessary regulations or instructions to implement this Order, pursuant to the delegations of personnel management authority in Treasury Order (TO) 102-01, "Delegation of Authority Concerning Personnel Management," or any successor Order.

4. TO 102-05, "Establishing a Maximum Entry Age Limit for Law Enforcement Officer Positions within the Department of the Treasury," dated January 7, 1977, is superseded.

5. This Order shall be effective on the date of signature.

Nicholas F. Brady,
Secretary of the Treasury.
[FR Doc. 92-2190 Filed 1-29-92; 8:45 am]
BILLING CODE 4810-25-M

[Number: 101-19]

Designation of Rigorous and Secondary Positions for Purposes of the Federal Employees' Retirement System

January 17, 1992.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in 31 U.S.C. 321(b) and subpart H of part 842 of title 5 of the Code of Federal Regulations (CFR), it is hereby ordered that rigorous and secondary positions within the Department of the Treasury will be designated according to the following procedures.

1. Application of the special provisions for law enforcement officers under the Federal Employees' Retirement System, Chapter 84 of title 5, United States Code, and the implementing regulations of the Office of Personnel Management in 5 CFR part 842, requires that the Secretary designate rigorous and secondary positions.

2. For purposes of the Federal Employees' Retirement System (FERS), a "rigorous position" is defined at 5 CFR 842.802 to include a position the duties of which are so rigorous that employment opportunities are required to be limited to young and physically vigorous individuals and the primary duties are investigating, apprehending or

detaining individuals suspected or convicted of offenses against the criminal laws of the United States, or protecting the personal safety of United State officials. The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly from one rigorous law enforcement officer position to another.

3. For purposes of FERS, "secondary position" is defined at 5 CFR 842.802 to include a position that is:

a. Clearly in the law enforcement field;

b. In a Treasury organization having a law enforcement mission; and

c. Either:

(1) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers in rigorous positions; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in the law enforcement field is a mandatory prerequisite.

4. Bureaus shall submit to the Director, Human Resources Directorate, documentation concerning those positions which are proposed to be designated as either rigorous or secondary. The Director, Human Resources Directorate, shall be responsible for reviewing official documentation to ensure that it meets the requirements of 5 CFR 842.804. Final action on the designation of rigorous and secondary positions shall be by the Secretary.

5. TO 101-19, "Designation of Rigorous and Secondary Positions for Purposes of the Federal Employees' Retirement System," dated December 22, 1987, is superseded. No designation made under that Order shall be deemed invalid due to the withdrawal of that Order.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 92-2189 Filed 1-29-92; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-1840.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 30, 1992, 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

1992 Presidential Compliance Manual

DATE AND TIME: Tuesday, February 4, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 6, 1992, 10:00 a.m.

PLACE: 999 E STreet, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Repayment Determination and Statement of Reasons—Senator Robert Dole and Dole for President Committee, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92-2397 Filed 1-28-92; 2:36 pm]

BILLING CODE 6715-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Hearing

Notice is hereby given that the Railroad Retirement Board, acting through its appointed Examiner, will hold a hearing on February 11, 1992, 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 hearing will be held at the request of the Chicago and Northwestern Transportation Company for the purpose of taking evidence relating to the agency's claim for reimbursement from the Company under 45 U.S.C. § 352(f).

The entire hearing 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: January 27, 1992.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 92-2394 Filed 1-28-92; 2:35 pm

BILLING CODE 7905-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 2636, January 22, 1992.

PREVIOUSLY ANNOUNCED DATE OF MEETING: February 4, 1992.

CHANGE: Delete the following item from the open meeting agenda:

6. Capital Investment.
   a. Kansas City, Kansas, GMF

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 92-2390 Filed 1-28-92; 2:06 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Western Michigan Institute, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-28150, appearing on page 58881, in the issue of Friday, November 22, 1991, in the 2d column, in the 3d paragraph, in the 11th line, "bar/ul" should read "bar μl".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research and Evaluation: Request for Nominations for Public Members

Correction

In notice document 92-213, beginning on page 573, in the issue of Tuesday, January 7, 1992, make the following correction:

On page 573, in the third column, under **ADDRESSES:**, in the second line, "2102" should read "2101".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0508]

Advanced Pulmonary Technologies, Inc., Premarket Approval of APT 1010 Ultrahigh Frequency Ventilator

Correction

In notice document 92-1098 beginning on page 1748 in the issue of Wednesday, January 15, 1992, make the following corrections:

On page 1749, in the second column, in the last full paragraph, the third line should read as set forth below: "515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 92-1022 beginning on page 1749 in the issue of Wednesday, January 15, 1992, make the following correction:

On page 1750, in the second column, in the second line, "contract" should read "contact."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6915

[CA-940-4214-10; CACA 27509, CACA 8003 WR]

Partial Revocation of Secretarial Order Dated May 5, 1927, and Removal of the Need for a Restriction Imposed by Section 24 of the Federal Power Act; California

Correction

In rule document 91-28629, appearing on page 60929,in the issue of Friday, November 29, 1991, make the following correction:

On page 60929, in the second column, under **Mount Diablo Meridian**, in Sec.2, "S½N¼" should read "S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Saugus Iron Works National Historic Site, Saugus, MA; General Management Plan; Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

Correction

In notice document 91-25997, appearing on page 55686, in the issue of Tuesday, October 29, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-25597" should read "FR Doc. 91-25997".

BILLING CODE 1505-01-D

federal register

Thursday
January 30, 1992

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Federal Public Lands in Alaska

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule will establish Subsistence Management Regulations for Federal Public Lands in Alaska (36 CFR part 242, and, 50 CFR part 100), implementing the subsistence priority for qualified rural residents of Alaska as required or specified to comply with title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3111–3126; Pub. L. 96–487). This rule will promulgate regulations regarding program structure and process as previously contained in subparts A, B and C of "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule", June 29, 1990 (55 FR 27114–27170). This rulemaking is necessary because subparts A, B and C are part of the temporary rule that will expire June 30, 1992. Subpart D is not included in this proposed rulemaking as it is being promulgated under a separate rulemaking process. That rulemaking will also expire June 30, 1992. Subpart D will be combined with subparts A, B and C in the final rulemaking which will become effective July 1, 1992.

DATES: Written and oral comments will be accepted regarding this proposed rulemaking until March 16, 1992.

ADDRESSES: Written comments may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest lands, contact Norman Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21623, Juneau, Alaska 99102–1628; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a priority for subsistence uses of fish and wildlife resources by rural residents on Federal public lands in Alaska. Until recently the State of Alaska has managed the subsistence program on Federal public lands pursuant to section 805 title VIII of ANILCA. In December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. This ruling placed the State out of compliance with title VIII. The Court stayed the effect of the decision until July 1, 1990.

Consequently, the Secretaries were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule" were published in the **Federal Register** (55 FR 27114 *et seq.*). These regulations defined and implemented a temporary program that is administered by a Federal Subsistence Board (Board). The Chair is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. Other members of the Board are the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. These five agencies within the Federal Government are responsible for management of Federal public lands in Alaska covered by title VIII of ANILCA. All agencies participated in the development of these temporary regulations. All Board members have reviewed this proposed rule and concur in its publication for public review and comment. Because these regulations relate to lands managed by Federal agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Draft Environmental Impact Statement

A draft environmental impact statement (DEIS) that describes four alternatives for developing a Federal Subsistence Management Program in Alaska was distributed for public comment on October 7, 1991. That document examined the environmental consequences of these alternatives and described the major issues associated with Federal subsistence management that were identified through public meetings, written comments and staff analysis.

This proposed rule reflects the proposed action (Alternative IV) as described in the DEIS. The final rule will result from public review and comment on the DEIS and this proposed rule.

Subpart C

The following addresses three sections of the proposed rule that require additional explanation in subpart C.

Section _____.22 Subsistence Resource Regions

The proposed action in the DEIS calls for eight subsistence resource regions. A final decision on the resource region boundaries will be made based on conclusions reached through the EIS process.

Section _____.23 Rural Determinations

Initial rural determinations were made by adopting the State's determinations of rural and non-rural community status. The Board proposed a process and revised determinations in the **Federal Register** (55 FR 40897) on October 5, 1990. Public comment was received, reviewed and considered by the Board. Final determinations were adopted and published in the **Federal Register** on January 3, 1991. Rural determinations are subject to further change depending on public comment on the DEIS and this proposed rule.

Section _____.24 Customary and Traditional Use Determinations

Customary and traditional use determinations as adopted in the June 29, 1990, Temporary Regulations, are offered for public comment and proposed changes. The determinations are anticipated to change due to the addition of several communities classified as rural, based on public comment on the DEIS, and on this proposed rule, and as a result of specific requests already made to the Federal Subsistence Board. Specific recent requests for customary and traditional use determination review include the Kilbuck Caribou Herd, rainbow trout, bear, and selected species in Game Management Units 11, 12, 13, 20, and 1B.

Subpart D.

This subpart will contain sections on definitions, prohibitions, methods and means, individual species seasons and bag limits, and fish and shellfish. It is not included in this proposed rulemaking as it is being promulgated under a separate rulemaking process; however, it will be combined with subparts A, B and C as a final rule. It should be noted that the section numbering detailed in this proposed rulemaking may change when the Federal subsistence program regulations (subparts A, B and C of 36 CFR part 242 and 50 CFR part 100) are issued as a final rule by July 1, 1992. For present purposes of this rulemaking, however, all references to these proposed regulations should cite the section numbering contained herein.

Public Comments/Proposals and Hearings

It is the policy of the Departments of the Interior and Agriculture, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments or proposals for change to this version of subparts A, B and C to the address noted at the beginning of this proposed rule. Comments may also be submitted at public hearings to be held in Alaska during January 1992. Comments on the proposed regulations included in the appendix of the DEIS that were submitted as part of the public review of that document will be considered during the final rulemaking process for this proposed rule. Comments on this published version of subparts A, B and C will then be compiled with those previously received for internal agency review and revision in preparation for Board action. Action on proposed changes to subparts A, B and C, will be taken at a March 1992 Board meeting. The location of this meeting will be announced in forthcoming notices published throughout the State of Alaska.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A DEIS, "Subsistence Management for Federal Public Lands in Alaska," was released on October 7, 1991. A final EIS and Record of Decision will be issued prior to implementation of the final "Subsistence Management Regulations for Federal Public Lands in Alaska, subparts A, B and C."

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulataions is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–00075.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one 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, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departaments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on Federal public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

This regulation was drafted by Peggy Fox under the guidance of Richard S. Pospahala, both of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, fish, Federal public lands, reporting and record keeping requirements, subsistence, wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, fish, Federal public lands, reporting and record keeping requirements, subsistence, wildlife.

Text of the Joint Proposed Rule

The text of the proposed rule as proposed by the Forest Service and the Fish and Wildlife Service in the common preamble appears below:

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.

_____.1 Purpose.
_____.2 Authority.
_____.3 Applicability and scope.
_____.4 Definitions.
_____.5 Eligibility for subsistence use.
_____.6 Licenses, permits, harvest tickets, tags, and fees.
_____.7 Restriction on use.
_____.8 Penalties.
_____.9 Information collection requirements.

Subpart B—Program Structure

_____.10 Federal Subsistence Board.
_____.11 Regional advisory councils.
_____.12 Local advisory committees.
_____.13 Board/agency relationships.
_____.14 Relationship to State procedures and regulations.
_____.15 Rural determination process.
_____.16 Customary and traditional use determination process.
_____.17 Determining priorities among subsistence users.
_____.18 Regulation adoption process.
_____.19 Closures and other special actions.

_____.20 Request for reconsideration.
_____.21 [Reserved].

Subpart C—Board Determinations

_____.22 Subsistence resource regions.
_____.23 Rural determinations.
_____.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

Subpart A—General Provisions

§ _____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on Federal public lands within the State of Alaska.

§ _____.2 Authority.

These regulations are issued pursuant to authority vested with the Secretary of the Interior and Secretary of Agriculture specified in section 814 of the Alaska National Interest Lands Conservation Act (ANILCA) (94 Stat. 2371, Pub. L. 96–487).

§ _____.3 Applicability and scope.

The regulations of this part apply to subsistence taking and uses of fish and wildlife on all Federal public lands in the State of Alaska as authorized in title VIII of ANILCA. Such subsistence taking and uses are prohibited in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA. These regulations do not supersede agency specific regulations.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part.

Agency means a subunit of a cabinet level Department such as U.S. Fish & Wildlife Service, USDA Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, etc.

ANILCA means the Alaska National Interest Lands Conservation Act, Public Law 96–487, 94 Stat. 2371, as amended.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses: for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § _____.10 of this part.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Conservation of natural and healthy populations of fish and wildlife is specifically mandated for national parks and national park monuments and means the maintenance of fish and wildlife resources and their habitats in a condition unaffected by the activities of humans, except for customary and traditional subsistence use activities which may be a natural part of related ecosystems, and, sport fishing and visitor service related activities which are mandated by law.

Conservation system unit means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic River Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by ANILCA, additions to such units, and any such unit established, designated, or expanded thereafter.

Councils refers to the Regional Advisory Councils as described in § _____.11.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs, transmitted from generation to generation. This use plays an important role in the economy of the community.

Customary trade means types and volumes of trade by subsistence users intended to provide alternative means of supporting their basic personal and family subsistence needs and does not include trade which constitutes a significant commercial enterprise.

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal lands means lands and waters the title to which is in the United States.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

Public lands means lands situated in Alaska which are Federal lands, except—

(a) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(b) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(c) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Regulatory year means July 1 through June 30.

Resident means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any area of Alaska determined by the Board to qualify as such under the process described in § _____.15 of this part.

Secretary means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and

wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

Take or taking as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) The taking of fish and wildlife on Federal public lands for subsistence uses as defined in § _____.4 is restricted to Alaska residents of rural areas or communities. Other individuals, including Alaska residents of non-rural areas or communities listed in § _____.23, are prohibited from taking fish and wildlife on Federal public lands for subsistence uses.

(b) Where the Board has made a customary and traditional determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § _____.24, only those Alaska residents of rural areas or communities so designated, are eligible for subsistence taking of that population under these regulations. All other individuals are prohibited from taking fish or wildlife from that population under these regulations.

(c) Where customary and traditional determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., no determination), all rural Alaska residents are eligible to participate in subsistence taking of that population under these regulations.

(d) This section does not limit the authority of the National Park Service to regulate further the eligibility of qualified subsistence users on National Park Service lands in accordance with specific authority in ANILCA, and Naitonal Park Service regulations found in 36 CFR part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and fees.

(a) To engage in subsistence taking on Federal public lands as defined in this part individuals must possess any licenses, permits, harvest tickets, or tags for taking required by the State of Alaska, unless Federal licenses, permits, harvest tickets, or tags are required by the Board.

(b) Harvest tickets, tags, permits, or other required documents must be validated before removing the kill from the harvest site.

(c) Subsistence users must comply with all reporting provisions required by the Board.

(d) Permit systems may be authorized by the Board upon evaluation of Regional Advisory Council recommendations, customary and traditional use patterns, and harvest report needs. All requirements of a particular approved permit system are incorporated in these regulations. Any transfer of a Federal subsistence permit is prohibited except for approved systems.

(1) Transferable permits may be issued to a qualified user whose needs are to be supplied by another individual. The permittee, on application, may designate another eligible rural resident to implement the take. The permittee may cancel an unused permit and reapply for another permit, designating another individual to do the taking. The permit must be in the possession of the individual during harvest. The individual, immediately after taking the fish or wildlife (before leaving the site), must validate the permit and return it with the fish or wildlife to the permittee. The permittee is responsible for reporting the taking. Taking authorized by these permits counts against any predetermined bag limit or other allocation for the permittee. Each permit system may have additional requirements.

(2) Community harvest permits may be allocated for a predetermined use level. The community will designate an official who is responsible for reporting the harvest and otherwise complying with the provisions of this section. For example, when applicable, this will include accounting for tags. An eligible user must carry the tag when in the process of the taking. The individual, immediately after taking the fish or wildlife (before leaving the site), must validate the tag. The tag must be countersigned and accounted for by the community harvest official within a reasonable period of time.

(e) Upon request of a State or Federal law enforcement officer, individuals must produce: any license, permits, harvest tickets, tags, or other pertinent documents required by this section. Individuals must allow said law enforcement officers to inspect any apparatus designed to be, or capable of being used to take fish or wildlife, or any fish or wildlife in possession.

§ _____.7 Restriction on use.

(a) Trade of fish and wildlife, and their parts, taken pursuant to these regulations, other than customary trade or barter as defined in this part, is prohibited.

(b) [Reserved]

§ _____.8 Penalties.

Any persons convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 on Federal public land may be punished by a fine of up to $500 or by imprisonment of up to 6 months, or both: or punishment in accordance with the penalty provisions of 18 USC chapter 227.

§ _____.9 Information collection requirements.

(a) These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal Public lands in Alaska.

(1) § _____.20, Request for reconsideration. The information collection requirements contained in this section provide a standardized process to allow individuals the opportunity to appeal decisions of the Federal Subsistence Board. Submission is voluntary, but required to receive a final determination on their appeal. The Department of the Interior estimates that an appeal will take 4 hours to prepare and submit for consideration.

(2) § _____.6, Licenses, permits, harvest tickets, tags, and fees. The information collection requirements contained in this section provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. The information requested is required to obtain subsistence benefits on Federal public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 15 minutes.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. The information collection requirements are required to obtain subsistence benefits on Federal public lands in Alaska. The Department estimates that the average burden imposed upon individuals will be 8 minutes.

(b) Direct comments on the burden estimate or any other aspect of this to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additionally, information requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such

requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish, and delegate responsibility for administering the subsistence taking and uses of fish and wildlife on Federal public lands, and the related promulgation and signature authority for regulations of subparts C and D, contained herein, to a Federal Subsistence Board.

(b) *Membership.* (1) The voting membership of the Board shall consist of a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) *Powers and Duties.* (1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of four members.

(3) No action my be taken unless at least four members are in agreement.

(4) The Board is empowered, to the extent necessary to implement title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on Federal public lands;

(ii) Determine which areas of the State are rural or non-rural, and consequently, indicate which Alaska residents are qualified as subsistence users;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate the subsistence taking from populations of fish and wildlife on Federal public lands consistent with the conservation of healthy fish and wildlife populations, or where affecting National Park Service park and monument lands consistent with the conservation of natural and healthy fish and wildlife populations;

(v) Ensure that the taking on Federal public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes:

(vi) Close Federal public lands to the non-subsistence taking of fish and wildlife as necessary;

(vii) Prioritize subsistence taking of fish and wildlife among users when necessary;

(viii) Restrict or eliminate taking of fish and wildlife by subsistence users if necessary to conserve healthy fish and wildlife populations on Federal public lands, to conserve natural and healthy fish and wildlife populations on National Park Service park and monument lands, or for reasons of public safety or administration;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence purposes constitute allowable customary trade;

(x) Establish eight geographic subsistence resource regions;

(xi) Establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xii) Establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act;

(xiii) Establish rules and procedures for the operation of the Board, and the regional advisory councils established pursuant to this part;

(xiv) Review and respond to proposals by regional advisory councils for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native corporations, and other appropriate persons and organizations, including international entities to effectuate the purposes and policies of the Federal Subsistence Management Program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence; and

(xvii) Take other actions necessary to implement title VIII of ANILCA.

(5) The Board will establish a Staff Committee composed of a member from the U.S. Fish and Wildlife Service, National Park Service, USDA Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for analytical and administrative assistance. The U.S. Fish and Wildlife representative shall serve as Chair of the Staff Committee.

(6) The Board may establish and dissolve additional committees as necessary for assistance.

(7) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(d) Relationship to Councils.

The Board shall consider the reports and recommendations of the councils concerning the taking of fish and wildlife on Federal public lands within their respective regions for subsistence uses. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

§ _____.11 Regional advisory councils.

(a) The Board shall establish a regional advisory council for each subsistence resource region to participate in the Federal Subsistence Program. The councils will be established, and conduct their activities, in accordance with the Federal Advisory Committee Act. The councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on Federal public lands. The councils will provide for public participation in the Federal regulatory process.

(b) Establishment of councils—membership. (1) The number of members of each council shall be established by the Board, and shall be an odd number. A council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses of the Federal public lands therein. The Board shall solicit nominations from the public. Appointments to the councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of the council shall be elected by the council, from its membership, for a one year term and may be reelected.

(c) Powers and duties. (1) The councils are empowered to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions;

(ii) Elect officers;

(iii) In consultation with the local advisory committees, established

pursuant to this part, or State fish and game advisory committees, in its region; review, evaluate, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within its region.

(2) The councils are authorized to:

(i) Prepare and submit to the Board an annual report containing:

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the Federal public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the Federal public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) [Reserved]

(3) The councils shall:

(i) Provide a forum for, and assist local advisory committees, established pursuant to this part, or State fish and game advisory committees, in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(ii) Comply with rules of operation established by the Board.

(iii) Perform other duties specified by the Board.

(d) The U.S. Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the councils. Federal coordinators shall be assigned to provide assistance to the councils.

§ _____.12 Local advisory committees.

(a) The Board shall establish such local advisory committees within each region as necessary at such time that it is determined, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of local advisory committees as set forth in Section 805 of ANILCA. Advisory committees will advise and assist the Regional Advisory Councils in fulfilling their responsibilities detailed in § _____.11. Advisory committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife on Federal public lands, may make recommendations to the councils concerning regulations affecting Federal public lands, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of local advisory committees. (1) Committees and their membership shall be recommended by the Regional Advisory Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses of Federal public lands. Authorizations of, and appointments to, the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each committee shall be elected by the committee from its membership, for a one year term and may be reelected.

(4) When considering a request by a council to create a committee, the Board will consider:

(i) Whether existing representation of subsistence users of Federal public lands within the region is adequate, and

(ii) Whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties. (1) The local advisory committees are empowered to:

(i) Elect officers;

(ii) Provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife on Federal public lands and assisting the councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters on Federal public lands;

(iii) Develop regulatory proposals for submission to the council;

(iv) Evaluate regulatory proposals submitted to the committees and make recommendations to the council and Board;

(v) Advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources on Federal public lands;

(vi) Work with the appropriate regional council to accomplish the duties described in § _____.11(c)(1)(iii); and

(vii) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge; and

(viii) Perform other duties specified by the Board.

(2) Local advisory committees must operate in conformance with the provisions of the Federal Advisory Committee Act, and comply with rules of operation established by the Board.

(d) The U.S. Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the local advisory committees.

§ _____.13 Board/agency relationships.

(a) *General.* (1) The Board, in mak'ng decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other Federal public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate regulations for subsistence taking of fish and wildlife on Federal public lands. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on Federal public lands.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ _____.14 Relationship to State procedures and regulations.

(a) State of Alaska fish and wildlife regulations apply to Federal public lands and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with, or superseded by this part.

(b) The Board may close Federal public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife as authorized by the State. The Board may review and adopt State closures which serve to achieve the objectives of title VIII of ANILCA.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

§ _____.15 Rural determination process.

(a) The Board shall determine the rural or non-rural status of all areas or communities within Alaska. In determining whether a specific area of Alaska is rural, the Board will use the following guidelines:

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined to be rural or non-rural.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Fish and wildlife use;

(ii) History and tradition of the community; and,

(iii) Development and diversity of educational and cultural institutions, the economy, transportation, communication links, community infrastructure, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(b) The Board will review and change rural and non-rural determinations as necessary.

(c) Current determinations are listed at _____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations will identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) Residents of a community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the users' control;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the users' residence;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which have been traditionally used by past generations, without excluding consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use related to the users' reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements of the users' lives.

(c) The Board shall take into consideration the reports and recommendations of the appropriate regional council(s) regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in _____.24.

§ _____.17 Determining priorities among subsistence users:

(a) In accordance with section 804 of ANILCA, whenever it is necessary to restrict the subsistence taking of fish and wildlife on Federal public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the users.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and,

(3) The availability of alternative resources.

(c) If allocation on an area or community basis are not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the above criteria.

(d) In addressing a situation where prioritized allocation becomes necessary the Board shall seek the input of the Regional Advisory Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D shall be accepted by the Board according to a published schedule, but at least once a year. Proposals for changes to subpart C will be accepted by the Board according to a published schedule.

(1) Public and governmental proposals will be made available for review by the regional councils. Regional councils will forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted as a part of the regional council's annual report described in § _____.11.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least 30 days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which they determine is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a regional council is not adopted by the Board they shall set forth the factual basis and the reasons for their decision in writing to the regional council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D in the **Federal Register**.

(b) [Reserved]

§ _____.19 Closures and other special actions.

(a) The Board may make or direct temporary closures or restrictions of any or all taking of fish and wildlife including subsistence taking on Federal public lands, if necessary, for reasons of public safety, administration, or to ensure the continued viability of a particular fish stock or wildlife population or continuation of

subsistence opportunity. In so doing, the Board will consult with the State, and provide adequate notice and public hearing.

(b) In an emergency situation, the Board may direct immediate closures, restrictions, or other changes related to any or all taking of fish and wildlife, including subsistence taking, on Federal public lands, if necessary for the same reasons stated in § _____.19(a). The Board shall publish notice and reasons justifying the emergency action in the **Federal Register** and in newspapers of the area(s) affected. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such action should be extended.

(c) Individual agency regulations and authority to direct emergency or temporary closures or restrictions on lands under such agency's management and related to the taking of fish and wildlife, for the purposes stated in § _____.19(a) or other purposes authorized by Federal statute are unaffected by the regulations of this part.

(d) Taking of fish or wildlife in violation of a Board closure restriction, or change implemented pursuant to this section is prohibited.

§ _____.20 Request for reconsideration.

(a) Regulatory actions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, and mailing address;

(2) The action for which reconsideration is requested and the date of **Federal Register** publication of that action;

(3) A detailed statement of how the requestor is adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the action changed.

(e) Upon receipt of a request for reconsideration the Board shall transmit a copy of such request to the appropriate regional council(s) for review and recommendation. The Board shall consider any Council recommendations in making a final decision.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in paragraph (g) of this section. Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

§ _____.21 [Reserved]

Subpart C—Board Determinations

§ _____.22 Subsistence resource regions.

The following areas are hereby designated as subsistence resource regions:

(a) Southeast Region
(b) Southcentral Region
(c) Southwest Region
(d) Bristol Bay Region
(e) Western Region
(f) Western Arctic Region
(g) Northern Arctic Region
(h) Interior Region

§ _____.23 Rural Determinations.

(a)(1) All communities and areas have been determined by the Board to be rural in accordance with § _____.15 except the following:

Adak;

Fairbanks North Star Borough;

Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;

Juneau area—including Juneau, West Juneau and Douglas;

Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;

Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cover, Saxman East, and parts of Pennock Island;

Municipality of Anchorage;

Seward area—including Seward and Moose Pass;

Valdez; and,

Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(2) Maps delineating the precise boundaries of non-rural areas listed in paragraph (a)(1) are available from the U.S. Fish and Wildlife Service.

(b) [Reserved]

§ _____.24 Customary and traditional use determinations.

(a) The customary and traditional use determinations listed as follows were adopted from State determinations as of the 1989–90 regulatory year.

(b) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species in the specified areas:

Area	Species	Determination
GMU 1	Brown Bear	No determination, except no subsistence for residents of Wrangell, Klukwan, Haines and Skagway.
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(B)	Goat	No determination, except no subsistence for residents of Petersburg, Kupreanof and outlying areas.
1(B)	Moose	The Stikine River drainages only—residents of Wrangell.
1(B)	Moose	North of the LeConte Glacier and 1(C) Berner's Bay—no subsistence.
1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(D)	Deer	No subsistence.
1(D)	Moose	Residents of Unit 1(D).

Area	Species	Determination
GMU 2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
GMU 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
GMU 4	Brown Bear	Residents of GMU 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, and Wrangell.
GMU 5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Yakutat.
GMU 6	Brown Bear	No subsistence.
6	Moose	No subsistence.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
6(A)	Black Bear	Residents of Yakutat.
6(B) and (C)	Black Bear	Residents of Unit 6(B) and (C), except Cordova.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6(D)	Black Bear	Residents of Chenega.
GMU 8	Deer	Residents of Unit 8.
GMU 9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(A), (C) and (D)	Brown Bear	No subsistence.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(D)	Moose	No subsistence.
9(E)	Brown Bear	Residents of Chignik Lake, Ivanof Bay and Perryville.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, Nelson Lagoon and Sand Point.
GMU 10	Caribou	Unit 10—Unimak Island: residents of False Pass. Remainder: no determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
GMU 11	Caribou	Mentasta Herd—Residents of Units 11, 12 (along Nabesna Road) and 13 (A)-(D).
11	Sheep	Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, McCarthy Road, Mentasta Lake, Mentasta Pass (milepost 79-110) Nabesna Road, Slana, McCarthy/South Wrangell/South Park, Tazlina, and Tonsina. However, no subsistence for Cantwell, east Glenn Highway (milepost 110-180) and to milepost 14 on the Lake Louise Road, Homestead North, Homestead South, Lake Louise, Paxson, Sourdough, Tanacross, Tok, and west Glenn Highway (milepost 78-110).
11	Moose	Residents of Unit 11, residents of Unit 12 (along Nabesna Road) and Unit 13 (A)-(D).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
11	Grouse (Spruce, Blue, Ruffed and Sharptailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and Whitetailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 12	Caribou	Nelchina Herd—Residents of Northway and Tetlin.
12	Caribou	40 Mile Herd—Residents of Unit 12, north of Wrangell Park Preserve and rural residents of Unit 20(D) and (E).
12	Moose	South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River—Residents of Unit 11 north of 62nd parallel and excluding BLM parcels of north and south Slana; and residents of Unit 12, 13(A)-(D) and residents of Dot Lake.
12	Moose	East of the Nabesna River, south of the Winter Trail from Pickerel Lake to the Canadian Border—Residents of Unit 12.
12	Moose	Remainder of Unit 12—Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
GMU 13	Caribou	Nelchina Herd—Residents of Units 11, 13, and 12 (along Nabesna Road).
13	Sheep	Tok Management Area—no subsistence.
13	Sheep	Delta Management Area—no subsistence.
13	Moose	Residents of Unit 13.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 & 23.
13(D)	Sheep	No subsistence.
13(D)	Goat	No subsistence.
GMU 14 (B) and (C)	Brown Bear	No subsistence.
GMU 15	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
15	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.

Area	Species	Determination
GMU 16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
16(A)	Moose	No subsistence.
16(B)	Moose	Residents of Unit 16(B).
GMU 17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
17(A)	Brown Bear	Residents of Unit 17, Goodnews Bay and Platinum.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum.
17 (A) and (B)	Brown Bear	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (A) and (B)	Caribou	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (A) and (B)	Moose	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (B) and (C)	Brown Bear	Residents of Unit 17.
17 (B) and (C)	Moose	Residents of Unit 17, Nondalton, Levelock, Goodnews Bay and Platinum.
GMU 18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou	Residents of Kwethluk.
18	Moose	Residents of Unit 18 and Upper Kalskag.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
GMU 19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
19(A)	Brown Bear	Residents of Unit 19(A), (D), Tuluksak, Lower Kalskag and Kwethluk.
19 (A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River and Unit 19.
19 (A) and (B)	Caribou	(fall season) Residents of Unit 19 (A) and (B) and Kwethluk—(winter season) Residents of Unit 18 in Kuskokwim Drainage and Bay. Residents of 19(A), (B) and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No subsistence.
19(C)	Caribou	Residents of Unit 19(C), Lime Village, McGrath, Nikolai, and Telida.
19(C)	Moose	Residents of Unit 19.
19(D)	Brown Bear	Residents of Unit 19(A), (D), Tuluksak and Lower Kalskag.
19(D)	Caribou	Residents of Unit 19(D), Lime Village, Sleetmute and Stony River.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
GMU 20	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana.
20 (A) and (C)	Moose	No subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—Residents of Minto and Nenana.
20(B)	Moose	Remainder—Rural residents of Unit 20(B), Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300-309, Nikolai, Tanana and Telida.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
20(D) and (E)	Caribou	40-Mile Herd—Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).

Area	Species	Determination
20(E)	Brown Bear	No subsistence.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
GMU 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
21	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, 22(A), (B), 23 and 26(A).
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
22(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and Russian Mission.
GMU 22	Brown Bear	Residents of Unit 22.
22	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22(A), (B), 23 and 26(A).
22	Moose	Residents of Unit 22.
22	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23 and 26(A).
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Moose	Residents of Unit 23.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 24	Brown Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Corridor.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna and Anaktuvuk Pass.
24	Moose	Residents of Unit 24, Anaktuvuk Pass, Koykuk and Galena.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
GMU 25	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(A)	Moose	Residents of Unit 25(A) and residents of Venetie only.
25 (B) and (C)	Sheep	No subsistence.
25(D)	Moose	West—Residents of Beaver, Birch Creek and Stevens Village.
25(D)	Moose	Remainder—Residents of "Remainder of Unit 25".
GMU 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23 and 26(A).
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and 16-26.
26 (A) and (B)	Sheep	Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26(B)	Caribou	Central Arctic Herd—Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26 (B) and (C)	Musk Oxen	Residents of Kaktovik.
26(C)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of the Code of Federal Regulations are proposed to be amended as follows:

TITLE 36—PARKS, FORESTS AND PUBLIC PROPERTY

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Part 242 of title 36 is proposed to be revised as set forth at the end of the common rule.

PART 242—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.

242.1 Purpose.

242.2 Authority.

242.3 Applicability and scope.

Sec.
242.4 Definitions.
242.5 Eligibility for subsistence use.
242.6 Licenses, permits, harvest tickets, tags, and fees.
242.7 Restriction on use.
242.8 Penalties.
242.9 Information collection requirements.

Subpart B—Program Structure.

242.10 Federal Subsistence Board.
242.11 Regional advisory councils.
242.12 Local advisory committees.
242.13 Board/agency relationships.
242.14 Relationship to State procedures and regulations.
242.15 Rural determination process.
242.16 Customary and traditional use determination process.
242.17 Determining priorities among subsistence users.
242.18 Regulation adoption process.
242.19 Closures and other special actions.
242.20 Request for reconsideration.
242.21 [Reserved]

Subpart C—Board Determinations

242.22 Subsistence resource regions.
242.23 Rural determinations.
242.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Part 100 of title 50 is proposed to be revised as set forth at the end of the common rule.

PART 100—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.
100.1 Purpose.
100.2 Authority.
100.3 Applicability and scope.
100.4 Definitions.
100.5 Eligibility for subsistence use.
100.6 Licenses, permits, harvest tickets, tags, and fees.
100.7 Restriction on use.
100.8 Penalties.
100.9 Information collection requirements.

Subpart B—Program Structure

100.10 Federal Subsistence Board.
100.11 Regional advisory councils.
100.12 Local advisory committees.
100.13 Board/agency relationships.
100.14 Relationship to State procedures and regulations.
100.15 Rural determination process.
100.16 Customary and traditional use determination process.
100.17 Determining priorities among subsistence users.
100.18 Regulation adoption process.
100.19 Closures and other special actions.
100.20 Request for reconsideration.
100.21 [Reserved]

Subpart C—Board Determinations

100.22 Subsistence resource regions.
100.23 Rural determinations.
100.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 92-2141 Filed 1-29-92; 8:45 am]

BILLING CODES 3410-11-M; 4310-55-M

federal register

Thursday
January 30, 1992

Part III

Department of Education

Foreign Languages Assistance Program; Notice

DEPARTMENT OF EDUCATION

Foreign Languages Assistance Program

AGENCY: Department of Education.

ACTION: Final interpretations and designation of critical foreign languages.

SUMMARY: For the purposes of the Foreign Languages Assistance Act of 1988, authorized by title II, part B, of the Elementary and Secondary Education Act, the Secretary designates Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the primary critical foreign languages. The Secretary also establishes, for a State that can clearly document that it lacks the capability to implement model programs in any of those languages, a procedure under which the State educational agency (SEA) may apply for a waiver of the requirement to fund model programs only in the designated primary languages. An SEA that is granted a waiver may use funds under this program to support model programs in any of the alternate critical languages of French, German, Italian, Portuguese, and Spanish. The Secretary also provides certain interpretations of other portions of the Act that are needed to administer the program.

EFFECTIVE DATE: These interpretations take effect either March 16, 1992, or later if the Congress takes certain adjournments, except that the provision for obtaining the Secretary's approval to support model projects in French, German, Italian, Portuguese, or Spanish, will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these interpretations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Doris Crudup, School Effectiveness Division, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6140, (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Foreign Language Assistance Program is authorized by title II, part B, of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). It is a new formula grant program that is intended to provide financial assistance to State educational agencies (SEAs) to improve the quantity and quality of instruction at both the elementary and secondary school levels in those foreign languages that are critical to the economic and security interests of the United States. Specifically, the Foreign Languages Assistance Program provides support for model programs that will assist school districts in their efforts to help move the Nation toward accomplishing National Education Goal Number 3, which has, as one of its objectives, increasing the percentage of students who are competent in more than one language. The program outlined in this notice can help States and localities make schools better and more accountable for today's students—a major aim of AMERICA 2000, the President's education strategy.

Congress has appropriated $4.9 million for fiscal year 1991 and $10 million for fiscal year 1992 to implement this program. Under the statute, each SEA distributes funds on a competitive grant basis to local educational agencies (LEAs) for model programs they have designed that represent alternative and innovative approaches to foreign language instruction. Unless the Secretary grants a waiver, the non-federal matching requirement is 50 percent. Because each SEA's application must describe the model projects to be conducted, the Secretary is announcing the criteria under which the Foreign Languages Assistance Program will be administered.

On April 29, 1991, the Secretary published a notice of proposed interpretations and designation of critical foreign languages for the Foreign Languages Assistance Program in the **Federal Register** (56 FR 19645). The notice proposed certain statutory interpretations that would apply to all projects that the program would fund. In addition, the Secretary proposed to designate Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the only foreign languages whose instruction the program would support.

The major difference between the proposed interpretations and these final interpretations is inclusion of procedures under which an SEA may apply for a waiver of the requirement that it fund model programs only in the primary languages designated by this notice.

Analysis of Comments and Changes

The Department received forty-six comments on the proposed interpretations. An analysis of the comments and of the portions of this notice that reflect changes from the proposed interpretations follows.

Major issues are grouped according to subject, with appropriate sections of the statute (if any) referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The Critical Foreign Languages

Comments: Nearly all of the comments received addressed the proposed designation of Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the only critical foreign languages for purposes of this program. Many of the respondents disagreed with the proposed designation and recommended that it be expanded to include other languages. Some recommended that the foreign languages specified in the proposed notice be given priority, but that other languages be added. Other commenters recommended that the list of 169 languages designated in a notice published in the **Federal Register** on August 2, 1985 (50 FR 31412), for programs at the postsecondary level, serve as the list of "critical" foreign languages for this program.

Many commenters felt that limiting the program to the five languages as proposed would make it difficult for some States and localities to participate in the program because they lack qualified teachers or the necessary financial resources. Some commenters stated that, because the proposed languages are considered of "high difficulty" for English speakers and very few universities offer programs for teacher preparation in these languages, new programs in these languages would require careful planning and the development of a sequential program with implementation over an extended period of time. Other commenters stated that the proposed designation would require States and LEAs to create programs that do not presently exist and for which there is no guarantee of long-term funding. Commenters pointed out that few elementary schools offer instruction in any foreign language, and suggested that restricting the use of funds to instruction in the proposed five languages would not encourage States or LEAs to begin foreign language programs at the elementary level.

Some commenters recommended that the decision as to what constitutes a "critical" foreign language be left to each State. According to these commenters, the definition of "critical" varies from State to State and is often determined by geographical location, ethnic population, and primary sources of trade for that State.

Five commenters supported the designation of the five critical foreign languages as proposed. These commenters felt that the designation would allow necessary resources to be focused on crucial, yet widely neglected, languages. They also suggested that expanding the list of critical languages would divert support from these less commonly taught languages, diluting the impact of the legislation. Some commenters noted that there are few models for programs in Chinese, Japanese, Korean, Russian, and Arabic, and that the Foreign Languages Assistance Program could serve as a catalyst to support the creation of model programs in these languages.

Discussion: The authorizing statute requires the Secretary to designate the "critical" foreign languages. This responsibility cannot be delegated to the States or LEAs. In carrying out this responsibility, the Secretary believes that to designate all 169 languages from the August 2, 1985 **Federal Register** notice would not meet the intent of the legislation to establish model foreign language programs at the elementary and secondary levels that promote "the economic and security interest of the Nation." The 1985 list was associated with a postsecondary education program, and was developed to identify languages important to scientific inquiry and research as well as of national security and economic interest.

The Secretary believes that the primary objectives of the Foreign Languages Assistance Program would best be served by focusing resources on a select group of less commonly taught, but highly critical, foreign languages, and that the emphasis on Chinese, Japanese, Korean, Arabic, and Russian would best serve the economic and security interests of the United States. This interpretation is consistent with the report of the Senate Appropriations Committee that accompanied the fiscal year 1991 appropriation for this program. In that report, the Senate expressed its intent that the program "focus primarily on the less commonly taught languages."

The Secretary recognizes, however, that Congress enacted the Foreign Languages Assistance Program as a State formula grant program, presumably with the intent that all States be able to participate. Consequently, the Secretary agrees that a State should not be precluded from participation in the program solely because LEAs in the State are unable to procure trained teachers or other resources needed to operate model programs in one of the languages proposed in the April 1991 **Federal Register** notice. For this reason, the Secretary has determined that an SEA that can demonstrate either (1) a clear lack of resources needed to implement model programs in Chinese, Japanese, Korean, Arabic, and Russian, or (2) other compelling reasons, may obtain a waiver to implement model programs in the more commonly taught languages of French, German, Italian, Portuguese, and Spanish. The section of this notice on "Application Content" describes the information that the Secretary will review in considering any SEA's request for a waiver.

The Secretary anticipates, however, that few requests for waivers are likely to be granted. To make a convincing case for approval to undertake projects in the five alternative languages, an SEA must demonstrate that the lack of available qualified teachers or other resources throughout the State or region, or other compelling reasons make it impossible for any LEA in the State to develop and implement model programs in Chinese, Japanese, Korean, Arabic, or Russian. An SEA's supporting evidence might include the following kinds of data: Surveys of school districts and universities to determine the availability of teachers in those languages, a comparison of the costs of implementing projects in the five critical languages with the costs of projects in the five alternate languages, accompanied by an analysis of local and State resources available for implementing projects in each group of languages, or descriptions of programs proposed by LEAs in the primary languages accompanied by an explanation for the SEA's rejection.

Furthermore, this program is not designed to support long-term projects. Rather, awards are to be made for a three-year period, and funds are to be used to develop models that can be replicated in other locations. The argument by some commenters that the "difficulty" of the designated language will deter LEAs from establishing model programs in elementary schools is not persuasive. In fact, because experience seems to show that young children have less difficulty learning a foreign language than older children or adults, it is likely that many of the most promising projects will be proposed for the elementary level. Finally, States should note that, although the statute requires a 50 percent State and local match, the law makes provisions for applying to the Secretary for a waiver of that requirement.

Changes: The Secretary has changed the definition of "critical foreign languages." The languages of Chinese, Japanese, Korean, Arabic, and Russian are now designated as the primary critical foreign languages, and, absent a waiver, all States will be required to fund local model programs in those languages. However, the definition also now includes French, German, Italian, Portuguese, and Spanish as alternate critical foreign languages. In order to fund model programs in any of the alternate languages, a State will have to apply for a waiver from the basic requirement and gain the approval of the Secretary. The section of this notice on "Application Content" has been modified to reflect this change.

Program Application

Comments: Commenters asked if (1) the State application is to be for a one- or three-year period; (2) a State application that merely describes the State's plan for selecting model programs can be approved prior to the identification of the LEA model programs; and (3) the LEA application must be developed for a three-year period. One commenter suggested that the Secretary define what is meant by a "model" program.

Discussion: The Act requires that a description of the model programs designed by LEAs be included in the State application. It further states that funds "shall be made available to the State two additional years after the first fiscal year during which the State receives its allotment" if the funds in the first year were used in the manner required under the State's approved application. Therefore, the Secretary will require that State applications cover a three-year period, pending the availability of appropriations. The State application must contain a description of model programs that have been selected on a competitive basis prior to submission of the application. While the statute requires that funds be used to support model programs for the commencement or improvement and expansion of foreign language study, the Secretary believes that the actual definition and duration of a model program is best determined by the SEA.

Changes: The application procedures have been amended to require that State applications cover a three-year period.

Participating Children

Comments: Commenters questioned the proposed requirement that children aged 5 through 17 who reside in the school district of the LEA must be eligible to participate in the program. One commenter recommended that SEAs be required to identify the mechanisms to be used to ensure that the programs will be available to children attending private schools or that the Secretary require LEAs to set aside funds to be allocated to private elementary and secondary institutions located in the LEA to implement programs. Other commenters noted that the requirement that the State's application contain an assurance that "all children * * * who reside in the school district of the LEA" must be able to participate in the program could limit participation by LEAs and restrict the programs to magnet schools. Another commenter pointed out that the language in the notice differed from language in other legislation, such as chapter 2 of title I of the ESEA, or the Drug Free Schools and Communities Program, and that private school children to be served under those programs are identified as those children attending school within the boundaries of a program or project. However, under the Foreign Languages Assistance Program eligibility for participation is extended to all children residing in the LEA.

Discussion: Section 2103(b)(2) of the Act requires that the SEA provide an assurance that all children, enrolled in public or private schools, who reside in the school district be eligible to participate in any model program funded under the Foreign Languages Assistance Program. In addition, section 2103(d) of the Act requires that, to the extent consistent with the number of children in the State or in the school district of each LEA who are enrolled in private elementary and secondary schools, each State or LEA shall, after consultation with appropriate private school representatives, make provision for including special services in which children attending private schools can participate. Because section 2103(a) limits activities to model programs "designed and operated by local educational agencies," the statute does not authorize these services to private school children to be provided out of funds that would be separately allocated to private institutions.

Furthermore, the Secretary believes that, as a practical matter, Congress could not have intended to require all LEAs to implement model programs for which all children, regardless of age and grade level, are eligible to participate, or to issue conditions that would restrict model programs to magnet school sites. Therefore, the proposed and final interpretations continue to require that participation in model programs be open to all children in the grade level or levels for which the model was designed rather than all children ages 5 through 17.

Changes: None.

Non-Federal Share

Comments: One commenter urged that the interpretation specify that no new funds be required for the 50 percent match and that the matching requirement be ignored.

Discussion: the law explicitly requires a 50 percent match, with provision for a waiver for those States able to demonstrate significant hardship.

Changes: None.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

Authority: 20 U.S.C. 2981–2991, 2993

Definitions and Interpretations

The Critical Foreign Languages

Section 2105 of the Act defines the term "foreign language instruction" as "instruction in critical foreign languages as defined by the Secretary." For the Foreign Languages Assistance Program, the Secretary designates Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the primary critical foreign languages. An SEA that can document a clear lack of capability to fund local model projects in any of these primary languages, which would preclude its participation in the program, may apply to the Secretary for approval to support, instead, local model projects in one or more of the alternate critical foreign languages. For the purposes of this program, the alternate languages are French, German, Italian, Portuguese, and Spanish. An Sea that wishes to apply for a waiver in order to support model programs in one or more of the alternate languages must provide justification as discussed under the next section of this notice.

Application Content

Section 2103(b) of the Act requires that an Sea desiring to receive a grant shall submit an application to the Secretary that covers three fiscal years and contains information and assurances as the Secretary may require. Consistent with the purpose of the program, all applications must include information that will ensure that projects contribute to the statutory goal of developing model programs from which other schools in the Nation can benefit. In addition, applications must include the following information as well as the items enumerated in section 2103(b) of the statute:

(1) A description of how each model program could benefit other school systems in the Nation;

(2) A description of how each program's design will provide a reliable measure of the impact of the program or of student educational achievement; and

(3) An assurance that, upon completion of each program, the SEA will provide to the Secretary documentation and a final evaluation of the program, in a form suitable for dissemination to other schools or school districts that may wish to replicate the program.

In addition, an application requesting approval from the Secretary to support model programs in one or more of the secondary critical foreign languages of French, German, Italian, Portuguese, or Spanish, must specifically describe:

(1) Efforts made by the State to identify and inform LEAs about, personnel and resources that LEAs can use in designing and implementing programs in the five primary critical languages (Chinese, Japanese, Korean, Arabic, or Russian);

(2) Use of criteria to select model programs that give additional weight to proposed programs offering instruction in one of the five primary critical languages:

(3) Reasons for the inability to fund projects in any of the five primary languages; and

(4)Any other conditions or circumstances that would clearly preclude implementation of model programs in any of the five primary critical languages.

In deciding whether to grant a waiver to an SEA from the basic requirement that it fund local model projects exclusively in one or more of the five primary languages designated in this

notice, the Secretary will consider whether the SEA's application demonstrates that, without a waiver, the State clearly would be unable to participate in the program. The Secretary will look for evidence that LEAs in the State are unable to implement model projects in the primary languages because either (1) an inability to procure qualified teachers or other needed resources, or (2) other compelling reasons. The Secretary will not consider local or State preference as a compelling reason for granting a waiver.

Program Variety

In approving an SEA's plan, the Secretary takes into consideration the amount of program funds that each State receives in determining whether the State's model programs represent a variety of alternative and innovative approaches to foreign language instruction, as required by section 2103(b)(1)(B) of the Act.

Participating Children

Section 2103(b)(2) of the Act requires and SEA's application to contain an assurance that "all children aged 5 through 17 who reside within the school district of the local educational agency shall be eligible to participate in any model program" funded under the Foreign Languages Assistance Act. The Secretary interprets this provision to mean that, for whatever grade span a model program is designed, all children in those grade levels who reside within the area served by the LEA must be eligible to participate.

Non-Federal Share

Section 2103(b)(3) of the Act requires that an SEA's application contain an assurance "that the state will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources." For purposes of this program, this means that the source of the non-Federal share will be either State or local. In either case, the contribution must come from non-Federal sources. In addition, the requirement of a 50 percent non-Federal share of project costs includes both these costs and third party in-kind contributions that are allowable under § 80.24 of EDGAR.

Waiver of Non-Federal Share

Section 2103(c)(2) of the Act authorizes the Secretary to waive the requirement of a 50 percent State or local share if the Secretary determines that adequate resources are not available. Consistent with the intent of Congress in enacting the waiver provision (see S. Rep. No. 222, 100th Cong., 1st Sess. 76 (1987)) the Secretary will grant a waiver only if presented with a clear case of hardship.

Program Authority: 20 U.S.C. 3001–3006.

Dated: January 22, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–2219 Filed 1–29–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
January 30, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Oneida Tribe of Indians of Wisconsin and the State of Wisconsin executed on November 8, 1991.

DATES: This action is effective upon date of publication.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240 (202) 208-7445.

Dated: January 24, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92-2266 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
January 30, 1992

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 172

Aspartame; Denial of Request for Hearing on Final Rules; Food Additives Permitted for Direct Human Consumption; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 87F-0240 and 85F-0346]

Aspartame; Denial of Request for Hearing on Final Rules

AGENCY: Food and Drug Administration.

ACTION: Final rule; denial of request for hearing and response to objections.

SUMMARY: The Food and Drug Administration (FDA) is denying a request for a hearing on the final rules that amended the food additive regulations to authorize the use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings and in frozen, ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings. After reviewing the objections to the two final rules and the request for a hearing, FDA has concluded that no genuine issues of material fact have been raised that would justify a hearing. In addition, FDA is overruling other objections to the final rule for which there were no hearing requests because the agency has addressed similar objections in prior administrative proceedings concerning aspartame.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 2, 1989 (54 FR 23646 through 23647), FDA issued final rules that amended § 172.804(c) (21 CFR 172.804) of the food additive regulations by adding new paragraphs (c)(19) and (c)(20). Section 172.804(c)(19) authorizes the use of aspartame as a sweetener in frozen ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings. This rule responded to a petition filed by Foodways National, Inc. Section 172.804(c)(20) authorizes the use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings. This rule responded to a petition filed by Foodways National, Inc., and the NutraSweet Co.

In accordance with 21 U.S.C. 348(f), four consumers and one consumer group filed objections to the final rules for aspartame. The aspartame Consumer Safety Network (ACSN), the consumer group, also requested a hearing on its objections. The agency's response to each objection and the request for a hearing is provided below.

II. Standard for Granting a Hearing

The Criteria for deciding whether to grant or deny a hearing are stated in 21 CFR 12.24(b). The regulation states that a hearing will be granted when the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 314.300, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing, are met.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214-215 (1980), *reh. den.*, 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620-621 (1973). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. EPA*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any evidence that would be the subject of a hearing, there is no point in holding one. A hearing request must not only contain evidence, but that evidence must raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing. *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971). Stated another way, a hearing is justified only if the objections are made in good faith, and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. See *Citizens for Allegan Country, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality are validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

> The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

Retail Clerks Union, Local 1401, R.C.I.A. v. *NLRB*, 463 F. 2d 316, 322 (DC Cir. 1972). (See *Costle* v. *Pacific Legal Foundation*, *supra* at 1106; See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F. 2d 804 (DC Cir. 1966)).

III. Analysis of Request for Hearing

The ACSN requested that FDA convene a public hearing to receive and evaluate evidence relevant to its objections on four issues. These four issues are: That an aspartame double blind challenge test (Ref. 1) is erroneous; that pilots have lost their medical

certification to fly due to adverse reactions resulting from their consumption of aspartame; that the labeling of aspartame products will not protect individuals with phenylketonuria (PKU), or other sensitive individuals, when these products are served in the home and other social settings; and that pregnant patients are not being warned that aspartame consumption during pregnancy can cause mental retardation and other birth defects.

A. Adverse Reactions to Aspartame

ACSN's first objection challenged the reliability of a double blind test (Ref. 1) reporting that aspartame is unlikely to produce headaches at any greater rate than placebo and implicitly asserted that aspartame causes a wide range of adverse reactions in consumers. In support of this objection, ACSN submitted three letters, published in the New England Journal of Medicine, which reported deficiencies in the study's experimental design. In addition, ACSN submitted news articles, as well as some physician case reports, reporting that some consumers develop headaches after consuming aspartame-containing products.

The study in question was performed by Schiffman, et al., at Duke University. The study was a double blind crossover design in which the investigators administered capsules containing aspartame, at a dosage of 30 milligrams per kilogram of body weight, to 40 human subjects, most of whom had a family or personal history of allergic reactions. In addition, each of the test subjects had previously reported suffering a headache within 24 hours of ingesting aspartame. Thirty-five percent of the subjects reported headaches after taking aspartame, while 45 percent reported headaches after a placebo. No other reactions occurred. The investigators concluded that the study demonstrated that a patient ingesting aspartame is no more likely to suffer a headache than when receiving a placebo.

FDA is denying ACSN's first objection for the following reasons. First, the results of the study by Schiffman, et al., are consistent with the agency's conclusion that aspartame is safe. FDA did not rely upon this study, however, as the basis (or as part of the basis) for the agency's safety determination. Thus, even if the study must be disregarded because it is flawed as ACSN has alleged, this will not alter the foundation underlying FDA's conclusion that aspartame is safe. Therefore, establishment of ACSN's claims of design deficiency would not require the revocation of the aspartame regulations in question. Accordingly, FDA is overruling ACSN's first objection and denying its hearing request on this issue. 21 CFR 12.24(b)(4).

Second, FDA is overruling ACSN's first objection and denying the hearing request to the extent that the objection asserts that aspartame causes a wide range of adverse reactions. The data ACSN filed in support of its hearing request on this issue were in the form of physician case reports and individual testimonials. In previous proceedings on aspartame in November 1986, in which the agency denied a petition of the Community Nutrition Institute (CNI) to revoke all uses of aspartame (Ref. 2), FDA evaluated the use of individual complaints and case reports to determine whether a causal link exists between aspartame consumption and alleged adverse effects of the sweetener. The agency concluded that only well-controlled clinical trials focusing on specific endpoints could provide evidence for the existence of such a link. (Indeed, the United States Supreme Court has characterized anecdotal evidence as "treacherous." *Weinberger* v. *Hynson, Westcott and Dunning*, 412 U.S. 609,629 (1973).) Accordingly, the data and information submitted by ACSN are not reliable and thus, cannot serve as the basis for a hearing. 21 CFR 12.24(b)(2).

B. Seizures and Adverse Reactions of Airline Pilots

ACSN's second objection asserts that "hundreds of pilots have reported adverse reactions including grand mal seizures" and that many pilots have lost their certification to fly because of consumption of aspartame. In support of this second objection, ACSN submitted individual testimonials and case reports allegedly reflecting untoward reactions to aspartame, news articles on pilots and aspartame, and letters from aviation industry consultants.

FDA is overruling ACSN's second objection and denying its hearing request on this issue because the agency has previously considered in prior administrative proceedings on aspartame whether consumption of the sweetener causes seizures. Specifically, in responding in November 1986, to the CNI petition to revoke aspartame's approvals, FDA considered the possible link between aspartame consumption and seizure onset. The agency concluded that there was no reliable evidence from controlled clinical trials or other research that aspartame consumption is not safe (Ref. 2), a position subsequently reiterated in the agency's March 2, 1988, denial of a hearing request on amendments to the aspartame regulation (53 FR 6595 and 6597, March 2, 1988). Once an issue has been considered in a prior proceeding, a party is estopped from raising that same issue in a subsequent proceeding in the absence of new evidence.

In the present case, ACSN's objection neither identifies nor contains any reliable new data that would provide a basis for reconsideration of this factual issue by FDA. ACSN submitted only individual testimonials and case reports to support its assertions. This information is simply more of the type previously submitted in support of the alleged link between aspartame and various adverse reactions and, as noted in the discussion of objection 1, is not a reliable basis for determining a link between consumption of aspartame and such reactions. In the absence of new, reliable information, FDA need not hold a hearing on this factual issue. 21 CFR 12.24(b)(2).

C. Lack of Warning to PKU Children and Adults

ACSN's third objection asserted that PKU children and adults, as well as others wishing to avoid aspartame, will be unable to do so because there will be no warning label on aspartame-containing foods when served in the home and other social settings. ACSN also asserted that there are 20 million PKU gene carriers who are also at risk from consumption of aspartame. In support of this third objection, ACSN filed a sheet "Facts You Should Know About Aspartame or NutraSweet."

FDA is overruling this objection and denying ACSN's request for a hearing on this issue because the issue has previously been considered by FDA in prior proceedings on aspartame. ACSN's assertion that PKU adults and children will be unable to avoid aspartame if the sweetener is permitted in frozen, ready-to-eat cheesecakes, fruits, and fruit toppings is simply a restatement of the basic issue of aspartame's safety when eaten in moderation by average consumers. In a number of prior administrative proceedings, including the final decision of the Commissioner of Food and Drugs on aspartame's initial approval (46 FR 38285, July 24, 1981), the denial of the hearing request on aspartame's approval for use in carbonated beverages (49 FR 6672, February 22, 1984), and the November 21, 1986, denial of CNI's citizen petition to revoke all approved uses of aspartame (Ref. 2), FDA considered the safety of aspartame and concluded that there is a reasonable certainty of no harm from consumption of the additive.

ACSN has neither identified nor filed new reliable data or information to support its assertions on this point. In view of the prior consideration and in the absence of new data, no hearing need be held on this factual issue.

FDA is also denying ACSN's third objection to the extent that it asserts that PKU heterozygotes are at risk from consumption of aspartame. First, ACSN did not identify or file any data or information in support of this aspect of its third objection. Therefore, no hearing is required to be held on this issue. 21 CFR 12.24(b)(2). In addition, in the context of the Commissioner's final decision on aspartame, FDA concluded that there is no evidence that PKU heterozygotes are adversely affected by ingestion of aspartame (46 FR 38285 at 38287–38288, 38290–38291, and 38303–38305). The agency is not required to hold a hearing where, as here, the same issue was raised and considered in a prior proceeding and the objector has filed no new data or information.

D. Risk of Aspartame Use During Pregnancy

ACSN's fourth objection asserts that use of aspartame during pregnancy can cause mental retardation and other birth defects. ACSN asserts that Drs. Louis Elsas and William Partridge have warned against aspartame use during pregnancy. However, ACSN did not identify or file data or other information in support of this objection.

The agency is denying ACSN's fourth objection for two reasons. First, as noted, ACSN filed no data or other information to support its assertions about aspartame's relationship to birth defects. A hearing will not be granted on the basis of mere allegations or general descriptions of positions. 21 CFR 12.24(b)(2).

Secondly, in its prior decisions on the safety of aspartame, FDA considered the risks that high levels of the amino acid phenylalanine pose to the developing fetus (46 FR 38285 at 38290–38291 and 38303–38305, July 24, 1981; 53 FR 6595 at 6598–6600, March 2, 1988). At that time, FDA explained that eliminating aspartame from new products is an ineffective means of preventing birth defects because there are multiple sources of dietary phenylalanine, of which aspartame is only a relatively minor one. Thus, to prevent retardation and birth defects from elevated phenylalanine blood levels, the cause of the elevation must be diagnosed and all dietary sources of phenylalanine restricted. ACSN has filed no new data or information that dispute FDA's previous findings on this factual issue. In such circumstances, a hearing need not be granted.

IV. Analysis of Other Objections

In addition to ACSN, four consumers filed objections to the final aspartame rules, but did not request a hearing on any of these objections. Because there was considerable overlap, FDA has combined the objections in the agency's response to them set out below.

A. Lack of Comprehensive Human Testing

One objection asserted that FDA has not been provided with comprehensive human test data or studies to establish the safety of aspartame. In support of this assertion, the objection stated that: (1) Rodents do not metabolize "aspartic and phenylalanine acids" in the same manner as humans; (2) FDA overrode the objections and recommendations of the 1975 and 1977 FDA Task Forces, and the 1980 Public Board of Inquiry on aspartame; (3) FDA considered the monkey study pivotal and that this study demonstrated the toxicity of aspartame; and (4) there are an increasing number of consumer reports of the harmful effects of aspartame usage which FDA is ignoring. To support this objection, the objector submitted a chronology from 1969 to 1986 that arguably relates to aspartame, a list of scientists who have conducted studies on the reported adverse effects of aspartame, and a list of publications dealing with aspartame's safety.

The agency has considered this first objection and, as discussed below, has determined that it provides no basis for reconsideration or alteration of the final rules at issue. First, the objector did not identify any data or other information to support its assertion that additional studies of aspartame in humans are necessary to establish the safety of the additive. In fact, there have been extensive clinical studies of aspartame, including tests in children, infants, and obese, diabetic, and normal adults; doses of aspartame in these studies have ranged from very large acute doses to more moderate subchronic (13 to 28 weeks) doses. FDA considered and discussed these human test data in prior proceedings involving aspartame (46 FR 38285 at 38292–38294, July 24, 1981; 49 FR 6672 at 6680, February 22, 1984; 48 FR 31376 at 31381, July 8, 1983). Importantly, these clinical studies are only a portion of the scientific data that support the agency's determination that the additive is safe, which data are discussed in the Commissioner's final decision (46 FR 38285 at 38289–38301, July 24, 1981). Likewise, the objector filed no data or information to support its claims concerning rat metabolism. Finally, the objector provided only anecdotal case reports to support its assertion that aspartame has harmful effects, which, as discussed above, are not an adequate basis for support. Accordingly, FDA is overruling this objection.

B. Change in ADI for Aspartame

A second objection asserted that no safe level of aspartame has been established and that FDA originally set the safe maximum daily intake for aspartame at 20 mg/kg/day and then increased it to 50 mg/kg/day without requiring new testing. The objection further asserts that aspartame should have been examined and tested as a drug instead of a food additive. The objector relies upon the data and information identified in objection 1 above to support this objection.

FDA has considered this second objection and has determined, as set out below, that it provides no basis for reconsideration or alteration of the final rules at issue.

First, no objector provided any data or other information to demonstrate that the current acceptable daily intake (ADI) of 50 mg/kg of body weight/day is inadequate. The objector correctly asserts that the original aspartame ADI was 20 mg/kg of body weight/day. However, additional clinical testing data were provided by the petitioner to support a revision of the ADI to 50 mg/kg of body weight/day. In prior administrative proceedings concerning aspartame, FDA discussed the basis for this revision of the ADI (49 FR 6672 at 6678, February 22, 1984). Second, the objector provided no support for its assertion that aspartame should have been tested as a drug. To the contrary, aspartame meets the definition of a food additive, 21 U.S.C. 321(s), not the definition of a drug, 21 U.S.C. 321(g), in the Federal Food, Drug, and Cosmetic Act and thus, should be tested, evaluated, and regulated as such. Accordingly, because no objector has provided any basis for impeaching the current ADI or for testing and regulating aspartame as a drug, FDA is overruling this second objection.

C. Risks Posed by DKP and Methanol

A third objection expressed a concern about two breakdown products of aspartame: Diketopiperazine (DKP) and methanol. The objection asserted that DKP is a cancer-causing substance that occurs in large amounts if aspartame is stored for an extended period of time, especially at elevated temperatures. The objection also challenges FDA's position that the methanol that results from

aspartame consumption is not harmful because methanol is a component of fruit juices and a few vegetables; the objector claims that this reasoning is faulty because methanol in these natural products is safely bound by pectin and is always accompanied by ethanol, which is claimed to block any damaging effects of methanol. In support of this objection, the objector filed an outline of the toxicity of methanol, including the quantity ingested from the degradation of aspartame and a list of the breakdown products of aspartame.

FDA has considered this third objection and has determined, as set out below, that it does not provide a basis for reconsideration or alteration of the final rules in question.

First, FDA has previously considered the possible effects of DKP from metabolism of aspartame (48 FR 31376 at 31380, July 8, 1983; 49 FR 6672 at 6677, February 22, 1984). FDA agrees that DKP concentration may increase if aspartame is stored under abusive conditions. However, based on well-conducted chronic bioassays in two rodent species, FDA previously concluded that the acceptable daily intake of DKP exceeds any dietary exposure that is likely to result from aspartame consumption (48 FR 52899 at 52901, November 23, 1983). No objector filed any data or information to support its assertion to the contrary. In such circumstances, there is no basis to reevaluate the final rules at issue.

Second, FDA has also previously considered the effect, if any, that methanol has on the safety of aspartame consumption. FDA determined that the amount of methanol due to exposure to aspartame is well below levels that produce the earliest signs of methanol toxicity (49 FR 6672 at 6677, February 22, 1984). Furthermore, the levels of methanol from ingesting aspartame is the same magnitude as that presented by other food sources, such as fruit juices and tomatoes; those levels of methanol are easily eliminated or metabolized by the body. No objector provided any new data or information to contradict FDA's previous evaluation of this issue. Accordingly, FDA is overruling this objection.

D. Absence of Warning Labels on Aspartame

A fourth objection questioned the absence of a label warning pregnant women to avoid products containing aspartame and asserted that aspartame causes fetal damage and mental retardation. This objection also questioned the usefulness of the phenylketonuria labeling for products containing aspartame and appeared to imply that certain carriers of the PKU gene are at risk from consumption of aspartame. No objector provided any specific data or information to support the claim that pregnant women cannot safely consume aspartame or that PKU gene carriers are at risk from consumption of aspartame.

In responding above to the ACSN request for a hearing on these same issues, FDA noted that the agency has addressed both issues in prior administrative proceedings on aspartame and that in the absence of new data or information, no hearing need be held. Likewise, in the absence of new data or information, there is no basis for reconsideration or alteration of the final rules at issue here. Therefore, FDA is overruling this fourth objection.

V. Conclusion

As set out above, FDA concludes that no new issues or reliable evidence have been presented to support the objections to the final rules providing for the use of aspartame in frozen desserts and frozen frostings, toppings, and fillings. Furthermore, when analyzed according to the proper standards, ACSN has not justified a hearing on its objections to the final rules.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Schiffman et al., New England Journal of Medicine, 317:1181-1185, 1989.

2. Letter dated November 21, 1986, from John M. Taylor to James S. Turner.

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2235 Filed 1-29-92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 172

[Docket No. 87F-0277]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in malt beverages of less than 7 percent ethanol by volume and containing fruit juice. This action is in response to a petition filed by The Stroh Brewery Co.

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 14, 1987 (52 FR 38144), FDA announced that a food additive petition (FAP 7A4029) had been filed by the Stroh Brewery Co., 100 River Pl., Detroit, MI 48207-4291, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in 21 CFR 172.804(c) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992 file with

the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by adding new paragraph (c)(22) to read as follows.

§ 172.804 Aspartame.

* * * * *

(c) * * *

(22) Malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2236 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 172

[Docket No. 83F-0262]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener available to consumers in bulk package form. This action is in response to a petition filed by the Searle Research and Development Division of G.D. Searle & Co. (now the NutraSweet Co.).

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 8, 1983 (48 FR 40562, FDA announced that a food additive petition (FAP 3A3744) had been filed by the Searle Research and Development Division of G.D. Searle & Co. (now the NutraSweet Co., Box 1111, 4711 Golf Rd., Skokie, IL 60076) proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener available to consumers in bulk package form.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c)(1) and (e) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(1) and by adding paragraph (e)(4) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(1) Dry, free-flowing sugar substitutes for table use (not to include use in cooking) in package units not exceeding the sweetening equivalent of 1 pound of sugar.

* * * * *

(e) * * *

(4) Packages of the dry, free-flowing additive shall prominently display the sweetening equivalence in teaspoons of sugar.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2237 Filed 1-29-92; 8:45 am]

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21 CFR Part 172

[Docket No. 88F-0007]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration IFDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in hot and instant cereals. This action is in response to a petition filed by the NutraSweet Co.

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1988 (53 FR 4075), FDA announced that a food additive petition (FAP 8A4055) had been filed by the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in hot and instant cereals.

Aspartame is an approved sweetener for use in cold breakfast cereals under § 172.804(c)(3). The requested amendment will remove the restrictions on temperature and permit the use of aspartame in hot and instant cereals. FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c)(3) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(3) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(3) Breakfast cereals.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2238 Filed 1-29-92, 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 89F-0127]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in refrigerated ready-to-serve puddings and fillings. This action is in response to a petition filed by General Foods USA.

DATES: Effective January 30, 1992; written objections and request for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register**

of May 15, 1989 (54 FR 20924), FDA announced that a food additive petition (FAP 9A4143) had been filed by General Foods USA, 250 North St., White Plains, NY 10625, proposing that the food additive regulations be amended to include the use of aspartame in refrigerated ready-to-serve puddings and fillings.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended by revising 21 CFR 172.804(c)(13) to read as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(13) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(13) Refrigerated ready-to-serve gelatins, puddings, and fillings.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2239 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

federal register

Thursday
January 30, 1992

Part VI

Office of Management and Budget

Notice of Transmittal of Sequestration Preview Report to the President and Congress

OFFICE OF MANAGEMENT AND BUDGET

January 29, 1992.

Notice of Transmittal of Sequestration Preview Report to the President and Congress

Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Preview Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 92-2447 Filed 1-29-92; 9:56 am]

BILLING CODE 3110-01-M

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