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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV-91-444 FR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 918 for the 1992–93 fiscal period which begins March 1, 1992. This action is needed for the Georgia Peach Industry Committee (committee) to incur operating expenses during the 1992–93 fiscal period and to collect funds during that period to pay those expenses. This action facilitates program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: March 1, 1992, through February 28, 1993.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administrative Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456; telephone (202) 720–3923.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement and Marketing Order No. 918 [7 CFR part 918] regulating the handling of fresh peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Georgia peaches regulated under this marketing order each season and approximately 150 peach producers in Georgia. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the handlers and producers of Georgia peaches may be classified as small entities.

The Georgia peach marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable fresh peaches handled from the beginning of such year within the production area. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are producers of Georgia peaches. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the number of bushels of fresh peaches expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a level that will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the committee before a season starts and expenses are incurred on a continuous basis. The budget and assessment rate must be approved prior to the start of the fiscal period so that the committee will have the authority to incur expenses and the funds to pay such expenses.

The committee met November 5, 1991, and unanimously recommended 1992–93 marketing order expenditures of $16,350. The committee also recommended an assessment rate of $0.01 per bushel of assessable peaches shipped under Marketing Order 918. In comparison, 1991–92 fiscal period expenditures were $18,000 and the assessment rate was $0.01 per bushel.

The 1992–93 budget projects an estimated assessment income of $15,000 based on shipments of 1.5 million bushels of fresh peaches. In addition to the projected assessment income, additional funds will be made available by drawing $850 from the reserve account ($750 in 1991–92) and $500 in accrued interest from the reserve account ($750 in 1991–92). The committee's reserve is well within the amount authorized under the marketing order.

The major committee expenditure projected for 1992–93 is the management services fee of $12,000. This fee is paid to the Georgia Farm Bureau Marketing Association to manage the committee's daily operations. This expenditure remains unchanged from fiscal period 1991–92. Other expenditures for 1992–93 are the same as, or slightly lower than, those for the 1991–92 fiscal period.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived for the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on December 11, 1991 [56 FR 288]. That document contained a

proposal to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through January 10, 1992. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of the section until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal year begins on March 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable peaches handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 918

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 918 is amended as follows:

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

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

2. A new § 918.228, is added to read as follows:

Note: This section will not appear in the *Code of Federal Regulations.*

§ 918.228 Expenses and assessment rate.

Expenses of $16,350 by the Georgia Peach Industry Committee are authorized, and an assessment rate of $0.01 per bushel of assessable peaches is established for the fiscal period ending February 28, 1993. Any unexpended funds may be carried over as a reserve into 1993–94 fiscal period.

Dated: January 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–2665 Filed 2–3–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 944

[Docket No. FV-91-240FR]

Olives Imported Into the United States; Authorization To Import Smaller Sized Olives for Limited Uses and Establishment of Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule continues in effect an interim final rule which authorized the importation of certain bulk olives into the United States to be used in the production of limited use styles of olives such as wedges, halves, slices, or segments during the period October 1, 1991, through July 31, 1992. Such olives are not required to meet the applicable minimum size requirements for use in the production of whole and whole pitted canned ripe olives. This rule also continues in effect minimum size requirements for such olives during the same period and updates inspection office address lists contained in the import regulation. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the olive import regulation into conformity with the requirements of the California olive marketing order.

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 690–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which would include olive importers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum quality (grade and size) requirements. All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Customs Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

An interim final rule was issued on September 24, 1991, and published in the **Federal Register** on October 1, 1991 [56 FR 49669], with a comment period ending on October 31, 1991. That rule modified paragraph (b)(12) of the olive import regulation. The modification authorized the importation of bulk olives which do not meet the applicable minimum size requirements for whole and whole pitted olives to be used in the production of limited use styles. The authorization is effective during the period October 1, 1991, through July 31, 1992. The interim final rule also established size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced

products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the requirements for olives for limited use grown in California, and the Department's decision to implement the recommended changes effective October 1, 1991 [56 FR 49667]. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

On December 4, 1990, the committee recommended suspension of the minimum sizes that were established for limited use olives and the establishment of smaller sizes that would be authorized for use in the production of limited use styles during the 1991–92 season. The authorization to use these smaller sized olives in the production of limited use styles began October 1, 1991, and applies through July 31, 1992. The grade requirements for such olives are the same as those implemented last season. The size requirements are based on a study authorized by the committee and conducted by the olive handlers within the California olive industry during the 1990–91 crop year. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements on varieties not grown domestically. The minimum sizes are as follows (previous minimum sizes in parentheses):

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties.	1/105 pound (1/90)
Variety Group I of the Ascolano, Barouni, or St. Agostino varieties.	1/180 pound (1/140)
Variety Group 2, except the Obliza variety.	1/205 pound (1/180)
Variety Group 2 of the Obliza variety.	1/180 pound (1/140)
Olives not identifiable as to variety or variety group.	1/205 pound (1/180)

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size. These sizes for the variety groups are the minimum sizes which are desirable for use in the production of limited use styles at this time.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing grade and size regulations for such olives requires that the same authorization and comparable regulations be issued for imported bulk olives.

Permitting importers to continue to use smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion thereby, increasing returns to importers. In the absence of this action, the smaller fruit could not be imported for limited use, and would have to be disposed of for less profitable, non-canning uses under the supervision of the inspection service or exported.

The Department also removed paragraphs (b)(12)(vi) through paragraphs (b)(12)(x) from the import regulation. These paragraphs pertained to pitted ripe olives offered for importation in bulk for use in the production of limited use styles. There is no evidence that there have ever been any pitted olives imported in bulk for limited uses. The Department does not believe that such olives will be offered for importation in the future. Therefore, these paragraphs are not necessary and have been deleted.

A final change in paragraph (c) updated the list of regional inspection offices to reflect the consolidation of the Southeastern and Central offices into the Eastern Regional Office and the relocation of the Western Regional Office.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule published in the **Federal Register** on October 1, 1991 [56 FR 49671] will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues a relaxation which provides importers the opportunity to import additional supplies of olives to meet market needs for limited use styles; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) the interim final rule provided a 30-day comment period and no comments were received.

The United States Trade Representative (USTR) has reviewed this action to determine whether it is consistent with U.S. international trade obligations and concurs with its implementation.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwi fruit, Limes, Olives and Oranges.

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

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

§ 944.401 [Amended]

2. Accordingly, the interim final rule amending provisions in section 944.401, which was published in the **Federal Register** [56 FR 49671; October 1, 1991], is adopted as a final rule.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: January 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–2667 Filed 2–3–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1065

[DA-92-02]

Milk in the Nebraska-Western Iowa Marketing Area; Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The revision reduces the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants to 20 percentage points for the months of January through August 1992. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. The reduction of the shipping standard is necessary to eliminate the need for making costly and inefficient shipments of milk to maintain pool status for producers who have historically been associated with the market.

EFFECTIVE DATE: January 1, 1992 through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages: Issued January 9, 1992; published January 15, 1992 (57 FR 1664).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action lessens the regulatory impact of the order on milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1065.7(b) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 1664) concerning a proposed relaxation of the supply plant shipping percentage. The revisions were proposed to be effective for the months of January through August 1992. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by January 22, 1992. No opposing comments were received.

Statement of Consideration

This action revises the supply plant shipping percentages set forth in § 1065.7(b) and is applicable to milk marketed on and after January 1, 1992. The revision lowers the shipping percentages for supply plants to 20 percent of receipts during the months of January through August 1992. The specific revision reduces the supply plant shipping percent by 10 percentage points during the months of January through March (from 30 percent to 20 percent of receipts) and by 20 percentage points during the months of April through August (from 40 percent to 20 percent of receipts).

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy farmers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240) reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March. The 40 percent figure was inadvertently changed to 30 percent in the current issue of the Code of Federal Regulations.

Revision of the supply plant shipping standard was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct ship producer milk located in the general area of Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, costly and inefficient movements of milk will have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

In view of marketing conditions, the supply plant shipping percentage should be relaxed. A reduction of the supply plant shipping percentage will eliminate the need for making unnecessary shipments of milk from supply plants to distributing plants.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective dates; and,

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision. No opposing views were received.

Therefore, good cause exists for making this revision effective, less than 30 days from date of publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

Title 7 part 1065 is amended as follows:

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1065 continues to read as follows:

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

§ 1065.7 [Amended in Part]

Note: This amendment will not be published in the annual Code of Federal Regulations.

2. In the introductory text of § 1065.7(b), the provision "30 percent" is revised to "20 percent" for the months of January through August 1992.

Signed at Washington, DC, on January 29, 1992.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 92-2558 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

[DA-92-03]

Milk in the Nebraska-Western Iowa Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The action reduces the amount of milk that must be transferred from supply plants to pool distributing plants and removes the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. This action is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: January 1, 1992 through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension: Issued January 9, 1992; published January 15, 1992 (57 FR 1665).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 15, 1992 (57 FR 1665) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing this action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of January through August 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

Statement of Consideration

This action suspends certain provisions of the order for the months of January through August 1992. The suspension reduces the amount of milk that must be transferred from supply plants to pool distributing plants and allows milk to be diverted to a nonpool plant without being physically received at a pool plant during the month.

Currently the order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The suspension removes the requirement that milk be transferred from a supply plant to a distributing plant each month, allows all direct-shipped milk to count as a qualifying shipment, and removes the requirement that a dairy farmer's milk be physically received at a pool plant each month. This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market.

Current projections indicate that there will be ample supplies of direct ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. Thus, it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, it is inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a suspension, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded opportunity to file written data, views, or arguments concerning the suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1065, §§ 1065, 1065.6, 1065.7(b)(1), and 1065.13 of the Nebraska-Western Iowa order, are hereby suspended for the months of January through August 1992.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1065 continues to read as follows:

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

§ 1065.6 [Temporarily suspended in part]

2. In § 1065.6, the words "during the month" are hereby suspended for the months of January through August 1992.

§ 1065.7 [Temporarily suspended in part]

3. In § 1065.7(b)(1), the words "not more than one half of" are hereby suspended for the months of January through August 1992.

§ 1065.13 [Temporarily suspended in part]

4. In § 1065.13, paragraph (d)(1) is hereby suspended for the months of January through August 1992.

Signed at Washington, DC, on January 29, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-2559 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 15

RIN 3150-AE14

Revisions to Procedures to Issue Orders

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to conform several sections in 10 CFR parts 2 and 15 to the changes in part 2 contained in the final rule "Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons," which was effective September 16, 1991 (56 FR 40678; August 15, 1991).

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mary E. Wagner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4976.

SUPPLEMENTARY INFORMATION: The final rule, "Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons", 56 FR 40664 (August 15, 1991), contained revisions to 10 CFR part 2 that, in part, removed the provisions on orders to show cause from the Commission's general ordering authority contained in § 2.202, and substituted "order" for "order to show cause" in § 2.201. It also revised § 2.202 to establish a mechanism to issue orders both to licensees (as the previous rules had done) and to any person subject to the jurisdiction of the Commission, when necessary to protect public health and safety or to minimize danger to life or property or to protect the common defense and security.

There are a small number of sections in the Commission's regulations where conforming changes consistent with the new rule were not accomplished. Specifically, §§ 2.702, 2.1201 and 15.29 continue to refer to an "order to show cause," although such an order is no longer specifically defined in new Subpart B of 10 CFR Part 2. These sections have been revised so that "order" is substituted for "order to show cause", and "order for modification of license" is replaced by "order" in § 2.1201. A reference to "demand for information" is added to § 15.29 to clarify that either an order or a demand for information may be issued before a suspension or revocation. Accordingly, §§ 2.702, 2.1201, and 15.29 are being revised to conform to the new rule that became effective on September 16, 1991.

Because this is an amendment dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature consisting of conforming amendments to an existing procedural rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0136.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not not apply to this final rule, and therefore, that a backfit analysis is not required for this rule, because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 15

Administrative practice and procedure, Debt collection.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 15.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.702 is revised to read as follows:

§ 2.702 Docket.

The Secretary shall maintain a docket for each proceeding subject to this part, commencing with the issuance of the initial notice of hearing, notice of consideration of issuance of facility operating license or other proposed action specified in § 2.105, or order. The Secretary shall maintain all files and records, including the transcripts of testimony and exhibits and all papers, correspondence, decisions and orders filed or issued.

3. Section 2.1201, of subpart L, is revised to read as follows:

§ 2.1201 Scope of subpart.

(a) The general rules of this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for—

(1) The grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter; or

(2) The grant, renewal, or licensee-initiated amendment of an operator or senior operator license subject to part 55 of this chapter.

(b) Any adjudication regarding, (1) a materials license subject to parts 30, 32 through 35, 39, 40, or 70, or an operator or senior operator license subject to part 55 that is initiated by a notice of hearing issued under § 2.104, or (2) a notice of proposed action under § 2.105, or a request for hearing under subpart B of 10 CFR part 2 on an order or a civil penalty, is to be conducted in accordance with the procedures set forth in subpart G of 10 CFR part 2.

PART 15—DEBT COLLECTION PROCEDURES

4. The authority citation for part 15 continues to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec. 1, Pub. L. 97-258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97-365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 4 CFR 101-105.

5. Section 15.29 is revised to read as follows:

§ 15.29 Suspension or revocation of license.

The NRC may suspend or revoke any license or approval which the NRC has granted to the debtor for any inexcusable, prolonged, or repeated failure of the debtor to pay a delinquent debt. Before suspending or revoking any license or approval for failure to pay a debt, the NRC shall issue to the debtor (by either registered or certified mail) an order or a demand for information as to why the license or other privilege should not be suspended or revoked. The NRC shall allow the debtor no more than 30 days to pay the debt in full, including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The NRC may suspend or revoke the license or approval at the end of this period. If a license is revoked under authority of this part, a new application, with appropriate fees, must be made to the NRC. The NRC may not consider an application unless all previous delinquent debts of the debtor to the NRC have been paid in full.

Dated at Rockville, Maryland, this 17th day of January 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-2648 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-138-AD; Amendment 39-8169; AD 92-03-12]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707/720 series airplanes, which currently requires inspection and repair, if necessary, of cracks in the wing rear spar upper chord. This action requires replacement of "interim repairs", which used the stop drill procedure, with a "final repair" after a finite number of flight cycles. This amendment is prompted by concerns that the stop drill procedure does not provide adequate assurance that the crack will not continue to propagate. This condition, if not corrected, could lead to failure of the wing rear spar.

DATES: Effective March 10, 1992.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the **Federal Register** as of June 19, 1991 (56 FR 25356, June 4, 1991).

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-11-06, Amendment 39-7002, (56 FR 25356, June 4, 1991), which is applicable to certain Boeing Model 707/720 series airplanes, was published in the **Federal Register** on August 30, 1991, (56 FR 42962). That action proposed to require inspection of the wing rear spar upper chord to detect cracks, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 343 Boeing Model 707/720 series airplanes of the affected design in the worldwide fleet. It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 160 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $616,000.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-7002 and by adding the following new airworthiness directive:

92-03-12. **Boeing:** Amendment 39-8169. Docket 91-NM-138-AD. Supersedes AD 91-11-06, Amendment 39-7002.

Applicability: Model 707/720 series airplanes; as listed in Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure continued structural integrity of the wing rear spar upper chord, accomplish the following:

(a) Perform a close visual inspection for cracks and corrosion of the wing rear spar upper chord from wing station (WS) 109.45 to WS 360 for Model 707-300 series airplanes; or from WS 180.71 to WS 360 for Model 720, 707-100, and 707-200 series airplanes; at rib and stiffener locations. Inspect in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, prior to the later of the times specified in subparagraphs (a)(1) and (a)(2) of this AD, unless previously accomplished within the last 900 flight cycles or 335 days. Repeat the inspection at intervals not to exceed 1,000 flight cycles or one year, whichever occurs first.

(1) Within the next 30 days or 100 flight cycles after June 19, 1991 (the effective date of Amendment 39-7002, AD 91-11-06); or

(2) Prior to the accumulation of 10,000 flight cycles.

(b) If cracks or corrosion areas are found, prior to further flight, accomplish either subparagraph (b)(1) or (b)(2) of this AD:

(1) Repair, other than by stop drill procedure, in accordance with Part III, Figure 2, of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985 (this is considered the "final repair"), or

(2) Repair in accordance with the stop drill procedures specified in Part III, Figure 2, of Service Bulletin 3240, Revision 3, dated October 18, 1985. This repair method may only be used provided that the limitations specified in Part III, Figure 2, Items 5a and 5b, of the service bulletin are met.

(i) Immediately after stop drilling, conduct an eddy current inspection of the stop drill hole in accordance with the instructions in Section 5-5-1 of D6-7170, Nondestructive Test Document, to ensure that the crack does not extend beyond the stop drill. Thereafter, inspect visually for crack growth beyond the stop drill at intervals not exceeding 300 flight cycles.

(ii) If crack growth beyond the stop drill occurs, prior to further flight, accomplish the final repair in accordance with paragraph (b)(l) of this AD.

(iii) Within 1,000 flight cycles or one year, whichever occurs first, after the stop drill has been accomplished, accomplish the final repair in accordance with paragraph (b)(l) of this AD.

(c) If previously stop drilled cracks are found as a result of the inspection required by paragraph (a) of this AD, conduct an eddy current inspection of the stop drill hole for crack growth beyond the stop drill, in accordance with the instructions in Section 5-5-1 of Boeing Document D6-7170, Nondestructive Test Document.

(1) If growth beyond the stop drill has occurred, prior to further flight, repair in accordance with paragraph (b)(l) of this AD.

(2) If growth beyond the stop drill has not occurred, and the limitations specified in Part III, Figure 2, Items 5a and 5b, of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, are met, prior to further flight accomplish either subparagraph (c)(1)(i) or (c)(l)(ii) of this AD:

(i) Repair in accordance with paragraph (b)(1) of this AD; or

(ii) Reinspect visually for crack growth beyond the stop drill at intervals not exceeding 300 flight cycles.

(A) If crack growth beyond the stop drill occurs, prior to further flight, accomplish the final repair in accordance with paragraph (b)(1) of this AD.

(B) Within 1,000 flight cycles or one year, whichever occurs first after the initial inspection revealed the stop drill crack, accomplish the final repair in accordance with paragraph (b)(1) of this AD.

(d) After each of the inspections and repairs required by this AD have been performed, apply BMS 3-23 corrosion inhibitor, or equivalent, to the affected areas.

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

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

(g) The inspections and repairs shall be done in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985. This incorporation by reference was previously approved by the Director of the Federal Register as of June 19, 1991 (56 FR 25356, June 4, 1991) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39-8169), AD 92-03-12, becomes effective March 10, 1992.

Issued in Renton, Washington, on January 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2627 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1201

[Docket No. 920102-2002]

RIN 0644-AA01

United States Travel and Tourism Administration Facilitation Fee

AGENCY: United States Travel and Tourism Administration, Commerce.

ACTION: Final rule.

SUMMARY: This notice advises that the Under Secretary for Travel and Tourism has determined that charging or collecting the United States Travel and Tourism Administration Facilitation Fee (the fee), established under section 306 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508) (the Act), from commercial airlines is inconsistent with the Chicago Convention, a treaty entered into by the United States. Based on this determination, and consistent with the requirements of Public Law 101-508, the Under Secretary is suspending action to charge or collect the fee from commercial airlines. In

addition, the Under Secretary will not charge or collect the fee from passenger cruise ship lines. This decision applies to all fees not collected for the first quarter of calendar year 1991, and all subsequent quarters. In addition, the Under Secretary will refund amounts collected for the first quarter of calendar year 1991.

Accordingly, the Under Secretary is withdrawing the Notice of Proposed Rulemaking published March 15, 1991 (56 FR 11116) and is removing 15 CFR part 1201 (56 FR 176, Jan. 3, 1991).

DATES: This rule is effective: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Lee J. Wells, Director, Office of Strategic Planning and Administration, United States Travel and Tourism Administration ((202) 377-3611).

SUPPLEMENTARY INFORMATION:

Background

Section 306 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508), directs the Secretary of Commerce to charge and collect a United States Travel and Tourism Administration (USTTA) Facilitation Fee from commercial airlines and passenger cruise ship lines transporting foreign passengers to the United States, "to the extent (such action is) not inconsistent with treaties or international agreements entered into by the United States." A final rule imposing the fee was published in the Federal Register on January 3, 1991 (56 FR 176). Responsibility for charging and collecting the fee was delegated within the Department of Commerce to the Under Secretary for Travel and Tourism.

For calendar year 1991, the fee was assessed in the amount of one dollar per foreign passenger transported by a commercial air line or passenger cruise ship line into the United States for purposes of business or pleasure. Carriers were billed for the first quarter of 1991.

On March 15, 1991 (56 FR 11116), USTTA published a notice of proposed rulemaking on the USTTA Facilitation Fee. The proposed rule set out procedures by which the Under Secretary for Travel and Tourism (Under Secretary) would charge and collect the fee. The proposed regulations also provided that the Under Secretary would not charge or collect any fee where such charge or collection would be inconsistent with treaties or international agreements entered into by the United States. In determining whether charging or collecting the fee would be inconsistent with treaties or international agreements entered into by the United States, the Under Secretary would consult with the Departments of State and Transportation, and other Federal agencies, as appropriate. The proposed regulations further set out procedures for affected airlines and passenger cruise ship lines to request exemption from the fee and to withhold payment of the fee based on a claim, and pending the Under Secretary's determination, that charging and collecting the fee from that particular airline or passenger cruise ship line would be inconsistent with treaties or international agreements entered into by the United States.

In response to these proposed procedures, individual commercial airlines and representatives of airlines submitted over one hundred twenty (120) requests to the Under Secretary for exemptions from charge or collection of the fee based on claims that such action would be inconsistent with treaties or international agreements entered into by the United States. In every case, claimants asserted that charging and collecting the fee would violate Article 15 of the Chicago Convention of the International Civil Aviation Organization (ICAO). Article 15 prohibits the imposition of fees or charges based solely on the right of entry into or exit from a signatory State.

The Under Secretary requested advice from the Departments of State and Transportation on the merits of claimants' arguments. Both agencies advised that charging and collecting the fee would be inconsistent with obligations of the United States under Article 15 of the Chicago Convention.

On October 4, 1991 the Under Secretary published a notice in the Federal Register (56 FR 50313) announcing, *inter alia*, that he would delay submitting bills for the second and subsequent quarters of 1991 until he had determined whether assessment and collection of the Facilitation Fee would be consistent with treaties or international agreements entered into by the United States.

Based on his review of the foregoing materials, including the advice from the Departments of State and Transportation, the Under Secretary has determined that charging and collecting the fee from commercial passenger airlines would be inconsistent with a treaty entered into by the United States because collection of the fee would violate Article 15 of the Chicago Convention. In addition, although the Chicago Convention does not apply to passenger cruise ship lines, the Under Secretary extends his determination to not charge or collect the fee to such carriers. The Act requires that, beginning in calendar year 1992, funds in the amount of USTTA's annual appropriation be completely recovered through fees apportioned among carriers on a pro-rata basis. Under the Act, each carrier is to pay its proportionate share of USTTA's annual appropriation based on the number of passengers it transports relative to the number transported by all other carriers from which the fee is charged and collected. Data available to the Under Secretary indicate that passenger cruise ship lines transport only 1 percent of foreign passengers arriving in the United States. To attempt to collect the fee from carriers transporting such a small percentage of the passengers upon which the fee was intended to be calculated would be manifestly unfair to those carriers and would not serve the legislative intent expressed in the statute that the fee be paid on a pro-rata basis by commercial airlines and passenger cruise ship lines transporting passengers into the United States.

Accordingly, the Under Secretary is withdrawing the Notice of Proposed Rulemaking published March 15, 1991 (56 FR 11116) and is removing 15 CFR part 1201 (56 FR 176, January 3, 1991).

Carriers identified as having paid the fee for first quarter 1991 will receive a refund in the amount paid, without interest.

Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department of Commerce must judge whether the rule promulgated here is "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Under Secretary for Travel and Tourism has determined that the rule promulgated here is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final

Regulatory Impact Analysis has been or will be prepared.

Administrative Procedure Act

The Under Secretary of Commerce for Travel and Tourism, pursuant to subsections 553 (b)(A) and (d)(2) of the Administrative Procedure Act, finds that because charging and collecting the USTTA Facilitation Fee from commercial airlines and passenger cruise ship lines has been determined to be: (1) In the case of commercial airlines, contrary to a treaty entered into by the United States, and (2) in the case of passenger cruise ship lines, where the fee is not also collected from airlines, manifestly unfair and not serving legislative intent, the requirement to pay the fee should be removed as soon as possible. Thus, further delay in promulgating this rule is not in the public interest, and no notice and comment or delay in the effective date is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor a final Regulatory Flexibility Analysis has been or will be prepared.

Paperwork Reduction Act

This rule does not contain any collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511).

Executive Order 12612

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

List of Subjects in 15 CFR Part 1201

Administrative practice and procedure, Air carriers, Passenger vessels, Travel.

For the reasons set forth in the Preamble, title 15 of the Code of Federal Regulations is amended by removing part 1201.

PART 1201—[REMOVED]

1. Part 1201 consisting of § 1201.1 is hereby removed.

Dated: January 29, 1992.

John G. Keller, Jr.,

Under Secretary for Travel and Tourism.

[FR Doc. 92–2626 Filed 2–3–92; 8:45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-92-3245; FR-3011-N-05]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim fair market rents for Monroe County, PA.

SUMMARY: This Notice announces interim fair market rents (FMRs) for Monroe County, PA, which was designated a separate fair market rent area by the HUD Appropriations Act for fiscal year 1992. The FMRs contained in the Notice apply to the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); and Section 8 housing assisted under part 886, subparts A and C (Section 8 loan management and property disposition programs). FMRs are also used to determine payment standard schedules in the Rental Voucher program.

DATES: *Effective date:* The FMRs published in this notice are effective on February 4, 1992. *Comments due date:* March 5, 1992.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department published a Notice of proposed 1992 FMRs on April 11, 1991 (56 FR 14732) and, after a period of public comment, final FMRs on September 26, 1991 (56 FR 49024).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991) amended section 8(c)(1) by adding the following new sentences:

> The Secretary shall also establish separate fair market rentals for Monroe County in the Commonwealth of Pennsylvania. In establishing fair market rentals for the remaining portion of the market area in which Monroe County is located, the Secretary shall establish the fair market rentals as if such portion included Monroe County.

Due to this statutory provision, the Department is publishing FMRs for Monroe County, PA for immediate effect. The public is invited to comment on the FMR levels announced in this Notice. Comments must include sufficient information (including local data and a full description of the methodology used) to justify any proposed changes, which may be proposed in all or any of the unit sizes. If the recommendations and supporting data justify any change in the FMR levels, the Department will publish a Notice of those changes.

In order to obtain an accurate, up-to-date FMR for Monroe County, the Department conducted a Random Digit Dialing (RDD) telephone survey of local rental housing. This survey was completed in January, 1992, and the results were then updated to the "as of date" of the fiscal year 1992 FMRs, April 1, 1991. The RDD survey method is a technique that HUD uses to obtain statistically reliable FMR estimates for selected areas. These surveys employ computers to select a random sample,

dial and keep track of the telephone numbers, and tabulate responses.

Proposed fiscal year 1993 FMRs for Monroe County, to be effective October 1, 1992, will be included in the Notice of proposed FMRs for all areas in a publication scheduled for spring 1992. Following a period of public comment, the final FMRs for fiscal year 1993 will be published before October 1, 1992.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, for Monroe County, PA are as follows: For an efficiency unit, $386; for a one-bedroom unit, $468; for a two-bedroom unit, $551; for a three-bedroom unit, $689; for a four-bedroom unit, $771. The FMRs for manufactured home spaces are $113 for a single-wide space, and $113 for a double-wide space.

Dated: January 27, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–2690 Filed 2–3–92; 8:45 am]

BILLING CODE 4210-32-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final Rules.

SUMMARY: The National Labor Relations Board is incorporating in 29 CFR part 102 an appendix setting forth the official starting and closing times of its various offices. The intended effect of this addition to the rules is to provide formal notice to the public of these hours.

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is adding an appendix A to part 102 of its rules setting forth the official starting and closing times of its various headquarters and field offices. This addition to the rules will provide formal notice of these hours to the public in order to facilitate contacts between the public and the Board. In particular, this will facilitate compliance with the Board's new rule 102.111, published at 56 FR 49141 and effective October 28, 1991, linking the time for filing documents to the "official closing time of the receiving office."

Paragraphs (a) and (b) of § 102.111, which presently link the time for filing documents to the "official closing time of the receiving office" are modified to include cross references to the new appendix A that sets forth those closing times. A new appendix A is then added at the end of part 102. This appendix lists the official business hours, in local time, the NLRB Headquarters office, the several offices of the Division of Judges, and the various regional, sub-regional, and resident offices maintained by the Board throughout the country.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

PART 102—[AMENDED]

Accordingly, 29 CFR part 102 is amended as follows:

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Sec. 102.117(c) also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.111 is revised to read as follows:

§ 102.111 Time computation.

(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the official closing time of the receiving office on the next Agency business day (see appendix A to this part 102 setting forth the official business hours of the Agency's several offices). When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit, if any, for such filing or extension of time that may have been granted (see appendix A to the part 102 setting forth the official business hours of the Agency's several offices). A request for an extension of time to file a document shall be filed no later than the official closing time of the receiving office on the date on which the document is due. Requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due

date, but in no event later than the day before the due date. *Provided, however,* The following documents must be received on or before the official closing time of the receiving office on the last day for filing:

(1) Charges filed pursuant to section 10(b) of the Act (see also § 102.14).

(2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.

(3) Petitions to revoke subpoenas.

(4) Requests for extensions of time to file any document for which such an extension may be granted.

3. An appendix A is added at the end of this part 102 to read as follows:

Appendix A.—NLRB Official Office Hours

NLRB Headquarters, Business Hours (Local Time):	
Washington, DC	8.30 a.m.–5 p.m.
Division of Judges, Business Hours (Local Time):	
Washington, DC	8:30 a.m.–5 p.m.
San Francisco	8:30 a.m.–5 p.m.
New York	8:30 a.m.–5 p.m.
Atlanta	8 a.m.–4:30 p.m.
Regional Office Business Hours (Local Time):	
1—Boston	8:30 a.m.–5 p.m.
2—New York	8:45 a.m.–5:15 p.m.
3—Buffalo	8:30 a.m.–5 p.m.
Albany	8:30 a.m.–5 p.m.
4—Philadelphia	8:30 a.m.–5 p.m.
5—Baltimore	8:15 a.m.–4:45 p.m.
Washington, DC	8:15 a.m.–4:45 p.m.
6—Pittsburgh	8:30 a.m.–5 p.m.
7—Detroit	8:15 a.m.–4:45 p.m.
Grand Rapids	8:15 a.m.–4:45 p.m.
8—Cleveland	8:15 a.m.–4:45 p.m.
9—Cincinnati	8:30 a.m.–5 p.m.
10—Atlanta	8 a.m.–4:30 p.m.
Birmingham	8 a.m.–4:30 p.m.
11—Winston-Salem	8 a.m.–4:30 p.m.
12—Tampa	8 a.m.–4:30 p.m.
Jacksonville	8 a.m.–4:30 p.m.
Miami	8 a.m.–4:30 p.m.
13—Chicago	8:30 a.m.–5 p.m.
14—St. Louis	8 a.m.–4:30 p.m.
15—New Orleans	8 a.m.–4:30 p.m.
16—Fort Worth	8:15 a.m.–4:45 p.m.
Houston	8 a.m.–4:30 p.m.
San Antonio	8 a.m.–4:30 p.m.
17—Kansas City	8:15 a.m.–4:45 p.m.
Tulsa	8:15 a.m.–4:45 p.m.
18—Minneapolis	8 a.m.–4:30 p.m.
Des Moines	8 a.m.–4:30 p.m.
19—Seattle	8:15 a.m.–4:45 p.m.
Anchorage	8:15 a.m.–4:45 p.m.
Portland	8 a.m.–4:30 p.m.
20—San Francisco	8:30 a.m.–5 p.m.
Honolulu	8 a.m.–4:30 p.m.
21—Los Angeles	8:30 a.m.–5 p.m.
San Diego	8:30 a.m.–5 p.m.
22—Newark	8:45 a.m.–5:15 p.m.
24—Puerto Rico	8:30 a.m.–5 p.m.
25—Indianapolis	8:30 a.m.–5 p.m.
26—Memphis	8 a.m.–4:30 p.m.

Appendix A.—NLRB Official Office Hours—Continued

Little Rock	8 a.m.–4:30 p.m.
Nashville	8 a.m.–4:30 p.m.
27—Denver	8:30 a.m.–5 p.m.
28—Phoenix	8:15 a.m.–4:45 p.m.
Albuquerque	8:15 a.m.–4:45 p.m.
El Paso	8:15 a.m.–4:45 p.m.
Las Vegas	8:30 a.m.–5 p.m.
29—Brooklyn	9 a.m.–5:30 p.m.
30—Milwaukee	8 a.m.–4:30 p.m.
31—Los Angeles	8:30 a.m.–5 p.m.
32—Oakland	8:30 a.m.–5 p.m.
33—Peoria	8:30 a.m.–5 p.m.
34—Hartford	8:30 a.m.–5 p.m.

Dated, Washington, DC, January 29, 1992.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 92–2582 Filed 2–3–92; 8:45 am]

BILLING CODE 7545–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1627

Effect of the Older Workers Benefit Protection Act on the Commission's Final Rule on Non-EEOC Supervised Waivers Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Removal of final rule on Age Discrimination in Employment Act (ADEA) waivers.

SUMMARY: Because the Older Workers Benefit Protection Act provided that the rule on non-EEOC supervised waivers under the ADEA issued by the Equal Employment Opportunity Commission no longer has any force or effect, the Commission is removing this rule from the Code of Federal Regulations (29 CFR 1627.16(c)).

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: John K. Light, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4690.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Older Workers Benefit Protection Act (OWBPA) (Public Law 101–433) provides:

(b) Rule on Waivers.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in § 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

The OWBPA was signed into law on October 16, 1990 and section 202(b) of that Act became effective on that date. Therefore, § 1627.16(c) of title 29, Code of Federal Regulations, no longer has force and effect, and the provision will be deleted.

List of Subjects in 29 CFR Part 1627

Aged, Equal employment opportunity, Reporting and recordkeeping requirements.

Accordingly, the Commission amends 29 CFR part 1627 as follows:

PART 1627—[AMENDED]

1. The authority citation for part 1627 continues to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, 29 U S.C. 211; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19087.

§ 1627.16 [Amended]

2. Section 1627.16 is amended by removing paragraph (c).

Signed this 22nd Day of January 1992 at Washington, DC.

For the Commission.

Evan J. Kemp, Jr.,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 92–2583 Filed 2–3–92; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–024–5151; FRL–4094–2]

Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 18, 1990, the State of South Carolina through the South Carolina Department of Health and Environmental Control submitted revisions to its State Implementation Plan (SIP). These revisions became state effective on August 24, 1990. The submittal included revisions to Regulation 62.1 (Definitions, Permit Requirements and Emission Inventory), Regulation 62.5; Standard No. 5 (Volatile Organic Compounds), Standard No. 5.1 (Lowest Achievable Emission Rate (LAER) Applicable to Volatile Organic Compounds) and Standard No. 7 (Prevention of Significant Deterioration). EPA is approving all of the revisions identified above except for Regulation

62.5, Standard No. 5.1 (LAER), Standard No. 7 (Prevention of Significant Deterioration) and Standard No. 5, Part F (Recordkeeping, Reporting, and Monitoring). Regulation 62.5, Standard No. 5.1 (LAER) will be acted upon in a separate notice. EPA is taking no action on the revision to Regulation 62.5, Standard No. 5, Part F (Recordkeeping, Reporting and Monitoring) because it contains deficiencies. Volatile organic compounds sources located in ozone nonattainment areas must keep daily records. This section does not include this provision, therefore, EPA cannot approve the revision as currently written.

Also, EPA will not act upon Regulation 62.5, Standard No. 7. According to the August 17, 1990, guidance memorandum from EPA Headquarters (Procedures and Guidance for the Incorporation of NO_2 PSD Increments Into State and Local PSD Programs), revisions should be evaluated for each state or local program incorporating the protection of NO_2 increments, to fulfill federal requirements, including program elements addressing the tracking of the increment consumption. The submitted provisions do not contain the required program elements.

EFFECTIVE DATE: This action will be effective on April 6, 1992, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Scott Miller of EPA Region IV (address below). Copies of the material submitted by South Carolina may be examined during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Scott Miller of the Region IV Air Programs Branch of the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the volatile organic compound (VOC) provisions of the South Carolina Air Pollution Control Regulations and Standards. These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became state effective on May 24, 1985.

On May 3, 1988, EPA released data on the ozone attainment status of areas throughout the nation. On May 26, 1988, EPA notified the Honorable Carroll A. Campbell that the South Carolina SIP needed revising to achieve the ozone National Ambient Air Quality Standard (NAAQS), pursuant to Section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H).

This SIP call, in part, required South Carolina to prepare an updated emission inventory and correct regulatory deficiencies and deviations between EPA's federal requirements and the State's SIP or pending SIP submittal. The correction of deviations is necessary for the State to continue progress in achieving attainment for ozone.

By letters of December 1, 1988, December 11, 1989, and March 18, 1990, EPA identified and requested that South Carolina correct the deficiencies in the 1985 revision. Since the revisions submitted on June 5, 1985, had not been approved and they contained the deficiencies identified in the above referenced letters, EPA published a direct final notice disapproving the June 5, 1985, revisions without prior proposal (54 FR 15181, April 17, 1989). In this notice, EPA advised the public that the effective date of the action was deferred for 60 days (until June 16, 1989) so that comments, if any, could be submitted. EPA announced that the final action would be withdrawn, if adverse or critical comments were received, and a new rulemaking would be proposed with a 30-day comment period. On September 4, 1982 (46 FR 44477), EPA published a general notice explaining this special procedure.

Adverse comments were received on the April 17, 1989, notice (54 FR 15181). Accordingly, EPA withdrew the direct final notice (54 FR 25582, June 16, 1989) and simultaneously proposed disapproval of the South Carolina regulation (54 FR 25592, June 16, 1989). Final rulemaking was on October 27, 1989 (54 FR 43817). As a result of the identified deficiencies, the State's rulemaking process was reinitiated, culminating in a public hearing on June 26, 1990. All of EPA's comments are incorporated in the regulations which South Carolina resubmitted on September 18, 1990. The affected revisions are summarized as follows:

Regulation No. 62.1 Section I (Definitions) was amended to eliminate the 1.0 mm Hg pressure cutoff for VOC's. The revised definition is consistent with federal requirements.

Regulation No. 62.1 Section II (Permit Requirements) was amended to clarify that all federal regulations take precedence over the State unless there is a more restrictive requirement.

Regulation No. 62.5, Standard No. 5 Section I, General Provision, Part A (Definitions) amended the definition of "Coil, Magnet Wire and Fabric Coating" to include all types of coating applied to fabric (including protective, decorative, and functional coatings).

The definition of "Functional Coating" was added which now reads "a coating that serves a purpose beyond decorative or protection of the substrate being coated." Also, the definition of "Paper coating" was revised to include functional coating. The definition of "Saturation Process" was added and the definition of "Vinyl Coating" was revised to include organisol and plastisol coatings which cannot be used to bubble emissions from vinyl printing and top coating.

Regulation No. 62.5, Standard No. 5 Section I, Part C—(Alternatives and exceptions to Control Requirements) was revised to require that all alternatives and exceptions be submitted to EPA for approval as a revision to the SIP.

Regulation 62.5, Standard No. 5 Section I, Part E—(Volatile Organic Compound Compliance Testing) was revised to state that "The Department or EPA will verify test results submitted by companies with independent tests. EPA or State conducted tests will take precedence."

Regulation 62.5, Standard No. 5, Section II—Provisions for Specific Sources, Parts A, B, C, D, E, F and G regulate the surface coating of paper, vinyl, fabrics, metal furniture and large appliances, magnet wire, miscellaneous metal parts and products and flat wood paneling, respectively. These parts were also revised to include compliance and averaging times. Compliance will not be demonstrated by a 24-hour weighted average of emissions for two or more coatings having the same emission limit for the same type of operation on the same line. Averaging times longer than 24 hours are not allowed. Part C, also includes saturation processes.

South Carolina's Regulations 62.1 and 62.5, Sections I and II are being approved; however, EPA expects the State to correct the following deficiencies pursuant to the SIP call letters for ozone form Mr. Greer C.

Tidwell, EPA Regional Administrator, to Governor Carroll A. Campbell on May 26, 1988, and clarified in a letter from Mr. Winston A. Smith, Air, Pesticides & Toxics Management Division Director, to Mr. Otto E. Pearson, former Director of the South Carolina Department of Health and Environmental Control:

Regulation 62.5, Standard No. 5, Section I, Part F—(Recordkeeping, Reporting, and Monitoring) lacked a requirement for daily recordkeeping. VOC sources located in ozone nonattainment areas must keep daily records. The recordkeeping requirements do not include the following requirements be met no a daily basis:

a. A requirement to maintain records of VOC content, coating usage, and lbs of VOC emitted;

b. A requirement to list diluents and clean-up solvents separately;

c. A requirement to document the test method used by the coatings;

d. A requirement to document the method used by the manufacturer to calculate the volume percent solids of the coatings.

Capture systems are required by the South Carolina VOC regulation. However, no method for determining capture efficiency is specified.

These two deficiencies must be corrected before EPA can fully approve the State's ozone SIP. The SIP call letters cited above originally required that final rules to correct these deficiencies be submitted to EPA by September 30, 1989. If the State fails to correct these deficiencies by 9 months from this notice date, unless a different date is required consistent with the Clean Air Act Amendments, EPA may disapprove the State's ozone SIP and may propose to promulgate federal rules which would correct these deficiencies.

Final Action

EPA has reviewed the changes to the South Carolina regulations and is today approving the revisions to Regulation 62.5, Standard No. 5 (VOC's), and Regulation 62.1 (Definitions, Permit Requirements and Emission Inventory). EPA is not acting on Regulations 62.5, Standard No. 5.1 (LAER), Regulation 62.5, Part F (Recordkeeping, Reporting and Monitoring), and Regulation 62.5, Standard No. 7. (Prevention of Significant Deterioration). Action will be taken on these regulations in a separate notice.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan (SIP) for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

This action is taken without prior proposal because the issues are straightforward and no adverse comment is anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States court of Appeals for the appropriate circuit by April 6, 1992. Filing a petition for reconstruction by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307 (b)(2))

Under 5 U.S.C. § 605(b), I certify that this SIP action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

In addition, although this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, it serves to fulfill part of the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the Cherokee county nonattainment area. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Cherokee nonattainment area is classified as marginal and is, therefore, subject to the RACT fix-up requirement. South Carolina's revised regulations, submitted in response to the SIP call letter, also respond to the RACT fix-up requirement.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 9, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(34) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(34) Changes in South Carolina's SIP submitted to EPA on September 18, 1990, by the South Carolina Department of Health and Environmental Control.

(i) Incorporation by reference.

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTG's.

(A) The following revision to South Carolina's State Implementation Plan (SIP) which became effective on August 24, 1990:

(*1*) Regulation 61–62.1:
(*i*) Section II,A,1. Applicability
(*ii*) Standard No. 5.1:
Section I,A.
Section III,A,1.
Section III,D.
Section III,L.
Section IV,B.
(*2*) Regulation 61–62.5:
(*i*) Standard No. 7:
Section I,C,(4)
Section I,Part M
Section I,Part N
Section I,Part O
Section I, BB
Section II A.
Section II D,(1),(e)
Section II D,(3),(a)
Section IV,D,(1)
Section IV H,(4)
(*3*) Regulation 61–62.1
(*i*) Section I,74.
(*4*) Regulation 61–62.5, Standard No. 5
(*i*) Section I,A: 9,22,27–78
(*ii*) Section I,C,1,b,(vi)
(*iii*) Section I,E,4
(*iv*) Section I,E,12
(*v*) Part F. Recordkeeping, Reporting, Monitoring
(*vi*) Part G. Equivalency Calculations
(*vii*) Section II—Provisions for Specific Sources
Part A. Surface Coating of Cans
Part B,2. Control Technology
Part C
Part D
Part E Surface Coating of Magnet Wire
Part F,2. and 3.
Part G,3. Control Technology
(ii) Other material.
(A) None.

3. Section 52.2126 is added to read as follows:

§ 52.2126 VOC rule deficiency correction.

Sections I and II of South Carolina's Regulations 62.1 and 62.5 is approved. The State submitted these regulations to EPA for approval on September 18, 1990. Sections I and II of Regulation 62.5 were intended to correct deficiencies cited in a letter calling for the State to revise its SIP for ozone from Mr. Greer C. Tidwell, the EPA Regional Administrator, to Governor Carroll A. Campbell on May 26, 1988, and clarified in a letter from Mr. Winston A. Smith, EPA Region IV, Air, Pesticides and Toxics Management Division, to Mr. Otto E. Pearson, former Director of the South Carolina Department of Health and Environmental Control:

(a) Regulation 62.5, Standard No. 5, Section I, Part F—Recordkeeping, Reporting, and Monitoring lacked a requirement for daily recordkeeping. VOC sources located in ozone nonattainment areas must keep daily records. Capture systems are required by the South Carolina VOC regulation. However, no method for determining capture efficiency is specified.

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guidance relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 92–2662 Filed 2–3–92; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 272

[FRL–4096–7]

Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Ohio

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to codify its authorization of State programs and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Ohio authorized State program in 40 CFR part 272. The purpose of today's **Federal Register** is to codify EPA's approval of recent revisions to Ohio's program.

DATES: Codification of Ohio's revised authorization hazardous waste program shall be effective April 6, 1992, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Ohio's codification must be received by the close of business March 5, 1992. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1992.

ADDRESSES: Written comments should be sent to Ms. Virginia Kroncke, Ohio Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, Phone: (312) 353–4716 [FTS: 353–4716]. Copies of the Ohio regulations that are incorporated by reference in this paragraph are available from Banks-Baldwin Law Publishing Company, P.O. Box 1974, University Center, Cleveland, Ohio 44106–8697 Customer Service Department. Additionally, they may be inspected at the following address from 9 a.m. to 4 p.m.; U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604, contact: Ms. Virginia Kroncke, phone (312) 353–4716.

FOR FURTHER INFORMATION CONTACT: Virginia Kroncke, Ohio Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Blvd, HRM–7J, Chicago, Illinois 60604, Phone: (312) 353–4716 [FTS: 353–4716].

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1989, EPA published a notice in the **Federal Register** (FR) of its decisions to codify Ohio's then authorized hazardous waste program (see 54 FR 27173). Since then, EPA has granted authorization to Ohio for additional revisions to the State hazardous waste program (see 56 FR 14203, published on April 8, 1991 and 56 FR 28088, published on June 19, 1991). In this notice, EPA is codifying the currently authorized State hazardous waste program in Ohio.

EPA codifies its approval of State programs in 40 CFR part 272, and incorporates be reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. Although EPA has the authority to enforce authorized standards in Ohio's hazardous waste program without codification of those standards, this effort will provide clearer notice to the public of the scope of the authorized program in Ohio.

Revisions to Ohio's and other State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. The codification of Ohio's authorized program in subpart KK of part 272 is intended to enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. For a fuller explanation of EPA's codification of Ohio's authorized hazardous waste program, see 54 FR 27173 (June 28, 1989).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic

impact on a substantial number of small entities. It intends to codify the decision already made to authorize Ohio's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkpeeing requirements, Water pollution control, Water supply.

Editorial Note: This document was received by the Office of the Federal Register on January 24, 1992.

Dated: March 29, 1991.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set forth in the preamble, subpart KK of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows.

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.1800 is amended by revising paragraphs (a) and (b) as follows:

§ 272.1800 State authorization.

(a) The State of Ohio is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6291 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98-616, November 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's program, as administered by the Ohio Environmental Protection Agency, was approved by EPA pursuant to 42 U.S.C. 6926(b) and part 271 of this chapter. EPA's approval of Ohio's base RCRA program was effective on June 30, 1989 (see 54 FR 27173). EPA's approval of revisions to Ohio's base program was effective on June 7, 1991 (see 56 FR 14203) and August 19, 1991 (see 56 FR 28088).

(b) Ohio is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow much action in a **Federal Register** notice granting Ohio authorization on June 7, 1991 (see 56 FR 14203) and August 19, 1991 (see 56 FR 28088).

* * * * *

2. Section 272.1801 is amended by revising the introductory text, paragraphs (a)(1), (a)(2), (c)(1) and (d) to read as follows:

§ 272.1801 State-administered program: final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Ohio has final authorization for the following elements submitted to EPA in Ohio's program application for final authorization and approved by EPA effective on June 30, 1989 (see 54 FR 27173), June 7, 1991 (see 56 FR 14203) and August 19, 1991 (see 56 FR 28088).

(a) *State Statutes and Regulations.* (1) The following Ohio regulations are incorporated by reference and codified as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Ohio Administrative Code, volume 4, chapter 3745, rules: 49-031; 50-01; 50-03; 50-10; 50-11; 50-31 through 50-32; 50-40 through 50-44(C)(3)(j); 50-44(C)(4) through 50-44(C)(4)(k); 50-44(C)(5) through 50-44(C)(5)(i); 50-44(C)(6) through 50-44(C)(7)(j); 50-44(C)(8) through 51-03(C)(2)(b)(ii); 51-03 (D) and (E); 51-04 through 51-05; 51-06(A)(1) through 51-06(A)(3)(g); 51-06(B) through 52-20(F); 52-20 Appendix I through 52-34(F); 52-40 through 52-44; 52-50 through 53-10; 53-11(D) through 53-20(H); 53-21 through 54-99; 55-02 through 55-99; 56-20 through 56-31; 56-33 (A) and (B); 56-50 through 56-60; 56-70 through 56-83; 57-01 through 57-14(B); 57-14(E); 57-15 through 57-18; 57-40 through 58-40; 58-42; 58-43 through 58-44; 58-45(A) through 58-45(E); 58-45(G); 58-46; 58-50 through 58-54; 58-60 through 65-01(C); 65-01(E); 65-10 through 68-14(C); 68-14(F); 68-15 through 68-52; 68-70 through 68-83; 68-011(A) through 68-011(E); 69-01 through 69-30 (OAC June 30, 1990, as supplemented by 1990-1991 Ohio Monthly Record, pages 70-80 (July 1990)). Copies of the Ohio regulations that are incorporated by reference in this paragraph are available from Banks-Baldwin Law Publishing Company, P.O. Box 1974, University Center, Cleveland, Ohio 44106-8697. Customer Service Department.

(2) The following statutory provisions and regulations concerning State enforcement, although not codified herein for enforcement purposes, are part of the authorized State program:

(i) Ohio Revised Code, title 1, chapter 119, sections: 01 through 06.1, and 07 through 13; Ohio Revised Code, title 1, chapter 149, sections 011, 43, and 44 (Banks-Baldwin, 1990); Ohio Revised Code, title 37, chapter 3734, sections: 01 through 05, 07, 09 through 14.1, 16 through 17, 20 through 22, and 31 through 99 (Banks-Baldwin, 1990).

(ii) Ohio Administrative Code, volume 4, chapter 3745, rules: 49-031, 50-21 through 50-30, and 51-03(F) (OAC June 30, 1990, as supplemented by 1990-1991 Ohio Monthly Record, pages 70-80 (July, 1990)).

* * * * *

(c) *Statement of Legal Authority.* (1) "Attorney General's Statement for Final Authorization," signed by the Attorney General of Ohio on July 1, 1985, and supplements to that Statement dated June 13, 1990, and October 15, 1990, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(2) * * *

(d) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto dated November 8, 1990, and December 11, 1990, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

* * * * *

[FR Doc. 92-2161 Filed 2-3-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-243; RM-7766]

Radio Broadcasting Services; Rusk, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of E. H. Whitehead, licensee of Station KWRW(FM), Channel 249A, Rusk, Texas, substitutes Channel 249C3 for Channel 249A at Rusk, Texas, and modifies KWRW(FM)'s license to specify operation on the higher powered channel. See 56 FR 42017, August 26, 1991. Channel 249C3 can be allotted to Rusk in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to accommodate Whitehead's desired site. The coordinates for Channel 249C3 are North Latitude 31-44-57 and West Longitude 95-09-26. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-243, adopted January 22, 1992, and released January 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 249A and adding Channel 249C3 at Rusk.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2677 Filed 2-3-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 23
Tuesday, February 4, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-91-440]

Onions Grown in South Texas; Proposed Amendment of Continuing Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would expand special purpose shipments under the handling regulation to include shipments for certain types of processing, establish safeguards and reporting requirements for subcontractors processing cull onions, and require cull onions shipped in bags to be unlabeled. Also, the introductory paragraph of the handling regulation would be changed to clarify the Sunday packing and loading prohibition. These actions would promote orderly marketing and clarify certain requirements in the handling regulation.

DATES: Comments must be received by March 5, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 690-0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 143 and Order No. 959 [7 CFR part 959] (order), regulating the handling of onions grown in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers of South Texas onions subject to regulation under the marketing order, and approximately 47 producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000.

The South Texas Onion Committee (committee) held its organizational meeting on October 15, 1991, and recommended several changes to the continuing handling regulation. Under the current provisions, onions for canning and freezing are special purpose shipments and are exempt from the handling regulation. The committee recommended adding a definition of processing to the handling regulation. The term "processing" would include traditional canning and freezing, but would also include cooking or freezing the onions in such a way, or with other food components, that the consistency of the product is altered. Onions for processing would be considered as special purpose shipments. This would permit the use of cull onions for such processed products as relishes, sauces, and other cold pack products requiring refrigeration which often do not meet the traditional meaning of the term canning, but are processed products nevertheless. By using the broader term for processing, a greater number of alternative outlets could be served. This would enhance economic returns to handlers and producers by providing an alternative market for cull onions that would otherwise be discarded. Under this definition, onions used as components for sauces, relishes, and similar items would be exempt from the handling regulation. Onions served at salad bars and individual salads provided by many fast food outlets still would be deemed fresh use and, therefore, subject to the grade and size requirements of the handling regulation. Other provisions would be changed for consistency.

The committee also recommended that the status of subcontractors working for onion processors be clarified and their area of responsibility be defined. In recent years, many processors have found that certain processing operations, notably the initial peeling of onions, can be accomplished more economically by subcontractors operating away from the physical plant of the processor. The committee recommended that the use of subcontractors be allowed with the stipulation that the processor or prime contractor be responsible for ensuring that the subcontractor comply with all reporting requirements and that the subcontractor report to the committee in the same manner and frequency as the processor is required to do. Refusal by a processor or subcontractor to comply could result in the committee's refusing to allow handlers to ship to such processors.

The committee recommended that cull onions shipped in bags have the bags reversed, in the case of burlap bags, or otherwise be unlabeled. Some shippers have found that when cull onions are transported to exempt outlets, the containers used are normally the cheapest ones available, often used bags

of other shippers. Because of this, cull onions may be confused for U.S. No. 1 onions on loading docks. In order to prevent this from happening, the committee recommended that bags used for culls be unlabeled, or that labeled burlap bags be turned inside-out so that the label cannot be seen.

The committee recommended revising the introductory paragraph of the handling regulation to remove any possible misconception regarding the Sunday prohibition of packing and loading. The intent of the committee continues to be that, except as otherwise provided, packing shed operations should be limited to not more than six days per week. This procedure gives receiving markets a chance to dispose of South Texas onion shipments in an orderly manner, especially important during the height of the shipping season when movement is heavy.

References to twenty and twenty-five pound containers in paragraph (f)(3)(i) should be deleted, since the pertinent parts were previously moved to a different paragraph and thus are redundant in this paragraph. Also, paragraph (i) "Applicability to imports" would be deleted, since the information given therein is provided in the Onion Import Regulation, § 980.117, or the summary thereto, and is therefore redundant and unnecessary in this regulation.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the additional burden resulting from this proposal will be submitted to the Office of Management and Budget for approval prior to information collection activities. A new form would not be required; the form currently used for canners and freezers also would be used for subcontractors.

Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 959 be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

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

2. Section 959.322 *Handling regulation* is amended by: revising the introductory text; revising paragraphs (f)(1) and (f)(3)(i); revising the introductory text of paragraph (g); revising paragraph (g)(4); adding new paragraph (g)(5); revising paragraph (h); and removing paragraph (i), as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending May 20, no handler shall handle any onions, except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. In addition, no handler may package or load onions on Sunday.

* * * * *

(f) *Special purpose shipments.* (1) The minimum grade, size, quality, container, and inspection requirements set forth in paragraphs (a) through (d) of this section shall not be applicable for shipments of onions for charity, relief and processing if handled in accordance with paragraph (g) of this section.

* * * * *

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches × 37½ inches × 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports of such shipments.

* * * * *

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, or experimental purposes shall:

* * * * *

(4) In addition to provisions in paragraphs (g)(1) through (g)(3) of this section, each handler making shipments for processing shall:

(i) Weigh or cause to be weighed each shipment prior to, or upon arrival at, the processor.

(ii) Attach a copy of the weigh ticket to a completed copy of the Report of Special Purpose Onion Shipment and return both promptly to the committee office.

(iii) Make each shipment directly to the processor or the processor's subcontractor and attach a copy of the Report of Special Purpose Onion Shipment.

(iv) Each processor or processor's subcontractor who receives cull onions shall weigh the onions upon receipt, complete the Report of Special Purpose Shipment which accompanies each load and mail it immediately to the committee office.

(v) Each processor who receives cull onions shall make available at its business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents for examination by the Department or by the committee, together with any other information which the committee or the Department may deem necessary to enable it to determine the disposition of the onions.

(vi) If a processor employs a subcontractor for any stage of processing, such processor shall be responsible for ensuring that the subcontractor accounts for all quantities of onions received and processed or otherwise disposed of, and that the subcontractor reports to the committee in the same manner and frequency as the processor.

(5) Cull onions transported in bags shall be transported in unlabeled bags, or shall have labelled bags reversed so that the label is not visible.

(h) *Definitions.* "U.S. onion standards" means the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (7 CFR 51.2830–51.2854), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards. "Processing" means cooking or freezing the onions in such a way, or with such other food components, that the consistency of the product is changed. Canning and freezing shall be considered forms of processing. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

Dated: January 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–2670 Filed 2–3–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Elimination of Requirements Marginal to Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) seeks public comment on the results, conclusions, and planned actions of its program to eliminate requirements marginal to safety. Two issues involving license conditions or commitments have been identified for elimination. The NRC has also concluded that decreasing the prescriptiveness of some of its current regulations may improve their effectiveness by providing flexibility to licensees without reducing safety. The NRC is seeking comments on this conclusion and the benefits of modifying some of its present regulations consistent with this conclusion. The NRC will consider a performance-oriented, non-prescriptive, approach in future regulatory initiatives. The NRC encourages the submittal of a petition for rulemaking whenever there is a brief that NRC regulatory requirements impose a significant economic burden without commensurate safety significance.

DATES: Comment period expires on May 4, 1992, for comments on the results, conclusions, and planned actions for this program.

ADDRESSES: Submit written comments to: Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Service, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the SECY paper, staff requirements memorandum, and NUREG and contractor reports may be examined at: the NRC Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3730.

SUPPLEMENTARY INFORMATION:

NRC Initiatives for the Elimination of Requirements Marginal to Safety

In 1984, the NRC's Annual Planning and Program Guidance (PPG) document stated that "Existing regulatory requirements that have marginal importance to safety should be eliminated. In accordance with the PPG document, the staff initiated a program to make regulatory requirements more efficient by eliminating those with marginal impact on safety.

At the start of the 1984 program, the NRC solicited comments from industry on specific regulatory requirements and associated regulatory positions that needed reevaluation. In response to NRC's request, a survey was conducted by the Atomic Industrial Forum providing most of industry's input. The industry survey results, which were published for the NRC in NUREG/CR-4330 [1] "Review of Light Water Reactor Regulatory Requirements," Vol. 1, April 1986, included a list of 45 candidates for potential regulation modification. A Program Advisory Group, composed of members from the major NRC offices was formed to review these candidates. The group selected 7 areas from the 45 candidates for analysis based on the potential benefit for licensees and the number of plants that would be affected: (1) Containment leak rate testing, (2) BWR main steam isolation valve (MSIV) leakage control systems, (3) fuel design safety review, (4) postaccident sampling systems, (5) turbine missiles, (6) combustible gas control systems, and (7) charcoal filters. The results of the analyses of the selected candidates have been published for the NRC in NUREG/CR-4330, "Review of Light Water Reactor Regulatory Requirements," Vols. 2 and 3, dated June 1986 and May 1987. The effects of selected eliminations or modifications to the regulations were evaluated in terms of such factors as public risk and costs to industry and NRC. The results indicated that potential modifications of the regulatory requirements in all the areas except charcoal filters would have little impact on risk. Impregnated charcoal filters in building ventilation systems did appear to limit risks to the public and plant staff. The cost analyses indicated that substantial savings in operating costs may be realized in the areas of containment leakage rates, MSIV leakage control systems, combustible gas control in inerted BWR containments, inspections for turbine missile protection, and postaccident sampling systems (for future plants only). While streamlining fuel design safety reviews would have marginal impact on safety, there appeared to be no significant cost savings in modifying them based on subsequent discussions with a number of utilities and industry groups, including fuel vendors.

The NRC has or proposes to take action in the areas of containment leakage rates, MSIV leakage control systems, and combustible gas control in inerted BWR containments (see Conclusions). The NRC is not proposing any action for the revision of requirements related to turbine missile protection and postaccident sampling systems at this time, since the effort now is focused on benefits for operating reactors, and the elimination of these requirements would not result in significant savings for operating reactors. Turbine missile protection reviews have already been completed, and the costs of installing postaccident sampling systems have already been expended by licensees of operating reactors.

The survey that was initially conducted provided industry's input to develop a list of potential candidates for modification or elimination. In order to complement this earlier work and ensure a complete search, a survey was conducted to collect suggestions based on the accumulated knowledge of NRC staff members, many of whom have spent years developing and applying plant regulations. A structured interview process utilizing each section of the Standard Review Plan (SRP) was developed. The SRP provided a systematic and comprehensive compilation of regulatory positions that served as the structure on which to organize the interview. Interviewees were selected so as to ensure reasonably comprehensive and insightful coverage of all areas of reactor regulation. They were to draw upon their expertise in their particular area, their experience in regulation, their knowledge of regulatory requirements, and any other information at their disposal. The survey identified 54 candidates [2], a number of which were previously identified in the earlier survey.

A method [3] was developed to evaluate the potential candidates

[1] Copies of NUREG series reports may be purchased through the U.S. Government Printing Office by calling (202) 512-2249 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

[2] "Effectiveness of LWR Regulations in Limiting Risk," Prepared for the NRC by Battelle Columbus Labs., May 1989.

[3] "Elimination of Requirements Marginal to Safety," Prepared for the NRC by Scientech, Inc., Task 1: Methodology Development, Dec. 1990; Task 2: Application of Methodology, March 1991.

identified in the surveys to select those that have a marginal impact on safety and yet would reduce the regulatory burden on industry. An assessment of the short- and long-term NRC and licensee benefit and burden was conducted together with an evaluation of the safety importance of the potential regulatory candidates. This assessment was based on a qualitative analysis and engineering judgment. Eight candidate items were identified [3] as having the highest potential for saving resources while not significantly affecting safety margins: (1) Replace 10 CFR 50.44 (hydrogen rule) with a performance-based rule accompanied by a regulatory guide, (2) clarify 10 CFR 50.59, "Changes, Tests and Experiments," (3) replace fire protection requirements in appendix R with a performance-based rule accompanied by a regulatory guide, (4) eliminate the requirement for the MSIV Leakage Control System, (5) update Regulatory Guide 1.76, "Design Basis Tornado," with current technology, (6) clarify "Important to Safety" in the regulations, (7) replace containment testing requirements in appendix J with a performance-based rule accompanied by a regulatory guide, and (8) transfer ECCS evaluation models in appendix K to a regulatory guide.

The NRC has made specific conclusions on the results related to the hydrogen rule, and fire protection and containment testing requirements (See section C under Conclusions). 10 CFR part 50.46 was amended in 1988 to allow a best-estimate and non-prescriptive (compared to ECCS evaluation models contained in appendix K) calculational approach for demonstrating that the performance criteria in § 50.46 would not be exceeded. The NRC has in the past already initiated actions for clarifying 10 CFR 50.59 and eliminating the requirement for MSIV Leakage Control Systems (see Conclusion B). Since the current effort is focused on modifications of 10 CFR part 50, the NRC does not plan any efforts now for revising Regulatory Guide 1.76, "Design Basis Tornado." The NRC has for the past several years expended resources for clarifying "Important to Safety" in the regulations and a considerable amount of dialogue has occurred between the NRC, and the industry and public. The NRC has concluded that additional efforts at this time are not necessary given the history of past efforts. Independent of the studies noted above for eliminating regulatory requirements that have marginal importance to safety, the NRC had been taking action to eliminate or relax regulations (e.g., 10 CFR part 50, appendix A, "Requirements for Protection Against Dynamic Effects of Postulated Pipe Ruptures") that had marginal importance to safety. In other instances licensees have been exempted from some regulations (e.g., hydrogen recombiners in Mark I and Mark II inerted containments). As noted previously the NRC staff has also been working with industry to clarify some regulations, e.g., 10 CFR 50.59, "Changes, Tests and Experiments." These efforts have resulted in the Guidelines for 10 CFR 50.59 safety evaluations (NSAC-125). At the time the above noted studies were completed in March 1991, it was difficult to identify a regulation that warranted complete elimination because it was so burdensome on operating reactors and so marginal to safety.

Conclusions

The NRC has reviewed each of these items and has reached the following conclusions:

A. No additional 10 CFR part 50 regulations were identified that are so burdensome on operating reactors and so marginal to safety to warrant the expenditure of additional NRC resources to eliminate at this time. Some regulations have been identified that could potentially be rectified (See Conclusion C).

B. The following two candidates involving license conditions or commitments in many licenses may be eliminated or relaxed based on cost-benefit considerations.

(1) Main steam isolation valve leak control system per Reg. Guide 1.96, "Design of Main Steam Isolation Valve Leakage Control Systems for Boiling Water Reactor Plants." The NRC staff has already initiated a review to eliminate the MSIV leak control systems in BWRs. The completion of this review is pending submittal of a topical report from the BWRs Owners Group to confirm the fission product hold-up and trapping capability of the main condenser system. If justified, the NRC anticipates it will eliminate this requirement shortly after the submission of the topical report.

(2) The allowable containment leakage rate utilized in containment testing per appendix J of 10 CFR part 50 may be increased. The NRC has initiated a program to update the source term and to decouple siting from design. As part of this effort, amendments will be made to 10 CFR parts 50 and 100. The basis for the requirements for the allowable containment leakage rate is related to the source term and the radiation dose guidelines contained in 10 CFR Part 100. Therefore, as part of this action, the NRC plans to explore the merits of establishing criteria on containment performance (including a leakage rate) as a replacement for the part 100 dose calculation currently employed. This rulemaking is expected to be completed by the end of Fiscal Year 1993.

C. Decreasing the prescriptiveness of some regulations may improve their effectiveness by providing flexibility to licensees without reducing safety.

The surveys and interviews of the industry and NRC staff conducted as part of this program yielded a general indication that some of NRC's regulations need not be as prescriptive as they presently are. By decreasing the prescriptiveness of some regulations and providing more flexibility to the licensees for proposing cost-effective safety features, the regulatory process may be made more effective. Specifically, the following three regulations could be made less prescriptive: (1) 10 CFR 50.44, "Standards for Combustible Gas Control Systems in Light-Water-Cooled Power Reactors"; (2) appendix J of 10 CFR 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors"; and (3) appendix R of 10 CFR 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979."

The detailed and prescriptive technical requirements contained in these regulations could be removed and replaced with performance-based requirements and supporting regulatory guides. The regulatory guides could specifically allow alternative approaches, although the current detailed technical requirements now in the regulations could be reflected to indicate their continued acceptability.

There is considerable uncertainty whether licensees would take advantage of the flexibility offered by non-prescriptive regulations, and develop for NRC approval alternative approaches to meet the performance objectives contained in the revised regulations. Licensees or industry groups are in a better position than the NRC to determine whether the reduction in burdens from such approaches would be sufficient that this effort would be cost beneficial overall. Therefore, prior to initiating a resource-intensive program to modify these regulations, the NRC is soliciting comments and assurances that the results of these efforts will be utilized and beneficial. The NRC will also evaluate the feasibility of defining performance-based requirements in proposing regulatory initiatives and new regulations.

Comments Requested

The NRC solicits comments from the public and regulated industry on the results, conclusions and planned actions for this program. Initially, the NRC had planned a public workshop on this program. However, due to resource limitations, this public announcement is being published in lieu of the public workshop. The NRC welcomes and will appreciate all comments on this subject. The following questions are posed to help guide commenters, however, comments need not be restricted only to answers to these questions:

1. Are there any other 10 CFR part 50 regulations that are marginal to safety and yet impose an economic burden on licensees? How would licensees benefit from the elimination of these regulations?

2. Are there any other license conditions or commitments in many licenses, other than the two identified in Conclusion B, that could be eliminated or relaxed? Are the actions identified to eliminate or relax the two candidates in Conclusion B appropriate?

3. Would decreasing the prescriptiveness of some regulations improve their effectiveness by providing flexibility to licensees without reducing safety? If so:

(i) What are these regulations? Are there any beyond the three identified in Conclusion C?

(ii) How would the regulations identified in (i) be made less prescriptive and performance-based? How would this benefit licensees and the regulatory process?

(iii) Would licensees take advantage of the flexibility offered by nonprescriptive regulations and develop for NRC approval alternative approaches to meet the performance objectives contained in the revised regulations?

(iv) Should the NRC pursue this approach at this time, or limit it to future regulatory initiatives?

The NRC is considering efforts to evaluate its regulations for consistency against the safety goals outlined in the NRC policy statement, "Safety Goals for the Operation of Nuclear Power Plants," 51 FR 28044, August 4, 1986. This evaluation could be conducted for regulations proposed in the future, and also a retroactive evaluation could be made for the present body of regulations. This is likely to be a resource intensive process, particularly for evaluating existing regulations, and therefore the NRC seeks public comment on the merits of embarking on such a process.

4. How should the safety goals be best used in evaluating regulations? Should such evaluations be restricted to future regulations or should the evaluation also include present regulations? What would be the advantage foreseen, if any, of another evaluation of existing NRC regulations given that the NRC is proposing to conclude these assessment efforts already described above?

The NRC requests that proposals for the elimination or revision of requirements be accompanied by an analysis demonstrating that the benefits gained by the licensees outweigh the regulatory burden of implementing the change.

These questions are suggested to guide commenter's responses at this time. The NRC recognizes that its regulatory requirements evolve and some in the past have become marginal to safety. The industry and public are encouraged to submit petitions for rulemaking, with supporting justification, at any time when there is a belief that NRC regulatory requirements impose a significant economic burden without a commensurate safety significance.

Dated at Rockville, Maryland, this 29th day of January 1992.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-2653 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 100

Seismic and Geologic Siting Criteria for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: February 4, 1992, 3 p.m.

ADDRESSES: 5650 Nicholson Lane, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. The Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena met with NRC staff on December 10, 1991, to discuss the proposed revision of appendix A. The discussion of the Subcommittee members with representatives of the nuclear industry was impaired by the fact that the related documents being examined were not publicly available. In order to make future meetings more effective with respect to the exchange of views and information, the Subcommittee requested that all of the documents that have been or will be made available for Committee review be made publicly available. Accordingly, a draft copy of the requested material has been placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

The purpose of the meeting is to discuss with NUMARC and other industry representatives the proposed revision of appendix A to 10 CFR part 100, No specific agenda is being proposed.

Dated at Rockville, Maryland, this 29th day of January, 1992, for the Nuclear Regulatory Commission.

Robert J. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92-2649 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-20]

Proposed Establishment of the Kalamazoo/Battle Creek International Airport, Airport Radar Service Area, MI; Extension of Comment Period/ Notice of Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; extension of comment period and notice of meeting.

SUMMARY: This notice announces an extension of the comment period for a Notice of Proposed Rulemaking (NPRM) which proposes to establish an Airport Radar Service Area (ARSA) at the Kalamazoo/Battle Creek International

Airport, MI. This notice also provide public notice of an informal airspace meeting to discuss the proposal to establish the Kalamazoo/Battle Creek International Airport ARSA.

DATES: Comments must be received on or before March 23, 1992.

The informal airspace meeting will be held on Thursday, February 27, 1992, from 6 p.m. to 10 p.m.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-20, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting location is as follows: Western Michigan University, Knauss Hall, room 3770, Kalamazoo, MI 49002, (Parking in the Miller Auditorium lot is encouraged).

FOR FURTHER INFORMATION CONTACT: Douglas Powers, Systems Management Branch (AGL-500), Air Traffic Division, Federal Aviation Administration, Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (312) 694-7000.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The FAA will hold an informal airspace meeting to discuss the proposal to establish an Airport Radar Service Area at the Kalamazoo/Battle Creek International Airport. These procedures will be followed:

(a) A designated representative of the Administrator will conduct the informal airspace meeting. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda and adjourn the meeting early if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be formally recorded. A summary of the comments made during this meeting will be filed in the docket.

(d) Participates who want to distribute position papers or other handout materials concerning the substance of the meeting should present an original and plus two copies to the FAA representative. Participants should make sufficient copies to distribute to all participants.

(e) Statements made by the FAA representative during the meeting should not be taken as expressing a final FAA position.

(f) Those participants seeking to make a presentation will be asked to sign a list and estimate the amount of time they need to make their presentation. The FAA representative will allocate an appropriate amount of time to accommodate each speaker. The meeting will not adjourn, however, until each participant on the list has had an opportunity to address the panel.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

Airspace Docket No. 90-AWA-20, published in the **Federal Register** on October 23, 1991 (56 FR 55018) proposes to establish an Airport Radar Service Area at the Kalamazoo/Battle Creek International Airport. This action will extend the period for public comment on the proposal to March 23, 1992.

In addition, an informal airspace meeting will be held during the comment period to allow airspace users the opportunity to further comment on this proposal.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Extension of Comment Period

The comment period for Airspace Docket No. 90-AWA-20 is hereby extended to March 23, 1992.

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

Issued in Washington, DC, on January 28, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-2632 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation

40 CFR Part 75

[FRL-4100-3]

Acid Rain Program: Announcement of Open Meeting on Electronic and Magnetic Data Reporting of Emissions Data for the CEM Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; open meeting.

SUMMARY: On December 3, 1991 the Environmental Protection Agency (EPA) proposed standards to implement title IV of the 1990 Clean Air Act, Acid Deposition Control (56 FR 63001-63351). In part, the standards propose requirements that each affected facility continuously measure and record concentrations of sulfur dioxide, nitrogen oxides, and carbon dioxide, as well as exhaust gas flow rate and other parameters necessary to calculate hourly pollutant emission rates.

The proposed CEM regulation would require that affected facilities provide EPA with an "electronic snapshot" of recorded hourly data on a quarterly basis (56 FR 63307). Affected facilities may submit the information magnetically, via an IBM PC-compatible floppy disk, or electronically, via transmission through phone lines. Because of the large amount of information expected to be reported and an affected community of over 2,500 utility units by 1995, the agency needs to develop uniform and consistent data handling procedures to ensure timely, accurate, and effective reporting.

To assist EPA in developing specifications for data reporting, the agency will hold a workshop to solicit ideas from (1) CEMS manufacturers, (2) vendors specializing in data acquisition and handling software, (3) utilities with in-house data processing staff, (4) EPA regional, state and local air pollution control agencies, and (5) any other interested parties.

Public comments on the substantive provisions of the Acid Rain "core" rules (e.g., frequency and content of quarterly reports) are beyond the scope of this meeting. Any such comments should be submitted, no later than February 12, 1992, to the appropriate EPA Air Dockets announced in the **Federal Register** notice of the "core" rules package on December 3, 1991.

DATES: Notice is hereby given that the Environmental Protection Agency will hold an open meeting on February 10, 1992, from 8:30 a.m. to 5 p.m., to discuss technical issues related to transmitting Acid Rain Program data via electronic and magnetic media.

ADDRESSES: The Acid Rain Data Reporting open meeting will be held at the National Endowment for the Arts, Conference Room M-07, Old Post Office Pavilion 1100 Pennsylvania NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Brian McLean, Director, Acid Rain Division(ANR-445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (617) 641-5377.

SUPPLEMENTARY INFORMATION: *Registration* Anyone wishing to participate in the meeting on electronic or magnetic data reporting for the Acid Rain Program must register not later than February 7, 1992, by calling Gayle Kline at (703) 671-0400. Limited seating will be available for persons who have not pre-registered, and seats will be provided for such additional participants on a first-come, first-served basis.

Dated: January 30, 1992.

Penelope Hansen,

Deputy Director, Acid Rain Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

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RIN 2050-AD27

Timing of Surface Impoundment Retrofitting Under the Land Disposal Restrictions Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing a rule under the Resource Conservation and Recovery Act (RCRA). This proposal clarifies the deadline by which surface impoundments receiving wastes that are newly identified or listed as hazardous must be brought into compliance with the minimum technological requirements (MTRs) established in RCRA section 3004(o)(1)(A). This action is being taken in response to conflicting compliance deadlines in the RCRA statute. Section 3005(j)(6) allows a four-year compliance period for meeting the surface impoundment MTRs after the promulgation of additional listings or characteristics of hazardous waste. Section 3004(g)(4), which deals with the land disposal restrictions, requires EPA to promulgate treatment standards for newly identified hazardous wastes within six months of the date of promulgation of the new listing or characteristic. The conflict arises if EPA issues a national capacity variance or case-by-case extension when treatment standards are promulgated, because section 3004(h)(4) states that throughout the duration of such an extension, wastes may be placed in a surface impoundment only if the impoundment is in compliance with the MTRs. Thus, for a surface impoundment managing a waste granted a national capacity variance or case-by-case extension when treatment standards are promulgated, it is unclear whether the unit must meet the MTRs at that time or four years after the waste was identified as hazardous. Today's proposed rule would allow surface impoundments up to four years from the date of promulgation of the new listing or characteristic to comply with the MTRs, as established in section 3005(j)(6). However, to the extent treatment capacity exists, it must be used, so that only in the event of a national capacity variance or case-by-case extension would non-MTR-compliant surface impoundment units be allowed to receive untreated wastes subject to the land disposal restrictions.

DATES: Comments on this proposed rule must be submitted on or before March 20, 1992.

ADDRESSES: Commenters must send an original and two copies of their comments to: RCRA Docket Information Center [OS-305], U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number F-92-TIRP-FFFFF. The public docket is located at EPA Headquarters (Room M2427) and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346, or (703) 920-9810 in the Washington, DC, metropolitan area. For information on specific aspects of this notice, contact Linda Malcolm, Office of Solid Waste (OS-321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8440.

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I. Background

A. Issue

EPA has identified a conflict in the Resource Conservation and Recovery Act (RCRA) concerning the deadline by which surface impoundments receiving wastes that are newly identified or listed as hazardous must come into compliance with the minimum technological requirements (MTRs) of section 3004(o)(1)(A). The MTRs require surface impoundments to have a double liner with a leak detection system, and a ground-water monitoring system. The conflict concerns the deadline by which surface impoundments must be in compliance with the double liner and leak detection system requirement.[1]

Three sections of RCRA contribute to this conflict. Section 3005(j)(6) allows a four-year compliance period for meeting the surface impoundment MTRs after the promulgation of additional listings or characteristics of hazardous waste. Section 3004(g)(4) requires EPA to determine whether newly identified or listed hazardous wastes shall be prohibited from one or more methods of land disposal (i.e., promulgate treatment standards) within six months of the date of the new listing or characteristic. Section 3004(h)(4), which also deals with land disposal restrictions, states that during a national capacity variance (which EPA issues if sufficient treatment capacity is unavailable nationwide) or case-by-case extension period (for individual facilities demonstrating that they have a binding contractual commitment to provide treatment capacity), wastes not meeting the treatment standards may be placed in a surface impoundment only if the impoundment is in compliance with the MTRs.[2] Thus, the conflict occurs for impoundments managing wastes granted a national capacity variance or case-by-case extension when treatment standards are promulgated, because it is unclear whether surface impoundments must be in compliance with the MTRs at that time or four years after the

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[1] EPA has stated that land disposal facilities newly regulated under subtitle C of RCRA as a result of a newly identified or listed hazardous waste must install a ground-water monitoring system within one year of the effective date of the listing or characteristic rule (55 FR 39400, September 27, 1990). This deadline will not change as a result of today's proposed rule.

[2] RCRA sections 3004(h)(2) and 3004(h)(3) restrict the duration of national capacity variances and case-by-case extensions to a maximum of four years. If capacity becomes available sooner, it must be used.

promulgation of the new listing or characteristic.

B. History

This conflict was not apparent when Congress enacted the Hazardous and Solid Waste Amendments of 1984 (HSWA) or when EPA first implemented the land disposal restrictions, even though the earliest land disposal restrictions dates (24 months from the enactment of HSWA for solvents and dioxins and 36 months for the California list wastes) would appear to cut short the November 8, 1988 retrofit deadline (four years after HSWA enactment) for interim status surface impoundments if they received wastes for which EPA granted a capacity variance. The issue did not arise because EPA interpreted section 3004(h) differently at that time; rather than requiring an individual unit receiving restricted waste to meet the MTRs, EPA required only those units within the same facility that were otherwise subject to the MTRs to be in compliance. As a practical matter, that meant that only new, replacement, or expansion units had to meet the MTRs.

In the August 17, 1988 rule promulgating the land disposal restrictions for the First Third Scheduled Wastes (53 FR 31138), EPA changed its interpretation to require individual units to comply with the MTRs. That reinterpretation became effective four years after the enactment of HSWA and was upheld in *Mobil Oil Corp.* v. *EPA*, 871 F2d. 149 (D.C. Cir. 1989). There was no conflict at that time because the four-year retrofitting period ended at the same time that the revised interpretation took effect.

The conflict was mentioned in the Third Third proposal (54 FR 48499, November 22, 1989), which stated that if EPA issues a variance for newly identified or listed hazardous wastes, it would have to reconcile the differences in sections 3005(j)(6) and 3004(h)(4). Several commenters responded to this issue. Some stated that section 3005(j)(6) explicitly afforded four years to retrofit surface impoundments newly brought under subtitle C regulation. Another commented that the four years provided to retrofit surface impoundments managing regulated mineral processing wastes may not be adequate, and that the schedule should be determined site-specifically.

Others disagreed, however, that a conflict exists between sections 3004(h)(4) and 3005(j)(6). They argued that: (1) EPA's interpretation of section 3004(h)(4), rather than any inherent flaw in the statute, led to the apparent "conflict," and (2) the general language of section 3004(h)(4) cannot override the specific language of section 3005(j)(6), wherein the issue of newly identified or listed hazardous waste is addressed directly. EPA did not resolve this issue in the final Third Third land disposal restrictions rule, but rather left it for later resolution. EPA is taking this opportunity to resolve the perceived conflict.

II. Proposed Agency Interpretation

Because of the confusion surrounding the date by which certain surface impoundments must be retrofitted, EPA has decided to propose this rule setting forth EPA's view of when compliance is required. In EPA's view, this is a reasonable approach to harmonizing sections 3004(h)(4) and 3005(j)(6) of RCRA. The Agency was guided by the need to interpret the statute to give the maximum effect possible to all statutory provisions and to stay within the parameters established by the statute. The Administrator of EPA has the authority pursuant to section 2002(a)(1) of RCRA to "prescribe . . . such regulations as are necessary to carry out his functions under the Act."

EPA does see a conflict between sections 3005(j)(6) and 3004(h)(4) when a variance is granted. If there is no need to grant a variance (either national or case-by-case), then sufficient treatment capacity exists and there is no conflict. EPA believes that the four years provided in today's proposal is the statutory maximum and that the Agency lacks the discretion to grant additional time for compliance. Further, while EPA agrees that section 3005(j)(6) is more specific in dealing with newly listed waste, EPA does not think that in a context other than the conflict it overrides the requirement to treat to BDAT standards before land disposal. *American Petroleum Institute* v. *U.S. EPA*, 906 F.2d 729 (D.C. Cir. 1990).

EPA proposes to resolve the apparent conflict between sections 3004(h)(4) and 3005(j)(6)(A) by allowing interim status surface impoundments brought into the subtitle C regulatory system up to four years to meet the minimum technological requirements of section 3004(o). However, only in those instances when a national capacity variance of a case-by-case extension is in effect can unretrofitted surface impoundments be used for wastes subject to the LDRs. This reading is generally consistent with the statutory language, as explained below.

According to section 3004(h)(4), during the period for which a variance or extension from the usual effective date for the land disposal prohibition is in effect, "such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o)." This is a general requirement for both landfills and surface impoundments for currently listed or characteristic wastes. Section 3005(j)(6)(A) says "In any case in which a surface impoundment becomes subject to paragraph (1) [requiring compliance with section 3004(o)(1)(A) as though it were a new impoundment] * * * due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 3001, the period of compliance in paragraph (1) shall be four years from the date of such promulgation * * *." EPA believes that it is possible to read these two sections together to give effect to most of Congress's intent.

First, both sections have the same goal—at some time after the promulgation of listings or characteristics, surface impoundments brought into the subtitle C system as a result of the new listing or characteristic will have to meet the MTRs. The challenge is to determine when that requirement becomes effective given the seemingly contradictory statutory language. Any attempt to resolve the conflict between these two sections must take into account that one came from the Senate and one from the House, which can lead to inadvertent inconsistencies in statutory language.

Second, section 3005(j)(6)(A) applies "in any case" to new surface impoundments that come into the subtitle C system because of new listings or characteristics. These impoundments newly in the system are given the same four years that existing impoundments required to retrofit by the passage of HSWA were given. Congress acknowledges that retrofitting is not a quick process, but rather one that requires time, thus tempering the need to protect the environment with an acknowledgement that there must be a reasonable period for changing operations.[3]

However, there is the competing command in section 3004(h)(4) that when there is a variance or case-by-case extension of the land disposal

[3] Section 3005(j) is actually a series of deadlines connected with the retrofitting of surface impoundments. For those units that undoubtedly have to retrofit, the time period is four years, while those that may qualify for variances are subject to interim deadlines for application and action on the variance request, and then a period, if the variance is denied, to retrofit within the time remaining in the four-year period. There are also retrofit deadlines for units initially granted variances, but later found to be leaking. These units are given shorter periods (two or three years depending on the variance), but this is appropriate where there is an actual leak.

prohibitions, the wastes subject to the variance or extension can go only to a surface impoundment or landfill that meets the standards of section 3004(o)(1)(A). Section 3004(h)(4) applies on its face to all landfills and surface impoundments receiving these wastes (whereas section 3005(j)(6) applies to interim status surface impoundments) and to both wastes that were regulated when Congress enacted HSWA in 1984 and to newly listed or identified wastes.

In light of the differences between the two sections, the Agency reads section 3005(j)(6)(A) as an exception to the general rule of section 3004(h)(4); that is, surface impoundments newly brought into the subtitle C system by a new listing or characteristic have four years to retrofit if they receive wastes subject to a national capacity variance or case-by-case extension. This reading accords with the traditional rule of statutory construction that the more specific provision is controlling: section 3005(j)(6)(A) is more specific as to new wastes and surface impoundments.

EPA emphasizes that this reading only applies when there is a national capacity variance or case-by-case extension. One reason such a variance or extension may be necessary is the lack of retrofitted surface impoundments in which to treat these wastes. Although Congress' goal is not to put untreated wastes into non-MTR-compliant surface impoundments, it recognizes that MTR compliance cannot be achieved immediately. Although the legislative history does not expressly articulate it, the structure of section 3005(j) shows that Congress thought that the goal of environmental protection (served by retrofitting) needed to be balanced against the goal of avoiding sudden disruptions and capacity losses in waste treatment and disposal that a six-month deadline could cause. Congress felt that four years struck an appropriate balance. EPA also believes that the four-year period set out in the statute is an appropriate compromise between the two competing policies. Therefore, it is reasonable to say that if there is not enough treatment capacity, a capacity variance or extension for newly listed or identified hazardous waste will be granted and an unretrofitted surface impoundment can be used for up to four years from the date of promulgation of the new listing or characteristic. If there is capacity, it must be used. If there is no capacity variance or extension, wastes may go either to an unretrofitted impoundment newly brought into subtitle C by a new listing or characteristic for four years (if the waste has already been treated to the land disposal restrictions level) or to an MTR-compliant unit pursuant to section 3005(j)(11).

III. Technical Analysis

A. Introduction

Owners or operators of surface impoundments managing newly listed or characteristic hazardous wastes have several options for complying with the minimum technological requirements. Facilities may retrofit the surface impoundments with liners and leak detection systems in compliance with the requirements of section 3004(o)(1)(A)(i). Alternatively, facilities may replace their treatment surface impoundments with wastewater treatment tanks regulated under the Clean Water Act or may opt to close the surface impoundments and send the waste off-site.

Finally, EPA encourages owners or operators of surface impoundments receiving newly regulated wastes, when developing a strategy for complying with the MTRs and other subtitle C requirements, to consider waste minimization as a possible means of reducing or eliminating hazardous waste generation. Cost-effective reduction of waste quantity and toxicity is EPA's preferred strategy for managing newly regulated hazardous wastes. EPA believes that source reduction can be a cost-effective option, as can be reuse or recycling. Treatment and disposal of hazardous waste should be relied on only for those wastes that cannot be cost-effectively reduced, reused, or recycled.

EPA believes that very few facilities managing newly regulated wastes in surface impoundments will choose to retrofit their impoundments. For example, the Chemical Manufacturers Association (CMA) conducted an informal survey of 582 chemical manufacturing facilities in the fall of 1989 to obtain information about the management of "non-hazardous wastes" in surface impoundments. Twenty-seven facilities reported that 85 surface impoundments would be newly regulated as a result of the Toxicity Characteristic rule (55 FR 11798, March 29, 1990); of these 85, only 9 would be retrofitted with liners and leak detection systems. Replacing surface impoundments with tank systems was the most frequently planned method of compliance for the respondents to this survey. Past experience also indicates that surface impoundment owners or operators are more likely to replace their surface impoundments with tank systems than to retrofit the impoundments. RCRA section 3005(j)(1) required surface impoundments that were in existence and that qualified for interim status on the date of enactment of HSWA to come into compliance with the MTRs by November 8, 1988. Most facilities with surface impoundments replaced their impoundments with tanks in response to this deadline. Less than five percent of these facilities actually retrofitted their surface impoundments.

To support today's rulemaking EPA undertook an analysis to determine how much time is needed for owners or operators of newly regulated surface impoundments to comply with the MTRs either by replacing the impoundments with wastewater treatment tanks exempt from RCRA subtitle C standards, or by retrofitting the surface impoundments with liners and leak detection systems according to the requirements of section 3004(o)(1)(A)(i). The results are summarized in this section.[4]

B. Information Sources

EPA gathered information from a variety of sources to determine how much time is needed to comply with the MTRs. EPA contacted several facilities that reported having subtitle C surface impoundments in the 1986 National Survey of Hazardous Waste Treatment Storage, Disposal, and Recycling Facilities (TSDR survey), prior to the November 1988 HSWA-mandated deadline for complying with the MTRs. EPA asked these facilities how long it took to retrofit their surface impoundments or replace the impoundments with treatment tanks. EPA also reviewed written case studies of facilities that replaced surface impoundments with tank systems, provided by representatives of the Chemical Manufacturers Association and the American Petroleum Institute. EPA also contacted facilities with surface impoundments receiving wastes newly regulated as hazardous as a result of the TC, and asked how they are planning to comply with the new regulations and how long they anticipate it will take. Through these sources, EPA

[4] It should be noted that the potential statutory conflict at issue in this rulemaking is most immediately relevant to wastes newly regulated as a result of the Toxicity Characteristic (TC) rule (55 FR 11798, March 29, 1990). According to the regulatory impact analysis for the TC, about 730,000,000 metric tons per year of wastewaters managed in surface impoundments at over 2,000 facilities are estimated to exhibit the TC (U.S. EPA, OSW, U.S. EPA Background Document, Toxicity Characteristic Regulatory Impact Analysis, Final Report, March 1990). This potential conflict will also arise with respect to all future newly identified or listed hazardous wastes; however, the TC rule is used as an example throughout this section.

obtained timing information on over 20 actual or planned projects involving conversion of surface impoundments to tanks, and on eight surface impoundment retrofitting projects. EPA also contacted manufacturers and suppliers of steel and concrete tanks, and spoke with engineers experienced in the construction and installation of tank systems.

EPA's data collection efforts were aimed at collecting anectodal information rather than conducting a rigorous statistical survey of facilities. The results are summarized below.

C. Typical Time for Compliance with MTRs

1. Replacing Surface Impoundments with Wastewater Treatment Tanks Regulated under the Clean Water Act

EPA believes that most owners or operators of surface impoundments affected by the TC will choose to replace their impoundments with wastewater treatment tanks which are exempt from RCRA standards. The wastewater treatment tank exemption from the RCRA standards is specified in 40 CFR 264.1(g)(6) and 40 CFR 265.1(c)(10) for permitted and interim status hazardous waste facilities, respectively. Although the treatment tanks are exempt from RCRA standards, they must meet the definition of tank specified in 40 CFR 260.10: "* * * a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support." The tanks must also be part of a wastewater treatment facility subject to regulation under section 402 or 307(b) of the Clean Water Act (CWA). These sections of the CWA provide the authority for EPA or the States to regulate pollutants discharged from wastewater treatment facilities to publicly owned treatment works or to surface waters.

EPA believes that converting to a tank system can rarely be accomplished within a six-month timeframe and frequently takes two to four years, depending on the complexity of the system and the location of the facility. The steps necessary to accomplish the conversion can be classified into four general areas:

- Analysis and decision-making,
- System design and pilot testing,
- Construction/installation, and
- Permitting.

Some of these steps occur concurrently and others are performed sequentially. Delays in one area may cause delays in another. Each activity is discussed below.

Analysis and decision-making. An owner or operator of a surface impoundment required to comply with the MTRs will first conduct a study of available compliance options. This typically includes an examination of the technical and legal issues involved, a basic engineering analysis, feasibility studies, and a cost assessment; many facilities will also evaluate process changes and waste minimization options as part of this process. A final decision is then made based on the results of these studies. A facility owned by a large corporation may need to consult people outside of the plant. Corporate approval of the decision is required in many cases.

According to the facilities that provided information to EPA, the analysis and decision-making phase typically takes one to two months, but can take longer, depending on the types of options being considered and the corporation's decision-making procedures. Most facilities were able to complete this phase within a six-month period.

System design and pilot testing. Once the decision to build a wastewater treatment tank system is finalized, the system design and pilot testing phase begins. This phase involves several steps. Some facilities report the need for a pre-design phase that involves planning and pilot testing. The next phase—final engineering—includes process and mechanical design and typically involves a soil compaction investigation to determine the stability of site soils.

Before the final design is completed, the bidding process begins. Concurrent with the design and bidding phases, the facility attends to pre-construction requirements such as obtaining construction permits, preparing the site, and acquiring materials. This process would most likely be completed some time after the design is finalized.

Facilities stated that the overall system design and pilot testing phase takes from six months to two years to complete.

Construction/installation. The time needed to construct and/or install a wastewater treatment tank system depends on the size of the system. The process is relatively quick if the tank can be manufactured and shipped to the site in one piece. Tank manufacturers report that a 50,000-gallon tank (e.g., 12 feet in diameter and 60 feet high) is typically the largest size that can be manufactured and shipped in one piece, and that installation would take two to four months (including shop drawings, production/fabrication, painting and coating, and transportation and installation).

Tanks larger than 50,000 gallons are typically manufactured in pieces at the shop and erected on-site. The time needed to install field-erected tanks depends on several factors such as the size of the tank, weather conditions, the amount of site preparation required, the complexity of the tank system (e.g., the number of connections to and from the tank), and materials availability. Tank manufacturers indicated that a one-million gallon field-erected tank typically takes from five to six months to fabricate, ship, and install at the site. One manufacturer indicated that on a recent fast-tracked project, two one-million gallon pre-fabricated bolted tanks were installed in about four months. Larger tanks take more time to install. For example, one tank manufacturer indicated that it takes six to seven months to construct and install a 2.4-million gallon tank (100 feet in diameter, 40 feet in height). Another tank manufacturer estimated that it takes about 15 months to construct a 10-million gallon welded tank. EPA is aware of several TC-impacted facilities constructing tanks as large as 16 million gallons.

Several of the facilities that provided information to EPA indicated that the construction/installation phase can take as long as 18 months.

Once the tank is installed, a hydrostatic test is typically performed to check for leaks or other structural problems. Problems identified during this test could delay the start-up date.

Permitting. The permitting process typically begins in the very early phases of conversion and extends through the construction phase. A decision on a modification of a facility's National Pollutant Discharge Elimination System (NPDES) permit typically takes about two months. Because this step can be done concurrently with others, it is not likely to delay project completion. In certain States, some facilities may need other permits, such as an air discharge permit. In some States, the State permitting authority may issue a construction variance so that the facility can proceed with construction while the air permit is being negotiated. Several facilities reported that satisfying the requirements of local regulations added a few months to the conversion process. Under some circumstances, the dialogue between facilities and agencies is a time-consuming process, particularly when a variance is sought or an appeal is made.

Other Factors That Can Affect Timing. While the size of the tank system significantly affects the length of the construction phase, other factors appear to be very important in terms of overall timing:

• Many facilities are constrained by a lack of available real estate. Land shortages may make it necessary to first close the existing surface impoundment and then construct the new tank system in the same place, introducing delays of up to two years;

• Weather conditions such as wind and snowfall also affect timing. Drought can speed construction while excess rainfall can add several weeks to the schedule. In some parts of the country, there is a limited "window of construction" during which tanks can be built. For example, a Michigan facility reported that tanks cannot be installed between December and March;

• Case-by-case geological conditions can slow the construction process (e.g., unstable ground necessitates the construction of pilings);

• The need to comply with State and local regulations can lead to considerable delays in constructing wastewater treatment tanks; and

• The availability of materials used for constructing tanks can affect the time needed to convert to tank systems. Tank manufacturers indicated that this is not a problem, but several facilities stated that a shortage in steel has led to delays in tank construction. For example, a Louisiana facility reported that it took 18 months to acquire the steel necessary to build a tank.

Summary. EPA believes that replacing surface impoundments with wastewater treatment tanks can rarely be accomplished within a six-month period. None of the facilities that provided information to EPA indicated that they were able to replace their surface impoundments with wastewater treatment tanks within a six-month time frame. According to the tank manufacturers EPA contacted, even the relatively small tanks take five to six months to fabricate, ship, and install; this does not include time for decisionmaking or permitting. The duration of most of the actual or planned projects of which EPA is aware ranges from two to four years. EPA requests additional information on how long it takes to replace existing surface impoundments with wastewater treatment tank systems.

2. Retrofitting Surface Impoundments

EPA believes that retrofitting newly regulated surface impoundments to meet the MTRs will seldom be performed because facility owners or operators typically prefer to avoid the long-term liabilities associated with operating subtitle C surface impoundments. However, the Agency is aware that owners or operators of surface impoundments may choose to retrofit their impoundments for a variety of reasons. One consideration, for example, is whether the treatment process occurring in the impoundment can be achieved cost-effectively in a tank.

The amount of time needed to retrofit a surface impoundment is influenced strongly by the size of the impoundment. EPA's data indicate that it frequently takes two to three years to retrofit a surface impoundment, although some facilities have been able to retrofit small impoundments in one year or less. Owners or operators who choose to retrofit their surface impoundments generally follow the four steps identified in the previous section, as discussed below.

Analysis and decision-making. This phase takes one to two months to complete and involves the same feasibility and cost studies as the tank option. Again, in some cases, corporate approval of the initial decision (and later, of the final design) is needed, and this can delay the process. One facility reported that the corporate approval process took over six months to complete.

System design. Once the decision to retrofit is made and approved, the design phase begins. The duration of the design phase increases with the size and complexity of the system. Facilities with one or two small surface impoundments may need less than one month to plan and design in order to retrofit. Facilities with several relatively large surface impoundments typically retrofit in phases, a process requiring difficult planning and sequencing. For complicated or very large systems, the design cycle can take one year.

Concurrent with the design phase, facilities generally begin the bidding process. It takes an average of two months to complete contract negotiations.

Installation and testing. Before construction begins, the facility owner or operator must prepare the site and obtain the necessary materials. The procurement of liner materials can take up to six months. The length of time needed for site preparation and liner installation depends on the size of the area. Site preparation, which includes removing liquids and dredging solids from the surface impoundment, can take several months. Several more months are typically needed to install the liner systems. One facility indicated that it took four months to complete the installation phase of retrofitting a 100 ft x 200 ft surface impoundment, while another facility reported retrofitting 29 acres of surface impoundments in 14 months.

Permitting. When a waste is newly identified as hazardous, facilities managing that waste gain interim status by submitting a section 3010 notification and a Part A permit application, and facilities that already have interim status must submit a revised Part A permit application. These facilities then submit a retrofit plan that, when approved, will be incorporated into the Part B permit application. The retrofit plan must be approved by the Region or State, a process taking four months to one year. Facilities may begin retrofitting before the plan is approved, although they run a very small risk that the permit will be denied.

For facilities that are already permitted, 40 CFR 270.42(g) provides a special procedure for modifying permits for newly identified hazardous wastes. This provision requires the permittee to submit a Class 1 permit modification request on or before the effective date of the rule identifying the waste as hazardous. Retrofitting a surface impoundment constitutes a Class 2 or 3 modification, requiring the permittee to also submit a complete permit modification request within 180 days of the effective date. The EPA Region or State then makes a decision on the permit modification request, which takes from several months to a year. Some facilities wait until the permit modification is approved before they begin the actual retrofit. However, facilities may begin retrofitting before the permit modification is approved under temporary authority granted under 40 CFR 270.42(e)(3)(ii)(E).

The permitting process may not delay the project significantly, especially if it is begun early and in conjunction with other phases of the retrofit. However, the length of time the permitting process takes varies, depending on specific requirements of Federal, State, and local agencies.

Other Factors That Can Affect Timing

• Weather affects timing; unexpected rainfall can extend the schedule by at least several months;

• The existence of excess surface impoundment capacity can facilities the retrofitting process. One facility was able to operate out of an emergency overflow basin while retrofitting its other surface impoundment;

• Some facilities need more time for site preparation and clean-up than

others. Contaminated soil from surface impoundment leaks, for example, could delay retrofitting;

• Existing liner systems require different levels of upgrading. One facility operator reported that the retrofitting process was relatively fast because their surface impoundment was already equipped with a clay liner and needed only a synthetic liner and drainage layers;

• There is a considerable amount of necessary but time-consuming exchange between facilities and agencies during the entire retrofitting process. This process is lengthened when a variance is sought; one facility reported that it took six months to resolve issues surrounding their variance request.

Finally, it should be noted that a related compliance option available to surface impoundment owners or operators is closing existing surface impoundments and replacing them with new, MTR-compliant impoundments constructed elsewhere on the site. The necessary steps and their time frames are similar to the retrofitting periods given above, with the exception of the permitting phase. In cases where a new surface impoundment has to be permitted, the permitting process can add considerable delays to the schedule.

Summary. EPA believes that few owners or operators will choose to retrofit newly regulated surface impoundments because of the long-term liabilities associated with operating subtitle C surface impoundments. However, those facilities that do choose to retrofit would rarely be able to accomplish this task within a six-month period. While small surface impoundments can sometimes be retrofitted in one year or less, EPA has determined that the overall process of retrofitting an impoundment more frequently takes two to three years. EPA requests additional information on how long it takes to retrofit existing surface impoundments with liners and leak detection systems.

3. Conclusion

EPA surveyed how much time is needed for owners or operators of newly regulated surface impoundments to comply with the MTRs by either replacing the impoundments with wastewater treatment tanks, or retofitting the surface impoundments with liners and leak detection systems according to the requirements to section 3004(o)(1)(A)(i). EPA collected information from a variety of sources, including facilities that have implemented these practices in the past or plan to do so in the future (e.g., in response to the TC), tank manufacturers, and engineers.

EPA estimates that the time needed to comply with the MTRs varies considerably based on case-by-case factors (e.g., current waste management practices, land availability) and regional factors (e.g., climate). According to EPA's information sources, six months appears not to be enough time to either retrofit a surface impoundment or replace the impoundment with a wastewater treatment tank. Replacing a surface impoundment with a tank frequently takes two to four years, and retrofitting a surface impoundment frequently takes two to three years.

EPA believes that most interim status surface impoundments managing wastes newly identified or listed as hazardous will be able to comply with the surface impoundment MTRs within four years of the date promulgating the listing or characteristic. Thus, the four-year period allowed in section 3005(j)(6) is a reasonable period within which to come into compliance.

IV. Relationship to Ground-Water Protection Principles

The EPA Ground-Water Task Force, established in July 1989, has developed Ground-Water Protection Principles to protect the Nation's ground-water resources. Because of the importance of these principles, they were considered in the preparation of today's proposed rule. EPA believes that today's proposal is consistent with the principles and will not adversely affect ground-water resources. Wellhead Protection Areas, a central concern of the Ground-Water Protection Principles, are discussed below.

Section 1428 of the Safe Drinking Water Act, added in 1986, calls for States to develop wellhead protection (WHP) programs in order to prevent contamination of public water supplies. Wellhead Protection Areas (WHPAs) are established by States around public water system supply wells. WHPAs are defined as "the surface and subsurface area surrounding a water well or well field, supplying a public water supply system, through which contaminants are reasonably likely to move toward and reach such water well or well field."

Because of the importance of WHPAs, EPA believes they should be addressed in today's proposal. The regulatory interpretation proposed today is not meant to conflict with State WHP programs. Owners or operators of surface impoundments should identify whether wellhead protection is an issue and, if so, follow the appropriate State procedures. Facilities must be in compliance with EPA-approved State Wellhead Protection Programs where these programs exist.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42) U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being proposed pursuant to sections 3004(g)(4) and 3005(j)(6), of RCRA. It is proposed to be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also proposed to be modified to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in § 271.2(e). The deadline would be July 1, 1993 if this rulemaking is finalized before June 30, 1992. This deadline can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in an annual cost to the economy of $100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, employment, investment, innovation, or international trade. Today's proposed rule is not expected to result in any significant compliance costs or economic impacts because it does not impose new requirements. Instead, the proposal clarifies the date by which existing requirements must be met. Therefore, today's proposal does not qualify as a major rule under Executive Order No. 12291, and EPA has not prepared an RIA.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for a proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of today's rule, as required by the Regulatory Flexibility Act, and determined that the rule will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared an RFA.

C. Paperwork Reduction Act

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

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 24, 1992.

William K. Reilly,

Administrator.

For reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.5, paragraph (h)(2)(v) is redesignated as paragraph (h)(2)(vi), paragraph (h)(2)(iv) is revised to read as follows, and new paragraph (h)(2)(v) is added to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

* * * * *

(h) * * *

(2) * * *

(iv) The surface impoundment, if permitted, is in compliance with the requirements of subpart F of part 264 and § 264.221 (c), (d) and (e) of this chapter; or

(iv) The surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of subpart F of part 265 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of § 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of subpart F of part 265 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of § 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste.

* * * * *

[FR Doc. 92-2659 Filed 2-3-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 704 and 799

[OPPTS-42051B; FRL 4047-6]

Glycidol and Its Derivatives Category; Proposed Test Rule; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule for the "Glycidol and its Derivatives" category published in the **Federal Register** of November 7, 1991. The extension responds to a request by the Society of the Plastic Industry, Incorporated (SPI) and others for an additional 60 days to permit more time to evaluate the administrative record for this complex proposal and prepare written comments.

DATES: Submit written comments on or before April 6, 1992. If persons request an opportunity to submit oral comments by April 6, 1992, EPA will hold a public meeting on this rule in Washington, DC.

ADDRESSES: Submit written comments, identified by the document control number (OPPTS-42051B), in triplicate to: TSCA Public Docket Office (TS-793), rm. NE-G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued a proposed test rule published in the **Federal Register** of November 17, 1991 (56 FR 57144) with reporting and recordkeeping requirements on the testing of the "Glycidol and its Derivatives" category for mutagenicity, oncogenicity, developmental toxicity, subchronic toxicity, acute and subchronic neurotoxicity and reproductive toxicity. EPA received requests from SPI and others for a 60-day extension of the comment period on this rule because of the complexity of certain aspects of the rule. EPA believes the request to be reasonable and agrees to this extension for public comment. EPA also extends the period of time to request a public meeting to April 6, 1992, on this proposed test rule.

Authority: 15 U.S.C. 2603.

Dated: January 26, 1992.

Joseph A. Carra,
Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2656 Filed 2-3-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3180

RIN 1004-AB73

[WO-610-4111-02-2411-24 1A]

Onshore Oil and Gas Unit Agreements: Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: In keeping with its legal and fiduciary obligations for prudent management of the public lands and resources, the Bureau of Land Management (BLM) proposes to make permanent its interim policy of conditioning its approval of all new onshore oil and gas unit agreements on the inclusion of a compensation provision for lost production royalty from unleased Federal lands located within the boundaries of unit participating areas. Changes in the regulations under subpart 3181, and the model onshore oil and gas unit agreement for unproven areas at § 3186.1 are proposed in order to provide for such compensation.

Also proposed is a change in the onshore oil and gas unit regulations at § 3183.4, which would define the effective date of approval of an onshore oil and gas unit agreement as the date of signature and approval by the BLM authorized officer.

A further change is proposed at § 3185.1 that would clarify the procedures for administrative appeal that are available to parties adversely affected by actions or decisions taken by the authorized officer under this part of the regulations.

DATES: Comments will be accepted until April 6, 1992. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555 Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653-2133, or Wayne Stevens, (202) 653-2164.

SUPPLEMENTARY INFORMATION: Under 30 U.S.C. 226(m), any unit agreement proposal embracing Federal lands requires the approval of the BLM. Such approval may be given only upon determination that the agreement is necessary or advisable to further the public interest. The Federal Government sustains a loss of royalty income when unleased Federal lands are drained by producing wells located on nearby non-Federal tracts or Federal tracts producing under a lower royalty rate. To avoid this revenue loss, the BLM attempts to lease these lands and have them committed to the unit agreement, but occasionally it is unable to do so for various reasons beyond its control.

The Office of the Inspector General (OIG) of the Department of the Interior, in an audit report released on December 2, 1986, expressed concerns about oil and gas drainage from Federal lands. In a more recent study, the OIG examined the status of unleased Federal lands located within producing areas of onshore oil and gas units. In the latter study, the OIG recognized that attempts to lease these lands are not always successful and concluded that the Federal Government continues to lose production royalty revenue from unleased Federal lands located within producing units. The OIG recommended that the BLM take steps to ensure that, in the future, the Federal royalty interest in unleased unit lands is adequately protected.

It has been determined that the public interest requires the United States to be assured of compensation for lost production revenues occasioned by unleased Federal lands being located within a unit participating area. The field offices of BLM were instructed on January 29, 1990, to scrutinize carefully all proposed unit agreements that could have resulted in uncompensated drainage from unleased Federal tracts. It is now proposed to incorporate this policy determination into the permanent regulations of the Department of the Interior. A new § 3181.5 is proposed to accomplish this. In order for the authorized officer to approve a unit agreement, the agreement is required to contain a compensatory royalty

provision covering such unleased lands. The BLM also proposed to add such a provision to the model unit agreement found at 43 CFR 3186.1.

This new provision in the model form would affect only those units containing unleased Federal land. The inclusion of a compensatory royalty provision in unit agreements for such areas could have been accomplished case-by-case, rather than through rulemaking. However, that approach was judged to be administratively inefficient, and would not address those situations where leased Federal lands in a unit could become unleased subsequent to unit approval. It is estimated that the proposed requirement to pay drainage compensation for unleased Federal lands would generate additional royalty revenue to the United States of $70,000 per year.

Proposed § 3183.4, Approval of executed agreement, would specify that approval of a unit agreement by the authorized officer of the BLM is not effective until the authorized officer has signed and dated the Certification-Determination addendum to the agreement. The provision in the current regulations states that the agreement shall be approved upon a determination that it is necessary or advisable and that such approval shall be incorporated in the Certification-Determination document, with no clear indication of when the agreement takes effect.

Proposed § 3185.1, Appeals, would state the proper channels of administrative review for those wishing to appeal a decision of the authorized officer related to oil and gas unit matters. Currently, that section of the regulations suggests that an appeal may be taken directly to the Interior Board of Land Appeals (IBLA) without prior review by the State Director. In order to be consistent with appeal procedures established under subpart 3165 for oil and gas operations in general, aggrieved parties who wish to appeal a decision of the authorized officer under the unit regulations in part 3180 must request a State Director review before pursuing an appeal to the IBLA.

The principal author of this proposed rule is Wayne Stevens of the Division of Fluid Mineral Lease and Reservoir Management, assisted by Dennis Daugherty of the Office of the Solicitor, Department of the Interior, and by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3180

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reasons stated in the preamble, part 3180, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

1. The authority citation for 43 CFR part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181, 226(e), 226(j), and 226(m).

Subpart 3181—Application for Unit Agreement

2. Section 3181.5 is added to read as follows:

§ 3181.5 Compensatory royalty payment for unleased Federal land.

The unit agreement submitted by the unit proponent for approval by the authorized officer shall provide for payment to the Federal Government of a 12½ percent royalty on production that would be attributable to unleased Federal lands in a participating area of the unit if said lands were leased and committed to the unit agreement. The value of production subject to compensatory royalty payment shall be determined pursuant to 30 CFR part 206; except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands.

Subpart 3183—Filing and Approval of Documents

3. Section 3183.4 is amended by revising paragraph (a) to read as follows:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (see § 3186.1 of this part for an example) and this unit agreement shall not be deemed effective until the authorized officer has executed the Certification-Determination document. No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

* * * * *

Subpart 3185—Appeals

4. Section 3185.1 is revised to read as follows:

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under the regulations in this part may request an administrative review before the State Director under § 3165.3 of this title. Any party adversely affected by a decision of the State Director after State Director review may appeal that decision as provided in part 4 of this title.

Subpart 3186—Model Forms

5. Section 3186.1 is amended by revising section 12 of the model unit agreement, and by redesignating the existing text of section 17 of the model unit agreement as paragraph (a) and adding a new paragraph (b) to section 17, to read as follows:

§ 3186.1 Model onshore unit agreement for unproven areas.

* * * * *

12. *Allocation of Production.* All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations which has been approved by the AO, or unavoidably lost, shall be

deemed to be produced equally on an acreage basis from the several tracts of unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. Each tract of unitized land in said participating area shall have allocated to it, in addition, such percentage of the production attributable to unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, upon payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensation royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed to by the affected parties. It is acknowledged that, once the compensatory royalty is paid, no other royalty shall be due from any lessee benefiting from a share in the production allocated to the unleased lands. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless of whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement, shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

17. Drainage.

(a) * * *

(b) In order to compensate the United States for drainage from any unleased Federal lands sharing a common pool or deposit with other land in the participating area, the value of 12½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Working interest owners party to this agreement shall be responsible for such payment of compensatory royalty on the volume of production allocated to their unitized tracts pursuant to section 12. The value of such production subject to the payment of compensatory royalty shall be determined pursuant to 30 CFR part 206, except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further Federal royalty assessment under section 14. Specifically, it is acknowledged that, once the compensatory royalty is paid, no other royalty shall be due from any lessee benefiting from a share in the production allocated to the unleased Federal lands. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

Dated: November 19, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-2572 Filed 2-3-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-12, RM-7883]

Radio Broadcasting Services; Belle Fourche, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lovcom, Inc., seeking the substitution of Channel 240C1 for Channel 240A at Belle Fourche, South Dakota, and the modification of Station KBFS-FM's license to specify operation on the higher class channel. Channel 240C1 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.4 kilometers (23.8 miles) south to accommodate petitioner's desired transmitter site, at coordinates North Latitude 44-19-35 and West Longitude 103-50-15. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Belle Fourche or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 23, 1992, and reply comments on or before April 7, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: W.K. Love, P.O. Box 787, Belle Fourche, South Dakota 57717 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-12, adopted January 22, 1992, and released January 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2681 Filed 2-3-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-11, RM-7881]

Radio Broadcasting Services; Inglis, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: .This document requests comments on a petition by Lucille Ann Lacy seeking the allotment of Channel 282A to Inglis, Florida, as that community's first local FM service. Channel 282A can be allotted to Inglis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) northwest, in order to avoid a short-spacing to Station WZTU(FM), Channel 281C, Cocoa Beach, Florida. The coordinates for the proposal are North Latitude 29-02-45 and West Longitude 82-40-53.

DATES: Comments must be filed on or before March 23, 1992, and reply comments on or before April 7, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lucille Ann Lacy, 3507-A Van Tassel, Amarillo, Texas 79121 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-11, adopted January 21, 1992, and released January 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2680 Filed 2-3-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 89-552; FCC 92-27]

Use of the 220-222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a further Notice of Proposed rulemaking to solicit the public's views regarding the best means for selecting licensees for the 220-222 MHz nationwide authorizations.

DATES: Comments must be filed on or before March 2, 1992 and reply comments must be filed on or before March 23, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634-2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed Rulemaking, PR Docket No. 89-552, FCC 92-27, adopted January 21, 1992, and released January 30, 1991. The full text of this further notice of proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Further Notice of Proposed Rulemaking

1. In the notice of proposed rulemaking and report and order in PR Docket No. 89-552, the Commission concluded that the lottery process was the best method for the selection of licensees. Although the Commission took several steps designed to minimize the number of speculative applications filed, and thus to restrict lottery entry to entities with legitimate communications plans, a considerable number of applications were received, many of which are believed to have been filed by entities with no apparent legitimate interest in developing and operating communications systems.

2. As a result, the Commission has begun to reexamine its decision and to consider whether the use of comparative hearings would be advantageous in guaranteeing that only the most qualified entities are selected for the nationwide 220-222 MHz authorizations. Although the number of local applications received leads the Commission to conclude that the principal amount of speculation occurred at the local level, the Commission remains convinced that the substantial similarities between the proposed systems of local applicants and the volume of local applications filed make it impracticable to attempt to compare their relative qualifications. In contrast, the potential value of the nationwide authorizations, the small number of nationwide licenses available, and the amount of spectrum associated with each nationwide license cause the Commission to question whether the public interest would be better served by the use of procedures more exacting than the lottery process. Consequently, the Commission solicits commenters' views regarding the best means, using currently available tools, to ensure that only the most qualified entities are selected for nationwide licensing.

3. The Commission also seeks comment with respect to whether the distinctions between the nationwide commercial and non-commercial authorizations cause a particular selection process to be more or less suitable in either context. In addition, in recognition of the special status of the non-commercial nationwide channels, the Commission seeks comment as to the efficacy of adopting stricter operational and construction standards as a means for narrowing the non-

commercial pool of applicants to only those entities with the greatest interest and demonstrated capability to develop a non-commercial nationwide communications system.

4. Finally, in the event that the Commission decides to use comparative selection procedures in either the commercial or non-commercial nationwide context or both, it proposes to adopt specific comparative criteria that will focus on the following three general areas: (1) The applicant's ability to demonstrate that it can provide service more quickly than required by the basic qualifications; (2) the applicant's ability to construct more than the minimum of one base station in a greater number of geographic areas than the 70 required as a basic qualification; and (3) the applicant's ability to demonstrate that its proposed use or system design is exceptionally innovative or proficient. Commenters are asked to discuss the effectiveness of these general areas of focus in terms of the likelihood that they will produce meaningful distinctions between applicants as well as their administrative workability.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, 220–222 MHz narrowband frequencies, Radio.

Amendatory Text

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

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

2. Section 90.711 is amended by revising paragraph (a) to read as follows:

§ 90.711 Processing of applications.

(a) Applications will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (i.e., if all applications were granted, violation of the provisions of § 90.723(f) would result), or when multiple applications for nationwide systems are filed on the same day for a number of systems in excess of those available in the relevant category (10-channel non-commercial, 5-channel non-commercial or 5-channel commercial), these applications will be considered mutually exclusive. All mutually exclusive nationwide applications will be resolved through the use of comparative procedures.

* * * * *

3. § 90.713 is amended by adding paragraph (a)(6) to read as follows:

§ 90.713 Entry criteria.

(a) * * *

(6) Applicants for non-commercial nationwide licensing must also submit a written certification demonstrating an actual presence or long-term business plan necessitating internal communications capacity in the 70 or more markets identified in the license application.

4. § 90.725 is amended by revising paragraph (h) to read as follows:

§ 90.725 Construction requirements.

* * * * *

(h) Licensees granted non-commercial nationwide authorizations will be required to construct base stations in a minimum of 70 markets designated in the license application within five years of the initial license grant, except as provided in paragraphs (a)(2), (a)(7) and (a)(8) of this section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–2683 Filed 2–3–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

[FAR Case 91–67]

Federal Acquisition Regulation; Employee Stock Ownership Plans

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering changes to the Federal Acquisition Regulation (FAR) to amend FAR 31.205–6(j)(8), Employee stock ownership plans, to make it clear that the cost principal applies to all Employee Stock Ownership Plans (ESOPs) regardless of whether or not an ESOP meets the definition of "pension plan" in FAR 31.205–6(j)(1) (i.e. provides a benefit payable for life).

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 6, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR case 91–67 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 91–67.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revision to FAR 31.205–6(j)(8), Employee stock ownership plans, will clarify the cost principle and ensure that the cost principle is applied consistently to all Employee Stock Ownership Plans (ESOPs). The proposed rule adds language at 31.205–6(j)(8) stating that regardless of whether or not an ESOP provides a benefit payable for life (i.e., meets the definition of "pension plan" in FAR 31.205–6(j)(i)), the costs of such a plan are allowable subject to certain conditions. Specifically, all ESOPs are subject to the contribution ceiling and rate approval requirements contained in the cost principle regardless of whether or not the ESOPs provide a benefit payable for life.

An excerpt from the Board of Contract Appeals findings in the Appeal of Ralph M. Parsons Company (ASBCA Nos. 37931, 37946, and 37947), raised a concern that the cost principle on ESOP costs, which was in Defense Acquisition Regulations 15–205.6(j) and is now in FAR 31.205–6(j)(8), was being interpreted to apply only when the ESOP meets the definition of "pensions plan" in 31.205–6(j)(1). Under this interpretation, an ESOP is subject to the contribution ceiling or rate approval requirements contained in the cost principle only when the ESOP provides a lifetime payment option. We believe that it is not appropriate or justifiable to apply the ceiling or approval requirements to ESOPs which qualify as pension plans, while excluding ESOPs which do not qualify as pension plans. The limitations imposed by the FAR 31.205–6(j)(1) definition of "pension plan" are already recognized in the language contained in 31.302(6)(j)(7). Under subparagraph (j)(7), early

retirement incentive plans do not represent lifetime income settlements and as such, would not qualify as pension costs. For contract costing purposes, however, early retirement incentive payments are allowable, subject to specified pension cost criteria. The clarification of 31.205-6(j)(8) would follow this precedent language and ensure that the cost principle is applied consistently to all ESOPs regardless of whether a lifetime payment is present.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from shall entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91-67) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement

Dated: January 24, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

1. The authority citation for 48 CFR part 31 continues to read as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205-6 [Amended]

2. Section 31.205-6 is amended by revising paragraph (j)(8)(i) introductory text to read as follows:

* * * * *

(j) * * *

(8) *Employee stock ownership plans.* (i) An employee stock ownership plan (ESOP) is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contribution to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. These plans do not necessarily provide benefits payable for life, and as such may not qualify as pension plans. However, regardless of whether an ESOP qualifies as a pension plan, its costs are allowable subject to the following conditions:

* * * * *

[FR Doc. 92-2454 Filed 2-3-92; 8:45 am]

BILLING CODE 6820-34-M

Notices

Federal Register
Vol. 57, No. 23
Tuesday, February 4, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes, Committee on Regulation, and Special Committee on International Assistance in Administrative Law; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 96–463), notice is hereby given of meetings of the Committee on Governmental Processes, the Committee on Regulation, and the Special Committee on International Assistance in Administrative Law of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Wednesday, February 12, 1992.
Time: 2 p.m.–4:30 p.m.
Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.
Agenda: The committee will meet to discuss a study of procedural constraints on agency investigations, by Professor Ronald F. Wright, Jr., Wake Forest University School of Law.
Contact: David M. Pritzker, 202–254–7020.

Committee on Regulation

Date: Tuesday, February 18, 1992.
Time: 1:30 p.m.–5 p.m.
Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.
Agenda: The committee will meet (from 1:30 p.m. to 2:30 p.m.) for further discussion of a draft recommendation on implementation of the Noise Control Act, based on a report by Professor Sidney A. Shapiro, University of Kansas School of Law, and Dr. Alice H. Suter, Alice Suter and Associations, Cincinnati, Ohio.

The committee will discuss (from 2:30 p.m. to 5 p.m.) a new project concerning the coordination of migrant and seasonal farmworker service programs. The Conference's consultants for this study are Professor David A. Martin, University of Virginia School of Law and Professor Phillip L. Martin, University of California at Davis, Department of Agriculture Economics.
Contact: David M. Pritzker, 202–254–7020.

Special Committee on International Assistance in Administrative Law

Date: Wednesday, February 19, 1992.
Time: 9:30 a.m.
Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.
Agenda: The special committee will discuss the role of the Administrative Conference in providing information and expertise on administrative law issues to foreign countries that request assistance.
Contact: Michael W. Bowers, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact person. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

Dated: January 31, 1992.
Michael W. Bowers,
Deputy Research Director.
[FR Doc. 92–2766 Filed 2–3–92; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-92-11]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.
Date: February 25, 1992.
Time: 10:30 a.m.
Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.
Purpose: To review the implementation of policies and procedures during the 1991–92 marketing season, discuss possible revisions, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: January 30, 1992.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 92–2668 Filed 2–3–92; 8:45 am]
BILLING CODE 3410–02–M

Federal Grain Inspection Service

Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the Michigan (MI) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

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

DATES: Comments must be postmarked on or before March 5, 1992.

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

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

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and

Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 1, 1991, **Federal Register** (56 FR 56184), FGIS asked persons interested in providing official grain inspection in the Michigan geographic area to submit an application for designation. Applications were to be postmarked by December 2, 1991. There was one eligible applicant, Michigan. This applicant applied for the entire area currently assigned to it.

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

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

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

Dated: January 28, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-2497 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicants for Designation to Provide Official Services at Mid-States Terminals, Inc. (now Countrymark, Inc.), and Peavey Elevator, Carrollton, Michigan (MI)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services at Countrymark, Inc., and Peavey Elevator at Carrollton, Michigan. FGIS proposes to recognize these elevators as domestic grain elevators at which official services would be provided by a designated official agency. FGIS has been and will continue to provide official services at these elevators until a decision can be made in this matter. FGIS anticipates that an applicant may be designated to provide official services at these two elevators by April 1, 1992.

DATES: Comments must be postmarked on or before March 5, 1992.

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

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

SUPPLEMENTARY INFORMATION:

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

In the October 25, 1991, **Federal Register** (56 FR 55268), FGIS asked persons interested in providing official services at Countrymark, Inc., and Peavey Elevator at Carrollton, Michigan, to submit an application for designation. Applications were to be postmarked by November 25, 1991. There were two eligible applicants. These applicants, Michigan Grain Inspection Services, Inc. (Michigan), and Detroit Grain Inspection Service, Inc. (Detroit), are nearby currently designated official agencies. Each applied for the entire available area and one (Detroit) would accept less than the entire area.

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

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

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

Dated: January 28, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-2498 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-EN-F

Evaluation of Deoxynivalenol (DON) and Zearalenone (ZEA) Test Kits

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Federal Grain Inspection Service (FGIS) is considering providing DON and ZEA testing in grains and commodities under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). DON and ZEA are chemical substances resulting from the metabolic process of certain molds in grains. This notice is to announce that FGIS is solicitating input into the availability of commercial test kits for qualitatively and quantitatively determining the presence of DON and ZEA in grains and commodities in order to conduct a study under field conditions.

DATES: Comments and mycotoxin test kits for examination must be submitted on or before March 5, 1992.

ADDRESSES: Comments and/or test kits for testing must be submitted to Dr. Chuan Kao, Chemist, Quality Assurance and Research Division, USDA/FGIS Technical Center, 10383 N. Executive Hills Blvd., Kansas City, Missouri 64153.

FOR FURTHER INFORMATION CONTACT: Dr. Chuan Kao, address as above, telephone (816) 891-7150.

SUPPLEMENTARY INFORMATION: The objective of this study is to provide FGIS with information and experience with commercially available test kits for the qualitative and quantitative determination of DON and ZEA in certain grains and commodities under field conditions. Grains and commodities to be considered are corn, corn gluten feed, corn meal, milled rice, sorghum, wheat, and products produced therefrom with primary emphasis on corn and wheat. The general requirements for a test kit to be acceptable for testing are:

(a) The time for completion, including extraction of a single test, shall not be more than 30 minutes, and

(b) The test shall not require the use of recognized or suspect human carcinogens.

Manufacturers are requested to notify FGIS of the commercial availability of test kits for DON and ZEA and to

provide information on the performance of these test kits.

Authority: 7 U.S.C. 1621, *et seq.*

Dated: January 29, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92-2562 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Suitability Studies for Six Rivers Being Considered for National Wild and Scenic River Status; Daniel Boone National Forest; Jackson, Laurel, McCreary, Pulaski, and Whitley Counties; KY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement for a proposal to study the suitability of six rivers in the Daniel Boone National Forest in Kentucky for inclusion in the National Wild and Scenic Rivers System. The six rivers include the Rockcastle River, Cumberland River, Marsh Creek, South Fork and War Fork of Station Camp Creek, and Rock Creek.

The agency invites written comments and suggestions on the suitability of these six rivers. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments should be received in writing by March 30, 1992, to ensure timely consideration.

ADDRESSES: Send written comments to Richard H. Wengert, Forest Supervisor, Daniel Boone National Forest, 100 Vaught Road, Winchester, Kentucky 40391.

FOR FURTHER INFORMATION CONTACT: Jorge Hersel, Dispersed Recreation Specialist, Daniel Boone National Forest, Stanton Ranger District, 705 W. College Avenue, Stanton, Kentucky 40380, (606) 663-2852.

SUPPLEMENTARY INFORMATION: The Daniel Boone National Forest Land and Resource Management Plan was approved in September 1985, shortly after the initial identification of nine rivers on The Daniel Boone National Forest that met the criteria of the 1982 Nationwide River Inventory. Of these nine, six (Rockcastle River, Cumberland River, Marsh Creek, South Fork and War Fork of Station Camp Creek, and Rock Creek) were identified in appendix D of the Forest Plan as needing to be studied for their eligibility and classification, at the rate of one per year, and recommended that suitability studies be conducted later. A separate study on another of the nine rivers, the Red River, was previously completed by the Forest Service and the Secretary will make a recommendation to the President in the near future. Due to the significant amount of private land along the other two rivers (Little South Fork of the Cumberland and South Fork of the Kentucky), the state of Kentucky was asked to take the lead in the eligibility studies of those rivers; therefore, they will not be included as part of this analysis.

The eligibility and potential classification studies for the six rivers have now been completed and the Daniel Boone National Forest is proposing to conduct an environmental analysis to determine the suitability of the six rivers for inclusion in the National Wild and Scenic Rivers System. The decision to be made, based on the environmental impact statement, is whether or not to recommend any or all of the rivers or river segments for designation and inclusion in the National Wild and Scenic Rivers System. The Forest Plan will be amended accordingly.

The suitability study and environmental impact statement will consider the following rivers or river segments:

Rockcastle River

Eligibility and classification determination completed in 1985. Out of the 52.5 miles of the Rockcastle River studied, a 13.3 mile segment, below Kentucky 80 bridge to the lower end of Rockcastle Narrows, was found to be eligible for designation as a National Wild and Scenic River possessing Scenic quality.

Cumberland River

Eligibility and classification determination completed in 1988. Out of the 29 mile segment of the Cumberland River studied a 14.9 mile segment from Cane Creek to approximately 4 miles downstream from Kentucky 90 bridge (RM 558.5) was found to be eligible for inclusion into the system possessing Scenic quality.

Marsh Creek

Eligibility and classification determination completed in 1989. Out of the 18 miles studied, 15 miles from the confluence of the Cumberland River to River Mile 15 were found to be eligible for inclusion in the system. The first seven miles were determined to possess Scenic qualities. The next eight miles were classified as possessing Recreational qualities.

South Fork and War Fork of Station Camp Creek

Eligibility and classification determination completed in 1991. The study of these two streams was combined as they share the same drainages. A 22 mile segment of the South Fork of Station Camp Creek and an 18 mile segment of War Fork and Station Camp Creek was studied. The segments of the two streams were determined not to possess outstandingly remarkable values; therefore, they were found to be ineligible.

Rock Creek

Eligibility and classification determination completed in 1991. A 21 mile segment from the confluence of Rock Creek and the Big South Fork of the Cumberland River to the Kentucky/Tennessee border was studied. The 17.5 mile segment from the White Oak junction to the Kentucky/Tennessee border was found to be eligible for inclusion into the system possessing Recreational qualities.

The area of consideration for each stream was a corridor a minimum of ¼ mile from each stream bank for the entire length of the stream with the Daniel Boone National Forest boundary, but where the visual corridor extended further it was also evaluated. In addition, segments above and below the recommended limits were evaluated as part of the consideration as a possible Wild and Scenic River.

The following preliminary issues, as well as significant issues identified during the scoping process, will be considered in the environmental analysis: (1) Effects on the ability of private landowners to retain their properties and use their lands as they choose; (2) effects on water quality caused by activities on private lands; (3) effects on private lands and Threatened and Endangered species caused by increased recreational use generated by designation of a river; (4) effects on future opportunities for impoundments; and (5) effects of increased use on the limited public access facilities along the rivers.

A range of alternatives will be considered. They will include, as a minimum, one alternative that does not recommend any eligible river or river segment for designation (no-action) and one that recommends designation of all eligible rivers. Additional alternatives may be developed from public

comments received during the scoping process.

The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

Public participation will be especially important at several points during the analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) Identifying potential issues; (2) identifying issues to be analyzed in depth; (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis; (4) exploring additional alternatives; and (5) identifying potential environmental effects (i.e., direct, indirect, and cumulative) of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be utilized in the preparation of the draft environmental impact statement. During January, notices will be published in local and regional newspapers, radio notices will be broadcast, and letters will be sent to key contacts and interested and affected publics. Informal public meetings will be held at Winchester, Kentucky, in the early stages of the analysis to inform the public of the analysis process and to provide for public participation and involvement. Additional meetings may be held in other locations.

Jorge Hersel, Dispersed Recreation Specialist, is the interdisciplinary team leader for the environmental analysis.

The responsible official is Edward Madigan, Secretary of Agriculture, Administration Building, 12th Street, SW., Washington, DC 20250.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1992. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for June 1992, reviewers 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 may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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 the comment period ends on the draft environmental impact statement, the comments will be analyzed, and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by February 1993. The Secretary will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: January 24, 1992.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 92-2568 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-11-M

Vegetative Management Practices for Noxious and Exotic Plant Species, Flathead National Forest, Spotted Bear and Hungry Horse Ranger Districts, Flathead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information to prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of vegetation management practices to control the spread of noxious and exotic weed species in the Bob Marshall and Great Bear Wildernesses (BM/GBWA). The program would apply to those lands administered by Spotted Bear and Hungry Horse Ranger Districts within Flathead, Missoula, Powell and Lewis and Clark counties of Montana.

Ten plant species are currently under consideration for control, five species classified by the state as noxious weeds and 5 other exotic weed species that currently infest the BM/GBWA. Noxious weed species include Leafy spurge (Euphorbia esula), Spotted knapweed (Centaurea maculosa), Whitetop (Cardaria draba), Sulphur cinquefoil (Potentilla recta), and Canada thistle (Crisum arvense). In addition, the wilderness supports Goatweed (Hypericum perforatum), Hound's-tongue (Cynglossum officinale), Common tansy (Tanacetum vulgare), Yellow toadflax (Linaria vulgaris), and Musk thistle (Carduus nutans). The extent of the infestation for these species is listed in Table 1.

As part of a multi-year vegetation management program the Forest Service recognizes the potential impacts of additional exotic vegetation. However, at the present time, the emphasis will be directed toward the ten plant species previously mentioned. These species will receive devoted attention due to their competitive nature and the lack of natural immunities. Once these species are in check, other exotic species may be controlled within the landtypes addressed in the NEPA document.

The Forest Service will consider a range of control techniques based on the individual plant species, the extent of the infestation, site characteristics, and

many other variables. Methods will include no action as well as manual and cultural control methods, biological control, and herbicide use. These methods, derived from scoping and public comments may be carried out under an Integrated Pest Management (IPM) program. Although some people may consider IPM to be an absolute alternative to pesticide application, in reality IPM provides a full range of management methods, including the use of herbicides. Aerial spraying of herbicides will not be considered as an alternative. The EIS will tier to the Flathead National Forest Plan which provides overall guidance in achieving a desired future condition for the areas under consideration.

DATE: Comments concerning the scope of the analysis should be received on or before March 5, 1992. It is important that interests be expressed within this time frame so they will receive timely consideration in the preparation of the DEIS.

ADDRESSES: Submit written remarks and suggestions on the potential vegetation management practices to Greg Warren, District Ranger, Spotted Bear Ranger District, P.O. Box 310, Hungry Horse, MT 59919.

FOR FURTHER INFORMATION CONTACT: Jay Winfield, Interdisciplinary Team Leader, or Greg Warren District Ranger, at (406) 387-5243.

SUPPLEMENTARY INFORMATION: The term "noxious weed" is a legal definition. The Federal Noxious Weed Act of 1974 defines a "noxious weed" as a plant which is of foreign origin, is new to, or is not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock or the fish and wildlife resources of the United States or the Public health (Pub. L. 93-629). The Montana County Noxious Weed Management Act defines a "noxious weed" as any exotic plant species established or that may be introduced in the state which may render land unsuitable for agriculture, forestry, livestock, wildife, or other beneficial uses and is further designated as either a state-wide or county-wide noxious weed (7-22-210 MCA). Therefore, federal, state and county laws require landowners, including the Forest Service, to control noxious and exotic plant species. The Wilderness Act and Flathead National Forest Plan contains similar direction for noxious weed control in wilderness areas.

The Bob Marshall complex contains one of the largest tracts of Congressionally designated wilderness in the lower 48 states. Management activities would transpire under the guidance of the Flathead National Forest Plan in Management Area 21 (996,381 acres) which consists of the Great Bear Wilderness, designated in 1978 by the U.S. Congress, and the Flathead National Forest portion of the Bob Marshall Wilderness, classified in 1964 (p. III-102).

The Wilderness Act defines wilderness as those areas "where the earth and community of life are untrammeled by man." Although wilderness may be viewed as those areas that are "left alone", human impacts have challenged the Forest Service to actively comply with the Wilderness Act mandate. The mandate states that wilderness be "protected and managed so as to preserve its natural condition." The Flathead National Forest Land and Resource Management Plan provides comparable wilderness management direction which commits the agency to "Maintain plants and animals indigenous to the area by protecting the natural dynamic equilibrium associated with natural, complete ecosystems." (Pg. III-102).

Noxious and exotic weed species are aggressively superior competitors when introduced into plant communities. Currently the invasion of exotic plant species into the BM/GBWA threatens the "natural condition" of these areas. Fortunately, only a small percentage of land within the BM/GBWA is infested with exotic plant species. The opportunity currently exists to treat exotic plant infestations while they are small and scattered. This option appears more economical and environmentally sound than waiting until infestations expand and significantly displace native vegetation and reduce native forage availability for all indigenous wildlife species. The depletion of native plant communities could cause aesthetic values and recreational opportunities to depreciate toward an unacceptable level.

The goal of the Forest Service is to maintain or improve the natural integrity of our forest resources. With this goal and the aforementioned acts in mind, the Forest Service proposes multi-year vegetation management practices directed toward the reduction and containment of those weeds currently established. Prevention of additional weed establishment will be addressed in a separate NEPA document.

The extent of the infestation of the ten species being considered for control is listed in Table 1.

TABLE 1.—WILDERNESS WEED INVENTORY

No. of sites	Species	Acres	Landtypes (LTA)
1	Leafy spurge	4.5	Ib
31	Spotted knapweed	59.0	I, Ib, III, VII, VIII
1	Whitetop	0.03	Ib
1	Sulphur cinquefoil	0.5	III
12	Canada thistle	58.0	I, II, III, IV, VII, VIII
3	Goatweed	7.0	III, VII
12	Hound's-tongue	0.55	I, III, VII, VIII
1	Common tansy	0.03	I
5	Yellow toadflax	0.4	I, III, IV, VII, VIII
5	Musk thistle	0.14	Ib, III

The Landtype associations (LTA), listed in the above table are described in "Land System Inventory of the Scapegoat and Danaher portion of the Bob Marshall Wilderness" a US Department of Agriculture, Forest Service, Flathead, Lolo, Lewis & Clark and Helena National Forests, May 1980.

The sites listed in Table 1 will be aggregated into groups with common geographic locations. Soil characteristics, weed species characteristics, sourrounding native vegetation, specific location, and other environmental features will be discussed in the draft environmental impact statement.

As a result of the scoping and analysis that has taken place to date, possible

methods to be used in the treatment of weeds would include:

(1) *No action:* Under this method no direct action would be taken. The comparison of this technique with the active methods highlights the potential effects of uncontrolled exotic plants on the wilderness environment. The no-action method would also provide a baseline for analyzing the possible adverse impacts of various control techniques.

(2) *Manual control:* This method was developed in response to the possible impacts of other treatment activities, and those areas that could possibly receive detrimental effects, if other methods were implemented. This method would include actions such as hand pulling, grubbing or topping to possibly destroy or limit reproduction of the exotic species.

(3) *Cultural control:* This method includes a number of important techniques such as forced grazing, utilization of a shaded canopy, irrigation, mowing, burying of soil that is contaminated with undesirable seed, heavy fertilization rates, mulching, etc.

(4) *Biological control:* Biological weed control is a deliberate use of natural enemies such as parasites, predators, or pathogens to lessen weed infestations to a desired level.

(5) *Herbicide (Glyphosate) control:* This method was developed to address the issue of persistence and water quality impacts associated with some herbicides. Glyphosate is a non-selective, broad-spectrum herbicide that has relatively no soil activity and its absorption by roots is minimal to non-existent.

(6) *Herbicide (2,4-D) control:* This method was also developed to address the issue of persistence and water-quality impacts associated with some herbicides.

(7) *Herbicide (Dicamba) control:* This method was developed to assess the tradeoffs between effective exotic weed control and the environmental impacts of a relatively persistent and less selective herbicide on non-target broadleaf species and biological diversity.

(8) *Herbicide (Picloram) control:* This method was also developed to assess the tradeoffs between effective exotic weed control and the environmental impacts of a relatively persistent and less selective herbicide on non-target broadleaf species and biological diversity.

(9) *Herbicide (Clopyralid) control:* This method was developed to address the impacts of a less persistent, more selective herbicide on non-target plant species and biological diversity.

The Forest Service recognizes the importance of a integrated approach, therefore, the emphasis may be placed on one or all methods previously mentioned. The blend of these methods will be based on a number of variables such as, site characteristics, environmental hazards and economic feasibility to name a few.

Public participation is important at several stages of the analysis. Although people may visit with the Forest Service officials at any time during the analysis and prior to the decision, two time periods are specifically identified for the receipts of comments on the analysis. The two public comment periods include the scoping process (now through February) and the review period for the draft EIS (March through April, 1992). The Forest Service is seeking information, comments, and assistance from Federal, State, Local Agencies, and individuals or organizations who may be interested in or affected by the proposal. This input will be used in preparing the draft EIS.

The Scoping Process Includes:

(1) Identifying potential issues.

(2) Identifying issues to be analyzed in depth.

(3) Eliminating insignificant issues or those which have been covered by relevant invironmental analysis.

(4) Identifying additional alternatives.

(5) Identifying potential environmental effects of the proposed action and alternatives, such as, direct, indirect, and cumulative effects, and connected actions.

(6) Determining potential cooperating agencies and task assignments.

The Department of Interior, Fish and Wildlife Service will be consulted throughout the analysis, in order to insure that the requirements of the Endangered Species Act are met.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March, 1992. The EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The Forest Service recognizes the importance of intra-agency reviewers as well as individuals participating in the reviewing process. First, reviewers must structure their participation in the environmental review of the proposal so that it is consequential and alerts an agency to the reviewer's position, whether contentious or supportive. Secondly, environmental objections that could be raised at the draft environmental impact stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. Those agencies or individuals interested in the proposed actions are encouraged to participate by the close of the 45 day DEIS comment period so that significant comments and objectives are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in the final environmental impact statement.

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 beneficial if comments refer to chapters and specific pages 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.).

The preliminary issues from initial scoping within the agency and public comments are listed below.

Potential impacts of noxious weeds on the wilderness and other forest resources.

Potential impacts of weed control methods on wilderness and other forest resources.

Human health affects in relation to weed management methods, particularly herbicide application.

How can adjustments such as road and trail construction, travel management, recreation management, range management, and other Forest Service activities help aid in the controlling the spread of noxious weeds.

Close coordination with other districts managing the BMWC should be emphasized in controlling noxious weeds.

Is knapweed control a realistic goal, given the present control methods and levels of infestations.

All actions should be based on a monitoring program. The monitoring program should determine the level of infestations and associated impacts of these infestations.

Application of herbicides on sandy soils or steep sites should be prohibited.

How would certified weed-free hay help prevent the spread of noxious weeds; require/educate commercial and private stock users to use weed-free hay.

Following a 45 day DEIS public comment period, the comments received

will then be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by June, 1992. The Forest Service will respond in the FEIS to the comments received in the DEIS. The Regional Forester, who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the FEIS, and the applicable laws, regulations, and policies. The decision and reasons regarding the action will be documented in the Record of decision (ROD).

Dated: January 22, 1992.

Greg Warren,

District Ranger, Spotted Bear Ranger District, Flathead National Forest.

[FR Doc. 92-2699 Filed 2-3-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales of Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Thursday, March 19, 1992 from 10 a.m. to 5 p.m. in room 4830, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c) (4) and (9) (B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, room 6020, Main Commerce.

Dated: January 29, 1992.

Henry Misisco,

Director, Office of Automotive Industry Affairs.

[FR Doc. 92-2674 Filed 2-3-92; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications: State of Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate an Indian Business Development Center (IBDC) for approximately a 3 year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $173,250 in Federal funds from July 1, 1992 to June 30, 1993. The IBDC will operate in the State of Minnesota geographic service area. The award number of this IBDC will be 05-10-92004-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The American Indian program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by Regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70 percent of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the American Indian program. The application will then be forwarded to the department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

IBDCs performing satisfactorily may continue to operate, after the initial competitive year for up to 2 additional budget periods. IBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 to 4 additional budget periods, respectively. Under no circumstances shall an IBDC be funded for more than 5 consecutive budget periods without competition. Periodic

reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding accounts receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the IBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of IBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All applicants must submit a completed form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"

(a) Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension,"

(b) Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants),"

(c) Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,"

(d) Any applicant that has paid or will pay any funds other than Federal appropriated funds for lobbying must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512, when submitted by subtier applicants, is intended for the use of recipients and should not be transmitted to the Department. SF-LLL should be submitted to the Department in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for applications is March 6, 1992. Applications must be postmarked on or before March 6, 1992.

MAILING ADDRESS FOR SUBMISSION: Proposals will be reviewed by the New York Regional Office. The mailing address for submission of applications is: New York Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 26 Federal Plaza, Room 3720, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

STATUTORY AUTHORITY: 15 U.S.C. 1512.

FUNDING AUTHORITY: Executive Order 11625, October 13, 1971.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 55 East Monroe, Suite 1440, Chicago, Illinois, February 14, 1992 at 10 a.m.

Dated: January 30, 1992.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 92-2609 Filed 2-03-92; 8:45 am]

BILLING CODE 3510-21-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 February 1992 at 10 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, January 27, 1992.

Donald B. Myer,

Assistant Secretary.

[FR Doc. 92-2619 Filed 2-3-92; 8:45 am]

BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Commodity Exchange (COMEX or Exchange) has applied for designation as a contract market in Eurotop 100 stock index futures and futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before March 5, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the Eurotop 100 stock index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the COMEX in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 29, 1992.

Gerald Gay,

Director.

[FR Doc. 92-2567 Filed 2-3-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Intent (NOI) To Prepare a Draft Programmatic Environmental Impact Statement (EIS) for a Ballistic Missile Defense System

AGENCY: Office of the Secretary of Defense—Strategic Defense Initiative Organization is the lead agency. The US Army, Air Force and Navy will serve as cooperating agencies.

ACTION: Notice.

The proposed action is to conduct development and test activities to provide the United States with the capability to produce, deploy, and maintain a missile defense system that will provide a defense against ballistic missile strikes. The system will use a combination of space- and ground-based sensors, interceptors, and communications systems, and a ground-based command and control system.

Alternatives

Alternatives to be evaluated in the EIS include the following: (1) No Action Alternative; (2) All Ground-Based System Alternative; (3) All Spaced-Based System Alternative; (4) Ground- and Space-Based Sensors with Space-Based Interceptors System Alternative; and (5) Ground- and Space-Based Sensors and Ground-Based Interceptors System Alternative.

Under the no action alternative (Alternative 1), no system development and testing would be conducted to provide a global protection against limited ballistic strikes capability. Under Alternative 2, only ground-based sensors and interceptors would be utilized to meet mission objectives. Under Alternative 3, only space-based sensors and interceptors would be utilized to meet mission objectives. Alternatives 4 and 5 represent a mixture of space- and ground-based sensors and interceptors distinct from those of the proposed action. All alternatives with the exception of the no action alternative would involve ground-based command and control.

Background

During his 1991 State of the Union address, President Bush called for the Strategic Defense Initiative (SDI) to be refocused. The new focus involves protecting the United States, our forces overseas, and our friends and allies from limited ballistic missile strikes, regardless of their origin. SDIO named this refocused program Global Protection Against Limited Strikes (GPALS).

Congress provided guidance and direction to the Department of Defense in regards to missile defense by enacting the Missile Defense Act of 1991. The Act states: "* * * It is the goal of the United States to: (1) Deploy an anti-ballistic missile system, including one, or an adequate additional number of anti-ballistic missile sites and space-based sensors, that is capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles; (2) maintain strategic stability; and (3) provide highly effective theater missile defenses (TMDs) to forward-deployed and expeditionary elements of the Armed Forces of the United States and to friends and allies of the United States."

SDIO is currently evaluating system architecture concepts that consist of a combination of space- and ground-based sensors, ground-based interceptors, and command, control and communication networks. Architecture concepts are also being developed for a follow-on space-based interceptor capability. The system architecture concept integrates theater and strategic missile defenses. *Global* means protecting the United States worldwide interests with theater defenses, as well as defenses for the American homeland. *Protection* means that the objective is to have an extremely low number or no offensive weapons getting past our defensive system. *Limited* means that the system can defend against up to 200 attacking ballistic missile warheads in a variety of scenarios. A fully developed GPALS system will provide continuous detection, tracking, and protection against limited strikes by tactical and strategic missiles.

The system is an integration of three segments that are designed to defend against different types or classes of missile threats. The segments are: Theater Missile Defense (TMD), National Missile Defense (NMD), and Global Missile Defense (GMD). The TMD segment is designed to defend against theater missiles. The TMD segment is rapidly relocatable in order to defend United States deployed forces and United States friends and allies from theater missiles. The NMD segment is designed to defend the Continental United States (CONUS), Alaska, and Hawaii. As proposed, the NMD system consists of ground- and space-based sensors and ground-based interceptors. It will be capable of destroying individual warheads in the late terminal phase of flight. The GMD segment is envisioned to be a subsequent development and will consist of space-based interceptors capable of destroying missiles in all phases of flight. All segments of the system will be integrated with a Battle Management Command, Control and Communications (BM/C3) element. The BM/C3 element currently exists but will need system improvements to be adjusted accordingly if the GPALS system is developed and deployed.

Related Environmental Documentation

The EIS will be the umbrella document for the missile defense system acquisition and will serve as the foundation, for future system and site-specific environmental documents. A separate and related programmatic EIS is being prepared on TMD because of the distinctive nature of the TMD

mission. Other related NEPA documents include the United States Army Kwajalein Atoll (USAKA) Supplemental EIS covering activities associated with experimental and integrated development flight testing in the Republic of the Marshall Islands; site-specific experimental launch activities, such as the EIS on the Strategic Target System (STARS) covering launch activities at the Kauai Test Facility on the Pacific Missile Range Facility, Kauai, Hawaii; and EISs for sites selected for deployment of the NMD segment facilities and assets.

Scoping

This EIS will examine the potential environmental consequences associated with the life-cycle activities for the proposed action and alternatives. The document will analyze development, testing, production, basing and siting, operations and maintenance support, and eventual decommissioning activities. The EIS will focus on broad life-cycle impacts. Follow-on site-specific documents will be written to evaluate possible impacts on areas considered for operations (development, testing, production, and deployment).

A preliminary list of significant topics to be addressed in the AEIS includes, but is not limited to, the following: potential effects of non-ionizing radiation on human and biological populations and on communications elements from testing sensor and communications elements; air quality and ozone depletion effects from rocket exhausts; launch safety and water quality effects resulting from test launches; space debris; impacts on various resource elements and the human environment from generation and use of hazardous materials and disposal of hazardous wastes; and, impacts on strategic mineral resources.

Invitation to Participate

Interested individuals and organizations may participate in the scoping process by providing written statements, recorded statements, or by attending one of the scoping meetings listed below. Statements and public input received as a result of this Notice of Intent and the related scoping process will be used to assist SDIO in identifying the significant issues to be analyzed in depth in this EIS. Individuals or organizations may participate in the scoping process through any or all of the following means:

1. Record requests for additional information by calling the following toll-free number: 1-800-742-2662; for the hearing impaired, the toll-free number is 1-800-223-8488. These lines will be available 24 hours a day through 6 March 1992.

2. Record telephone statements by calling the following toll-free number: 1-800-424-2534.

3. Send written statements or questions to the address below no later than 6 March 1992.

4. Offer verbal statements at Scoping Meetings at the following times and locations:

SCOPING MEETINGS

Date	Times	Location
Feb. 25, 1992....	1-3 p.m., 6:30-8:30 p.m.	Grand Hyatt Hotel, 1000 H St. NW., Washington, DC 20001.
Feb. 27, 1992....	1-3 p.m., 6:30-8:30 p.m.	Los Angeles Hilton, 930 Wilshire Blvd., Los Angeles, CA 90017.

Written statements and questions about the proposed action and scope of the EIS may be submitted to: Captain Tracy A. Bailey, USAF, P.O. Box 41048, Bethesda, MD 20824.

Written and verbal statements will be considered during the preparation of the EIS. Inputs should be received by 6 March 1992.

Dated: January 29, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2575 Filed 2-3-92; 8:45 am]

BILLING CODE 3810-01-M.

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on February 28, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: January 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2576 Filed 2-3-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach-Global Power will meet on 26-28 February 1992, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-2614 Filed 2-3-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach - Global Power: 1995-2020 (Mobility Panel) will meet on 19-20 February 1992, at Kirtland AFB, NM, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefing and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariate at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-2615 Filed 2-3-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Draft Implementation Plan for the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of availability for public comment and announcement of public workshops.

SUMMARY: DOE announces the availability for public review and comment of the Draft Implementation Plan (IP) for the Environmental Restoration and Waste Management (EM) Programmatic Environmental Impact Statement (PEIS). DOE also plans to conduct a series of workshops to discuss the Draft IP. The purpose of the Draft IP is to record the results of the public scoping process and to serve as a plan for the preparation of the PEIS. The Draft IP also states the alternatives and issues to be evaluated in the PEIS.

BACKGROUND: On October 22, 1990, DOE issued a Notice of Intent (NOI) to prepare the EM PEIS, which identified the proposed scope of the PEIS and initiated the public scoping process. The proposed action is to formulate and implement an integrated EM program in a safe and environmentally sound manner and in compliance with applicable requirements. This proposed action will be achieved by defining a broad, systematic approach to DOE remedial activities and waste management practices. The PEIS will analyze the existing EM program (the no-action alternative) and evaluate alternatives for an integrated program.

In the NOI, DOE requested comments concerning the scope of the PEIS. The public comment period was from October 22, 1990 (the publication date of the NOI) to February 19, 1991. Beginning on December 3, 1990, DOE held 23 scoping meetings at various locations across the country to ensure adequate opportunity for participation by the public and other government agencies. During the public comment period, over 1,200 people provided approximately 7,000 comments, either by participating in the meetings or by submitting materials and letters to DOE. The majority of comments came from individuals. However, about 280 organizations also participated. A statistical analysis of scoping comments shows that most concerns were related to the public perception of the DOE culture and to environmental, health, and safety issues.

In the NOI, DOE stated that the IP would be issued for public comment. DOE has prepared the IP to record the results of the public comments on the scope of the PEIS and to serve as a plan for the preparation of the PEIS. The IP also states the alternatives and issues to be evaluated in the PEIS.

The IP contains seven chapters, seven appendices, and an executive summary. The bulk of the information is presented in chapters one through four and in Appendix C, which are briefly described below. Background, bibliographic, organizational, and administrative information are included in the other sections of the IP.

Chapter one, Introduction, provides historical and background information, discusses the regulatory framework under which DOE operates and explains the relationship of the EM PEIS to other DOE activities. Chapter two, Purpose of and Need for the Proposed Action, relates the proposed action to the fundamental mission of DOE's EM program.

The third chapter, The Scoping Process and Results, describes the DOE scoping process and the results of the scoping meetings. This chapter describes how public comments will be addressed in the preparation of the PEIS.

Chapter four, Proposed Action and Alternatives, gives details on the proposed scope of the PEIS. The overall EM proposed action addresses both environmental restoration and waste management. The PEIS will analyze the current environmental restoration program (no action alternative) and three alternatives. The PEIS also will assess the current waste management program (no action alternative) and alternatives for each of six waste classifications and for DOE spent nuclear fuel. The alternatives will be analyzed in an integrated way since environmental restoration activities generate waste. The last section of chapter four, Alternatives Analysis, describes the approaches to be used in studying risks and impacts related to environmental restoration and waste management alternatives and the impacts of technology development.

Appendix C provides a proposed annotated outline for the PEIS.

INVITATION TO COMMENT: All interested parties are invited to comment on the IP. In an effort to encourage public involvement, copies of the IP, with an invitation to comment and notice of the workshops, will be sent to all those who participated in the scoping process or who asked to be on the mailing list. Written comments should be directed to Mr. Glen L. Sjoblom at the address and by the date indicated below. Also, agencies, organizations, and the general public are invited to take part in any one of five planned regional public workshops. The dates, locations, and contact information for the five workshops are listed below and will be announced in local public notices in advance of the planned workshops. Following completion of the comment period and consideration of the written comments, DOE will revise the Draft IP as appropriate and issue an IP for the PEIS.

ADDRESSES AND FURTHER INFORMATION: Written comments on the IP and questions concerning the program should be directed to: Glen L. Sjoblom, Special Assistant to the Assistant Secretary, Environmental Restoration and Waste Management (EM-1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

To request copies of the IP, call (800) 862-8860.

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

DATES: The comment period on the IP will continue until April 10, 1992. Written comments should be postmarked by April 10, 1992, to ensure consideration.

PUBLIC WORKSHOPS: Five regional public workshops on the IP are planned. They will be held at the following times and places:

Date: Tuesday, March 17, 1992.

Location: Atlanta Penta Hotel, 590 West Peachtree Street, NW., Atlanta, GA 30308-3586, (404) 881-6000, (800) 633-0000.

Date: Thursday, March 19, 1992.

Location: St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, NV 89109, (702) 369-5400, (800) 666-5400.

Date: Wednesday, March 25, 1992.

Location: Regency Hotel, 3900 Elati Street, Denver, CO 80216, (303) 458-0808, (800) 525-8748.

Date: Friday, March 27, 1992.

Location: Airport Ramada Inn, Spokane International Airport, Spokane, WA 99219, (509) 838-5211.

Date: Tuesday, March 31, 1992.

Location: Georgetown University Convention Center, 3800 Reservoir Road, NW., Washington, DC 20007, (202) 687-3200, (800) 446-9476.

These workshops will be different in format from the scoping meetings in order to facilitate interactive communication between participants

and senior DOE representatives of the EM program and to solicit individual viewpoints. The workshops will be informal in nature and no formal transcript will be recorded. Anyone wishing to ensure that DOE will consider his or her comments in the preparation of the IP should submit them in writing.

Each workshop on the IP will consist of day and evening plenary sessions and four small-group breakout sessions during the day. These workshops will focus on DOE EM program-wide issues relating to the PEIS, not site-specific issues. The plenary sessions will consist of presentations on the PEIS process and the IP. Registration is required for the small-group breakout sessions of the workshops, but not for the plenary sessions. Anyone who wishes to participate in the breakout sessions at one of the five workshops should call (800) 862-8860 to register at least two weeks before the date of the desired workshop.

The breakout sessions will focus on four topics related to the PEIS: the PEIS process, Waste Management, Environmental Restoration, and Technology Development. The breakout sessions will be repeated to allow the participants to cover all four topics. Registration will be on a first-come, first-served basis. The number of breakout attendees will be limited to approximately 60 persons (15 for each of the breakout sessions) to promote an interactive atmosphere.

The tentative agenda for the workshops is as follows:

Day Session

8:00–8:15 Welcome
8:15–8:30 Presentation on the PEIS Process
8:30–9:15 Presentation on the IP
9:15–9:45 General Questions
9:45–10 Break
10–11 Breakout Sessions (Four parallel sessions: PEIS Process, Waste Management, Environmental Restoration, and Technology Development)
11–12 Repeat Breakout Sessions
12–1 Lunch
1–2 Repeat Breakout Sessions
2–3 Repeat Breakout Sessions
3–3:30 Break (facilitators organize for final plenary session)
3:30–5 Breakout Summary Report (from facilitators) & comments

Evening Session

6:30–6:45 Welcome
6:45–7 Repeat of Presentation on the PEIS Process
7–7:45 Repeat of Presentation on the IP
7:45–8:15 Repeat of Breakout Summary Report (from facilitators) and comments
8:15–8:30 Break
8:30–9:30 General Questions and Comments
9:30–10 Summary Remarks

Issued in Washington, DC, this 30th day of Jan., 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-2637 Filed 2-3-92; 8:45 am]

BILLING CODE 6450-01-M

Floodplain Statement of Findings for the Proposed RCRA and CERCLA Characterization and Remediation Studies for the 200, 600, and 100 Aggregate Areas Operable Units, Hanford, Site, Richland, WA

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Statement of Findings prepared pursuant to Executive Order 11988 and 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE has determined that some activities associated with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) Remedial Investigation/Feasibility Study (RI/FS) and the Resource Conservation and Recovery Act of 1976 (RCRA) Facility Investigation/Corrective Measures Study (RFI/CMS) processes for the 100-N, 100-B/C, 100-D, 100-K, 100-H, 100-F, 200-IU, and adjacent 600 Area operable units are proposed to be within the 100-year floodplain of the Columbia River. On the basis of the Floodplain/Wetlands Assessment for the proposed actions prepared pursuant to 10 CFR 1022.12, DOE has determined that there is no practicable alternative to the proposed actions and that the proposed actions have been designed to avoid or minimize impacts on the floodplain of the Columbia River.

AVAILABILITY OF FLOODPLAIN/WETLANDS ASSESSMENT: Single copies of the Floodplain/Wetlands Assessment are available from Mr. Jim Goodenough, DOE Richland Field Office, Richland, Washington 99352 (509) 376-7087.

STATEMENT: The proposed actions are to perform RI/FS and RFI/CMS characterization activities for 17 operable units on the Hanford Site, Richland, Washington. The characterization is necessary to meet requirements of CERCLA, as amended, and RCRA to determine the nature and extent of the potential risk to human health, welfare or the environment posed by past releases of hazardous substances to the environment and to evaluate proposed remedies for such releases. The proposed RI/FS and RFI/CMS actions are preliminary steps in developing plans and alternatives for clean up of the operable units. The work is described in detail in the work plans for the operable units. The work is also necessary to comply with the Hanford Federal Facility Agreement and Consent Order, and in particular, to support milestones addressed in the Agreement.

The specific activities that may occur within the floodplain include geophysical surveys, hydrostratigraphic studies, surface water and sediment investigations, and biota investigations. The following briefly describes these activities:

- Geologic Investigations—performed to obtain information on the geology of the vadose and groundwater systems. Geologic and physical logs would be maintained and evaluated, soil samples would be collected if well installation is required, and an area walk-over would be performed to develop preliminary maps of the area.
- Groundwater Studies—drilling groundwater monitoring wells to determine the nature, extent, and movement of groundwater contamination in the hydrostratigraphic units of the 100 Areas.
- Surface Water and Sediment Investigations—conducted to evaluate the impact of facility operations on the exposed shoreline and on water quality of the Columbia River. Activities would include mapping, sampling water and sediments from the Columbia River and around springs or seeps areas along the river, and monitoring of the river stages.
- Ecological Investigations—collection of aquatic and riparian zone biota to identify possible biotic contaminant transport pathways, and to evaluate the existing concentrations of contaminants in biota associated with the 100 Areas.

The goal of each task would be to characterize the extent of known areas of contamination and to identify and characterize unknown areas that may exist. None of the tasks would require major construction activities. The geologic and hydrostratigraphic studies may require the drilling of wells in the floodplain; however, if preceding studies performed in the upland areas provide sufficient data, drilling in the floodplain will not be conducted.

Disturbances to the floodplain and wetlands adjacent to the Columbia River would be minimal, as most activities will occur on the upland portion of each operable unit. Disturbances to the wetlands primarily would be limited to pedestrian traffic necessary to collect samples, monitor water levels, and to carry out surveys with nonintrusive instruments. No long-

or short-term impacts would be expected from the nonintrusive sampling. If intrusive characterization, such as drilling were determined to be necessary in the wetland portion of the operable units, siting would be guided in part by the results of the biologic and cultural resource assessments performed on each operable unit. If drilling is necessary, disturbances would be kept to a minimum by limiting the extent of surface disturbance and by utilizing stabilization devices such as berms, riprap, or other devices to minimize erosion.

Following completion of characterization, remedial action strategies and alternatives would be prepared for the removal and remediation of the contamination from the operable units. Alternatives to the near-term proposed characterization actions are limited because of the need to carefully characterize contaminated areas on the Hanford Site prior to commencement of remediation activities.

• Relocation of the activities to another area cannot be considered as a viable alternative because it would not provide adequate or accurate data on the extent, distribution, and concentration of contaminants in the 100, 200 and adjacent 600 Areas. Effective remediation or corrective measures must be based on sound knowledge of the contamination as it exists in the operable units, gained from representative samples collected from known and discovered areas of contamination in the subject areas. This alternative would not satisfy the requirements of RCRA and CERCLA.

• The no-action alternative where no RFI/CMS or RI/FS activities are performed in the floodplain is not viable, as this alternative would not be in accordance with the requirements of RCRA, CERCLA, and the Hanford Federal Facility Agreement and Consent Order, as well as current U.S. Environmental Protection Agency and State of Washington Department of Ecology requirements to characterize operable units prior to remediation.

• The proposed action, consisting of characterization of the operable units of the 100, 200 and adjacent 600 Areas by collecting existing data, and collecting samples of various media from areas known and discovered to be contaminated, would provide information on the nature and extent of contaminants in the areas. This alternative would allow the most appropriate and effective corrective measures to be determined, and satisfies requirements of RCRA, CERCLA, and other applicable regulations.

The proposed actions have been designed to conform to applicable Federal and State regulations. All applicable Federal, State, or local permits will be obtained prior to commencement of activities on the RCRA operable units. Federal, State, or local permits are not required under Section 300.400(e) of the National Contingency Plan for on-site actions pursuant to CERCLA, however, DOE will ensure that the actions conform with all applicable or relevant and appropriate standards, requirements, criteria, or limitations, which would have been included in any such permit.

The proposed actions in the Columbia River floodplain must be taken as soon as possible because of binding agreements between DOE, the U.S. Environmental Protection Agency and the State of Washington Department of Ecology. Therefore, any further public review is waived prior to the implementation of the proposed floodplain actions, as provided by 10 CFR 1022.18(c).

FURTHER INFORMATION: For further information contact Ms. Julie Erickson, DOE Richland Field Office, Richland, Washington 99352 (509) 376-3603.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-2688 Filed 2-3-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories; Opportunity To Review and Comment on Task Force Report

Pursuant to the Charter of the Secretary of Energy Advisory Board, notice is hereby given of the opportunity to review and comment on a written report of the Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories. The report contains the Task Force's recommendations to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

The report will be available for review and copying for ten working days following issuance of this notice in the Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays. Single copies of the report will be available upon request by calling (202) 586-7092.

Persons wishing to submit written comments on the report should submit five copies to the contact listed below by February 28, 1992, in order to receive full consideration.

Contact: Dr. E. Fenton Carey, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

Issued in Washington, DC, on: January 30, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-2686 Filed 2-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-03260T Utah-1 Addition]

State of Utah; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 28, 1992

Take notice that on January 22, 1992, the Utah Board of Oil, Gas and Mining (Utah) submitted the above-referenced notice of determinaton pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wasatch and Mesaverde Formations (Wasatch/Mesaverde) in Duchesne and Uintah Counties, Utah, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application includes approximately 27,000 acres of federal land and 4,000 acres of State of Utah land more particularly described as follows:

Township 10 South, Range 17 East, S.L.M.

Section 1 thru 5: All
Section 8 thru 17: All
Section 20 thru 29: All
Section 32 thru 36: All

Township 10 South, Range 18 East, S.L.M.

Section 5 thru 8: All
Section 17 thru 21: All
Section 28 thru 36: All

Township 10 South, Range 19 East, S.L.M.

Section 31: All

The notice of determination also contains Utah's findings that the referenced portion of the Wasatch/Mesaverde Formations meet the

requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination, may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2597 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-69-012]

Colorado Interstate Gas Co.; Report of Refunds

January 28, 1992.

Take notice that on January 15, 1992, Colorado Interstate Gas Company (CIG) filed a refund report showing that on December 16, 1991, it refunded $925,576.00 ($893,702.10 in principal and $31,873,90 in interest) to various jurisdictional customers.

CIG states that the refund report summarizes sales, storage, and transportation refunds for the period April 1, 1991, through October 31, 1991, made pursuant to the Commission's Orders of August 5, 1991, in Docket Nos. RP90-69-007 and RP87-30-036 (Phase II) and September 16, 1991, in Docket Nos. RP90-69-009 and RP87-30-038 (Phase II).

CIG states that copies of the filing have been served on CIG's jurisdictional customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commissions's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 4, 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. 92-2603 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-001]

El Paso Natural Gas Co.; Compliance Tariff Filing

January 28, 1992.

Take notice that on January 23, 1992, El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in compliance with the directive of the Commission in its order dated January 8, 1992, Substitute Original Sheet No. 222A to be contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1-A, to be effective January 17, 1992.

El Paso states that on December 17, 1991, it tendered Original Sheet No. 222A which revised Section 13, Service Conditions, of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1-A in compliance with Order No. 537. El Paso states that such provision provides that El Paso may require Shipper's certification to verify that its services qualify under said section.

El Paso states that by order dated January 8, 1992, the Commission stated that its regulations do not provide for an option on whether a Shipper should provide certification to meet the "on behalf of" standard and that Shipper shall provide certification. The Commission accepted El Paso's filing, subject to the condition that El Paso file a revised tariff sheet, within fifteen (15) days of the date of the order. Accordingly, tendered Substitute Original Sheet No. 222A revises such provision as directed.

El Paso request that the tendered tariff sheet be accepted for filing and permitted to become effective January 17, 1992, which is the date the Commission accepted the original tariff sheet.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commission.

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 February 4, 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 92-2600 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-218-001]

Great Lakes Gas Transmission Limited Partnership; Final Report of Cash-Out of Account No. 191 Balances

January 29, 1992.

Take notice that on January 27, 1992, Great Lakes Gas transmission Limited Partnership ("Great Lakes") filed with the Federal Energy Regulatory Commission ("Commission") in the above-captioned proceeding six (6) copies of a Final Report of Cash-Out of Account No. 191 Balances ("Report").

Great Lakes states that the purpose of its filing is to comply with the directives of the Commission's order issued November 1, 1991 in Docket No. RP91-218-000 and the terms of Great Lakes' settlement approved in Docket No. RP89-186, *et al.*, which required Great Lakes to clear its Account No. 191 balances, by cash-out, and to report these cash-outs to the Commission. Great Lakes further states that its filing includes the final cash-out reports required by the Commission's March 28, 1991 letter order in Docket No. RP91-110 and May 29, 1991 letter order in Docket Nos. RP91-144 and RP91-148.

Great Lakes states that copies of its filing were served on each of its affected customers, as well as the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin. Copies of the transmittal letter accompanying Great Lakes' filing are said to have been served by Great Lakes on its remaining customers, as well as any other parties on the Commission's service list prepared in Docket No. RP91-218-000.

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 February 5, 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. 92-2594 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-25-000]

Mississippi River Transmission Corporation; Rate Change Filing

January 28, 1992.

Take notice that on January 24, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

	Proposed effective date
Twenty-Third Revised Sheet No. 4A.	February 23, 1992.
Eleventh Revised Sheet No. 4A.3.	February 23, 1992.
Twenty-Fourth Revised Sheet No. 4A.	March 1, 1992.
Twelfth Revised Sheet No. 4A.3.	March 1, 1992.

MRT states that the purpose of Twenty-Third Revised Sheet No. 4A and Eleventh Revised Sheet No. 4A.3 is to reflect the remaining installment of take-or-pay charges direct billed to it by United Gas Pipe Line Company pursuant to Docket No. RP85-209 *et al.*, and the flow of take-or-pay costs incurred by United from Sea Robin Pipeline Company in Docket No. RP89-141. MRT states that the filing is in accordance with its June 26, 1991 Stipulation and Agreement on the Allocation and Recovery of Transition Costs from Upstream Pipelines (Settlement) approved by Commission Order dated July 25, 1991 in Docket No. RP91-46-000, *et al.*, and reflects the reconciliation of take-or-pay amounts paid to United by MRT compared to take-or-pay amounts collected by MRT from its jurisdictional customers. MRT also states that because the take-or-pay amounts paid to United by MRT do not reflect a final Order 528-A settlement, it reserves the right to make additional flowthrough filings based on the outcome of future United take-or-pay filings.

MRT states that Twenty-Fourth Revised Sheet No. 4A and Twelfth Revised Sheet No. 4A.3 are reserved for future use and that these two sheets reflect the end of MRT's flowthrough amortization period and the termination of the account balances.

MRT also states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

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 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such protests should be filed on or before February 4, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 92-2599 filed 2-3-92; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-022]

National Fuel Gas Supply Corp.; Report of Refunds

January 28, 1992.

Take notice that on December 31, 1991, National Fuel Gas Supply Corporation (National), tendered for filing its Report of Refunds in compliance with the Stipulation and Agreement in Docket No. RP86-136, *et al.*, filed on July 19, 1990, and approved by this Commission on November 1, 1990. Such agreement required National to refund directly to its customers any overcollection of Account No. 858 costs for the 12-month period ending October 31, 1991, and submit a report to the Commission detailing the distribution of the refunds to the various customers and setting forth the data and computations supporting such distribution.

National states that it will distribute the refunds to its customers, together with interest, within 30 days from the date of a final Commission order approving this refund report.

National further states that copies of the refund report have been served upon both its jurisdictional customers and upon all interested state regulatory agencies.

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 February 4, 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. 92-2604 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-53-007]

Panhandle Eastern Pipe Line Co.; Report of Refunds

January 28, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on January 15, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with Article II of the Settlement Agreement (Settlement) dated July 10, 1991, approved by the Commission's orders issued August 2, 1991 and September 25, 1991, in Docket No. RP91-53, *et al.* Panhandle states that the report summarizes repayment amounts Panhandle made on December 16, 1991, to its jurisdictional sales customers who were subject or sponsoring parties to the Settlement.

Panhandle states that a copy 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 February 4, 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. 92-2602 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-96-000]

Pelican Interstate Gas System; Proposed Change in FERC Gas Tariff

January 29, 1992.

Take notice that on January 24, 1992, Pelican Interstate Gas System (Pelican)

tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 39
First Revised Sheet No. 39A
Second Revised Sheet No. 55
First Revised Sheet No. 55A

The proposed effective date of the revised tariff sheets is February 24, 1992. Pelican states that the purpose of this filing is to revise § 5.6 of Rate Schedule FTS and § 5.6 of Rate Schedule ITS of Pelican's FERC Gas Tariff to require that shippers provide certification and sufficient information to Pelican to verify that, for transportation provided pursuant to section 311 of the Natural Gas Policy Act (NGPA) and § 284.102 of the Commission's Regulations, such services qualify as section 311 transportation.

Pelican states that on September 20, 1991, the Commission issued a final rule in Order No. 537 regarding revisions to the Commission's regulations governing transportation pursuant to section 311 of the NGPA and blanket transportation certificates. Pelican states such order, among other things, requires interstate pipelines to (a) obtain from its shippers certification, including sufficient information, to verify that services provided to them under section 311 of the NGPA and § 284.102 of the Commission's regulations qualify as section 311 transportation and (b) file by January 4, 1991 any tariff revisions or additions necessary to clarify that an interstate pipeline may require such certifications. Pelican states that there are no current customers for which this rule change will impact and has requested a waiver of the filing requirement by January 4, 1992 in order to let these tariff pages become effective.

Pelican states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

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, 823 North Capitol Street, NE. Washington, DC 20428, in accordance with rules 211 and 214 of the Commission's Rule of Practice and Procedure, 18 CFR 385.124. all such motions or protests should be filed on or before February 5, 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 intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-2596 Filed 2-3-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP92-67-000 and CP92-182-000]

Peoples Gas System, Inc. v. Florida Gas Transmission Co.; Technical Conference

January 28, 1992.

Take notice that on February 13, 1992, at 10 a.m., the staff of the Federal Energy Regulatory Commission will convene a technical conference in the above captioned proceedings to examine the following issues as they relate to the pending complaint by Peoples Gas System, Inc. v. Florida Gas Transmission Company. Peoples alleges that the allocation procedures proposed in FGT's Phase III application are unduly discriminatory, contravene the settlement reached in FGT's Phase II proceeding, violate first-come, first-served principles, and are not permitted by FGT's existing tariff.

So far the record suggests the following:

(1) In the Phase III application FGT proposes to construct and operate facilities to deliver up to 875,000 Mcf of natural gas per day to various delivery points in Florida.

(2) FGT has received customer commitments, in the form of executed long term firm service agreements, amounting to approximately 550,000 MMBtu/d.

(3) FGT has proposed a capacity allocation method which does not comply with the scheme currently approved, and embodied in FGT's Tariff. The proposed scheme would not allocate capacity on a first-come, first-served basis. Further, the proposed scheme would use only two seasons, instead of the currently approved four season allocation method.

(4) Peoples' total quantity requested on the Firm Service Log as of April 14, 1989 is 152,687 Mcfd. (See page 9 of the Complaint).

(5) Peoples also has a request for up to 169,275 Mcfd with a request date of December 19, 1990. (Request #1039). Staff is unable to determine whether this request is additive to, or duplicative of, the April 14, 1989 request.

(6) The combination of 550,000 MMBtu/d (current executed commitments) and 152,687 Mcfd (April 14, 1989 requests) does not exceed the proposed capacity of the pipeline of 875,000 Mcfd

Based on the above, the following issues will be discussed:

(a) Accuracy of the above observations.

(b) If Peoples executes a long term firm service agreement for 152,687 Mcfd or 169,275 Mcfd, will FGT be required to allocated capacity based on either the existing allocation procedures in FGT's tariff or on the allocation scheme proposed in Phase III, or would the proposed pipeline be adequate to accommodate all customer commitments?

(c) If FGT would be required to allocate capacity, what portion of the Peoples request would be satisfied based (1) on first-come, first-served allocation, and (2) based on the proposed allocation method in the Phase III application. (In order to do the first-come, first-served allocation, FGT is requested to match the executed customer commitments, with the applicable Firm Service Log Request numbers of December 19, 1990, which is stated to be the end of the original Phase III open season).

(d) If no allocation of capacity would be necessary, is it necessary for the Commission to further process the Complaint?

The Technical Conference will be limited to parties to the proceeding and the Commission Staff. Any person wishing to become a party to these proceedings must file a motion to intervene in accordance with Rule 214 of the Commission's rules of practice and procedure.[1] In addition, a technical conference addressing other issues in the Phase III proposal may be held on a later date. For further information contact William C. Lansinger, Jr., at (202) 208-2082.

Lois D. Cashell,
Secretary.

[FR Doc. 92-2605 Filed 2-3-92; 8:45 am]
BILLING CODE 6717-01-M

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[1] 18 CFR 385.214.

[Docket No. RP92-97-000]

Tarpon Transmission Co.; Tariff Filing

January 29, 1992.

Take notice that on January 27, 1992, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 2A, to be effective on February 1, 1992. Tarpon states that it has filed this tariff sheet (which reflects a base transportation rate of 8.08 cents per Mcf) and supporting workpapers in compliance with Ordering Paragraph (B) of the Commission's "Order Affirming in Part and Modifying in Part Initial Decision," issued on December 26, 1991, in Docket No. RP84-2-004 (Remand), as revised in the Commission's December 30, 1991 Errata Notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, 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). Such motions or protests should be filed on or before February 5, 1992. Such motions or 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 desiring 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. 92-2595 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-9-001]

Tennessee Gas Pipeline Co.; Compliance Filing

January 29, 1992.

Take notice that on January 27, 1992, Tennessee Gas Pipeline Company (Tennessee) filed in the above referenced docket its compliance filing in response to the Commission's order issued on December 26, 1991.

Tennessee was directed in the December 26 order, among other things, to (1) reflect the removal of the enhanced fixed-variable (EFV) method of rate design and use of the current modified-fixed variable method of rate design in the classification of the fixed transmission costs of Canadian supplies in Tennessee's demand and commodity gas rates; (2) reflect a correction of the demand billing determinants used in calculating the D-1 current and surcharge adjustments; (3) remove nonsales service fuel use and last and unaccounted-for gas costs from its sales rates; and (4) supply supporting information concerning certain cost issues.

Tennessee states it mistakenly double-counted GS volumes in calculating billing determinants, and that a number of conversions have recently occurred on its system. As a result, it believes that the overall impact of any rate design revisions would be to increase both the demand and commodity rates. Tennessee states that because it will shortly file revised rates that reflect the EFV rate design, the proper GS volumes, and the recent conversions, to be effective February 1, 1992, as a part of its motion filing in Docket No. RP91-203, Tennessee has not reflected the increases in this compliance filing, but has attached workpapers setting forth its calculations.

Tennessee further states that it is seeking rehearing and stay on the fuel cost issue, and requests that the matter be discussed at the February 6, 1992 technical conference in this proceeding. Tennessee states that it has provided the other explanations and information required by the Commission's order.

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 February 5, 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. 92-2592 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-205-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 29, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 27, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

2nd Sub First Revised Sheet No. 410A

Texas Eastern states that on September 16, 1991, Texas Eastern filed tariff sheets to comply with the Commission's August 30, 1991 order in the above-referenced proceeding. On December 26, 1991, the Commission issued its Order on Compliance Filing (the "Order"). In the Order, the Commission accepted the tariff sheets subject to certain conditions.

Texas Eastern submits 2nd Sub First Revised Sheet No. 410A in compliance with the Commission's mandate that Texas Eastern refile tariff sheets to clarify that Texas Eastern's shippers will not be required to indemnify Texas Eastern for damages resulting from Texas Eastern's negligence or willful misconduct in its handling of gas tendered pursuant to section 4.7. In addition, Sheet No. 410A is submitted in compliance with the Commission's requirement that Texas Eastern implement the quality specification waiver of a non-discriminatory basis.

The proposed effective date of the tariff sheet listed above is September 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions. Texas Eastern also states that copies of the filing have also been mailed to all Rate Schedule FT-1 and IT-1 shippers.

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 February 5, 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. 92-2593 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-54-008]

Trunkline Gas Co., Notice of Refund Report

January 28, 1992.

Take notice that on January 15, 1992, Trunkline Gas Company (Trunkline) tendered for filing with the Commission a Refund Report in accordance with Article II of the Offer of Settlement (Settlement) dated July 10, 1991 approved by the Commission's order issued August 2, 1991 in Docket No. RP91-54-000.

Trunkline states that the report summarizes repayment amounts Trunkline made on December 16, 1991 to its jurisdictional sales customers who were subject or sponsoring parties to the Settlement.

Trunkline states that copies of the filing were sent to Trunkline's affected customers and the respective state regulatory commissions.

Any person desiring to protest said filing should file 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 February 4, 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. 92-2601 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-135-001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

January 28, 1992.

Take notice that Trunkline Gas Company (Trunkline) on January 22, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 9-KA
First Revised Sheet No. 9-KK
First Revised Sheet No. 9-KM

Trunkline proposes that these sheets become effective January 1, 1992.

Trunkline states that the revised tariff sheets reflect revisions to the High Island Offshore System (HIOS) and the U-T Offshore System (UTOS) experimental capacity brokering programs authorized by the Commission in Docket Nos. RP92-50-000, *et al.* and RP92-47-000, *et al.*Trunkline filed tariff sheets to establish a new Rate Schedule UTAP to provide for the brokering of its firm transportation capacity rights on the HIOS and UTOS systems and to reflect procedures and conditions set forth in the HIOS and UTOS tariffs. Pursuant to the Commission's Letter Order dated May 10, 1991, Trunkline's Rate Schedule UTAP was approved in Docket No. RP91-135-000. Specifically, Trunkline's tariff sheet revisions under its Rate Schedule UTAP are being filed in compliance with the Commission's October 30, 1990 and December 31, 1991 orders in HIOS Docket Nos. RP89-37-000, *et al.* and RP92-50-000, *et al.* and UTOS Docket Nos. RP89-38-000, *et al.* and RP92-47-000, *et al.*, respectively.

Trunkline states that a copy of this letter and enclosures were served on all affected customers subject to the tariff sheets and applicable state regulatory commissions.

Any person desiring to protest said filing should file 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 February 4, 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. 92-2598 Filed 2-3-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,064,798, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a settlement agreement entered into with Oasis Petroleum Corporation, Case No. LEF-0007. The OHA has tentatively determined that 16% of the funds obtained from Oasis, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, and that the remaining 84%, plus accrued interest, will be distributed to those injured as a result of Oasis' alleged refined petroleum product allocation violations.

DATES AND ADDRESS: Comments must be filed in duplicate on or before March 5, 1992, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number LEF-0007.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $1,064,798, plus accrued interest, obtained by the DOE under the terms of a settlement agreement entered into with Oasis Petroleum Corporation on November 20, 1989. The funds were paid by Oasis towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil and gasoline during the period January 1, 1978 through January 27, 1981.

The OHA has proposed to divide the Oasis settlement agreement fund into two different refund pools based on alleged crude oil overcharges and alleged refined petroleum product allocation violations.

For the crude oil refund pool (16% of the settlement agreement fund, plus accrued interest), the OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's

consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

With respect to the refind product refund pool (84% of the settlement agreement fund, plus accrued interest), the OHA has tentatively determined to distribute these funds in two stages. In the first stage, we will accept claims from those injured as a result of Oasis' alleged allocation violations. The specific requirements which an applicant must meet in order to receive a refund are set out in Section V of the Proposed Decision. A claimant who meets these specific requirements will be eligible to receive refunds based on the demonstrated injury resulting from Oasis' failure to furnish gasoline that it was obliged to supply to the claimant.

If any funds remain in the refined product refund pool after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 29, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

PROPOSED DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

January 29, 1992.

Name of Firm: Oasis Petroleum Corporation

Date of Filing: January 5, 1990

Case Number: LEF–0007

On January 5, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Oasis Petroleum Corporation (Oasis) remitted to the DOE pursuant to a November 20, 1989 settlement agreement between the DOE and Oasis. Oasis has remitted $1,064,798 pursuant to the settlement, to which $68,552 in interest has accrued as of December 31, 1991. In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the Oasis settlement agreement. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

The ERA issued two Proposed Remedial Orders (PROs) to Oasis—one in 1986 and another in 1988. The PROs alleged that Oasis had violated the Federal petroleum price and allocation regulations. During the time of the alleged violations, Oasis was a corporation engaged, *inter alia*, in the purchasing and selling of motor gasoline and crude oil. In 1986, Oasis filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California. On November 20, 1989, the bankruptcy court approved a settlement agreement entered into by Oasis' Trustee and the DOE. *In re Oasis Petroleum Corporation*, No. LA 86–01255–AG (Bankr. C.D. Cal. 1989). Pursuant to the settlement, the Oasis bankruptcy estate remitted $200,000 to the DOE, after which the two PROs pending against Oasis were dismissed. See Letter from Thomas O. Mann, Deputy Director, OHA, to Emily Somers and Thomas B. DePriest, ERA, and Mark N. Savit, Doyle & Savit (Dec. 20, 1989). In addition, the DOE was allowed a general unsecured claim of $10,500,000 in the bankruptcy estate. The agreement stipulates that any monies received are to be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07, and subpart V. Oasis has since remitted additional payments of $491,365 and $373,433. Thus, to date, Oasis has remitted $1,064,798, to which $68,552 in interest has accrued as of December 31, 1991, making available a total of $1,123,169 (the Oasis settlement agreement fund) for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*),

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Oasis settlement agreement fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plant to distribute this fund.

III. Division of the Oasis Settlement Agreement Fund

The first PRO issued by the ERA alleged that Oasis has resold crude oil at a price in excess of its permissible average markup. The ERA determined that these violations amounted to $1,915,564. In the second PRO the ERA alleged that Oasis has sold allocated gasoline to parties without allocation rights, and thereby diverted gasoline in violation of federal allocation regulations. Oasis was found in the PRO to have profited from its diversion in the amount of $10,139,702. Thus, the violations alleged in the two PROs total $12,055,266, with alleged crude oil violations approximating 16% of the total, and alleged allocation violations making up the other 84%. Accordingly, we believe that it is most equitable to direct 16% of the Oasis settlement agreement fund, plus accrued interest, into a crude oil refund pool. We will direct the remaining 84% of the fund, plus accrued interest, into a refund product refund pool.

IV. Proposed Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The portion of the Oasis settlement agreement monies in the crude oil pool will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the

MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

B. Refund Claims

We propose to adopt the DOE's standard procedures to distribute the crude oil portion of the Oasis settlement agreement fund. As mentioned above, 16% of the fund, plus accrued interest, is covered by the crude oil portion of this Proposed Decision. We have chosen to initially reserve twenty percent of the crude oil refund pool, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. Id. These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Resitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

The deadline for claims to the first pool of crude oil overcharge funds was June 30, 1988, and this pool contained funds covered by determinations up to and including Shell. A second pool of crude oil overcharge funds, obtained pursuant to the determinations beginning with World Oil Co., 17 DOE ¶ 85568, modified, 17 DOE ¶ 85669 (1988) and ending with Texaco Inc., 19 DOE ¶ 85,200, modified, 19 DOE ¶ 85,236 (1989), was established with an application deadline of October 31, 1989. the application deadline for the third crude oil overcharge pool was established as march 31, 1991, by Bi-Petro, Inc., 20 DOE ¶ 85,071 (1990). The third pool was funded by those crude oil proceedings ending with Benton Pruet d/b/a P&R Trading Co., 20 DOE ¶ 85,786 (1990). The deadline for filing an application for refund from the fourth pool of crude oil overcharge funds, covering the present determination, is June 30, 1992. see Quintana Energy Corp., 21 DOE ¶ 85,032 (1991). The volumetric refund amount from the fourth pool of crude oil funds will rise as additional crude oil overcharge monies become available. Applicants may be required to submit additional information to support their refund claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register**.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and

reporting requirements as all other crude oil monies recieved by the states under the Stripper Well Settlement Agreement.

V. Proposed Refined Product Refund Procedures

A. Allocation Claims

We propose to implement a two-stage refund procedure for the refined product portion of the Oasis settlement fund by which those injured as a result of Oasis' alleged allocation violations may submit Applications for Refund in the initial stage. As stated above, the ERA alleged that Oasis diverted gasoline in violation of federal allocation regulations by selling allocated gasoline to parties without allocation rights. In Lucky Stores, Inc. 14 DOE ¶ 82,505 (1986) the OHA found that during the period August 3, 1979 through January 27, 1981, Oasis had an affirmative duty to supply gasoline to wholesale purchasers who had been supplied by Research Fuels, Inc. (RFI) during the period July 1, 1977 to June 30, 1978, pursuant to a court order issued by the United States District Court for the Northern District of Texas.[1] We have identified 22 such firms and intend to give each firm notice of the proposed refund proceedings.[2]

Therefore, we anticipate that we will receive claims based upon Oasis' alleged failure to furnish gasoline to RFI's wholesale customers. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988); Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989), aff'd, No. CA3-89-2983G (N.D. Tex. Oct. 3, 1991) (Marathon/RFI). These standards will require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with RFI during the period July 1, 1977 to June 30, 1978 and the likelihood that Oasis failed to furnish gasoline that it was obliged to supply to the claimant from August 3, 1979 through January 27, 1981. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Oasis may have had to the alleged allocation violation. See Marathon/RFI. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of gasoline that it received from suppliers other than Oasis. Finally, since the Oasis settlement agreement reflects a negotiated compromise of the issues involved in the enforcement proceedings against Oasis and the settlement agreement amount is less than Oasis' potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the settlement agreement fund. Cf. Amtel/Whitco.

B. Distribution of Funds Remaining After First Stage

We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. ¶¶ 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Oasis settlement agreement escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Oasis Petroleum Corporation, pursuant to the settlement agreement executed on November 20, 1989, will be distributed in accordance with the foregoing Decision.

[FR Doc. 92-2689 Filed 2-3-92; 8:45 am]

BILLING CODE 6450-01-M

[1] Oasis entered into an agreement with RFI on October 24, 1978, which attempted to transfer, from RFI to Oasis, allocation entitlements to gasoline supplies from Marathon Petroleum Company and Cities Service Corporation. On March 1, 1979, updated federal petroleum allocation regulations went into effect which obligated RFI to supply certain wholesale purchasers to which RFI had sold gasoline during the period July 1, 1977 through June 30, 1978. RFI claimed that the updated regulations entitled it to be supplied, by Marathon and Cities, the amount of gasoline that it had purchased from the two suppliers and resold to its wholesale customers during the updated base period. Oasis disputed this, contending that the 1978 agreement transferred to it the right to supply RFI's wholesale customers, and sought an injunction from the United States District Court for the Northern District of Texas to prevent RFI or the DOE from interfering with its rights under the agreement. The court issued an injunction on August 3, 1979, ordering Oasis to supply the wholesale customers. See Lucky Stores, Inc., DOE ¶ 82,505 (1986).

[2] See Lucky Stores, Inc. at 85,054. OHA also identified RFI as a firm that was potentially injured by Oasis' alleged violations. However, in 1988 the Bankruptcy Court for the Central District of California approved a settlement agreement entered into by RFI and Oasis which resolved all outstanding disputes between the two companies. In re Oasis Petroleum Corporation, No. LA-1225-AG (Bankr. C.D. Cal. July 21, 1988). As part of the agreement, RFI specifically waived its right to a Subpart V refund from the Oasis settlement agreement fund. See Stipulation Between the Trustee of Oasis Petroleum Corporation and Research Fuels, Inc. Compromising Disputed Issues at 5.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00314; FRL-4098-8]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of three members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of August 21, 1991 (56 FR 41550).

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 821, Crystal Mall # 2, Arlington, VA, (703-305-5369/5244).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. List of nominees, including biographical data, appeared in the **Federal Register** of August 21, 1991 (56 FR 41550). Seven comments were received in response to this Notice.

I appoint Dr. Marion W. Anders, Dr. Ernest E. McConnell, and Dr. Harihara

M. Mehendale to serve as members of the FIFRA Scientific Advisory Panel.

Dr. Anders is Professor and Chairman of Pharmacology, and Professor of Toxicology, Department of Biophysics, University of Rochester School of Medicine. He will provide the experience and technical background needed in the area of Toxicology/Pharmacology.

Dr. McConnell is a Consultant in Toxicology and Pathology, 3028 Ethan Lane, Raleigh, NC; formerly Director of the National Institute of Environmental Health Sciences National Toxicology Program, Research Triangle Park, NC. He will provide the experience and technical background needed in the area of Veterinary Pathology.

Dr. Mehendale is Professor and Burroughs Wellcome Toxicology Scholar, University of Mississippi Medical Center. He will provide the experience and technical background needed in the area of Toxicology/Pharmacology.

My decision to appoint Drs. Anders, McConnell, and Mehandale is based upon several factors, including comments received, their expertise in the field of toxicology and veterinary pathology, the need for general overall experience in laboratory animal toxicology, and a need for current understanding of state-of-the-art developments in toxicology and laboratory animal bioassays.

Dated: January 17, 1992.

F. Henry Habicht,

Deputy Administrator.

[FR Doc. 92-2657 Filed 2-3-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180860; FRL 4044-8]

Receipt of Application for Emergency Exemption to Use Fenpropathrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide fenpropathrin (trade name Danitol) (CAS 39515-41-8) to control citrus thrips *Scirtothrips citri* on up to 30,000 acres of citrus trees in Yuma County, Pinal County, and the portion of Maricopa County south of Baseline Road. The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 19, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180860" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the insecticide, fenpropathrin, manufactured as Danitol 2 EC, by Valent U.S.A. Corporation, to control citrus thrips, on up to 30,000 acres of citrus. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that, over the last several years, many citrus growers have experienced increasing difficulty in controlling citrus thrips and have suffered significant economic losses. An emergency situation has been created primarily by the development of thrips populations which are resistant to dimethoate and formetenate hydrochloride which previously were effective in controlling citrus thrips. Avermectin has recently become available and is the only registered material to which thrips lack resistance. However, the Applicant fears that if avermectin is used alone, thrips will also develop resistance to it, and avermectin will soon become as ineffective as the old compounds. The other available insecticides have little effectiveness against the thrips, and generally cause more acute side effects on beneficial organisms.

The Applicant is requesting the use of fenpropathrin which has a different mode of action than avermectin, dimethoate, and formetenate hydrochloride, and could be used in rotation with the above-listed registered chemicals. The Applicant feels that rotation of use of several chemicals with different modes of action could possibly help preserve the efficacy of the available chemicals by not allowing thrips populations to develop which are resistant to them.

In addition to the resistance problem, there has been a persistent problem with bee kills associated with the production of citrus. The bee kills arise from the fact that fields of vegetables being grown for seed are intermingled with the citrus orchards. These vegetable seed crops require bees for pollination at the same time that citrus trees are in bloom. Citrus blooms are highly attractive to bees, and because of the insecticides used on citrus, this has created a hazardous situation for bees in the area. Of the registered chemicals for thrips on citrus, both dimethoate and formetenate hydrochloride can cause direct mortality to bees. Avermectin causes some harm to bees mainly in that it can cause disoriented behavior. The Applicant submitted data indicating if applications of fenpropathrin to citrus are limited to the period of time from one hour after sunset to three hours before sunrise bee mortality is reduced to a minimum.

The Applicant plans to treat up to 30,000 acres of citrus using up to 9,000 pounds of active ingredient. One application would be made per growing season, at a maximum rate of 0.3 lbs. active ingredient (16 oz. product, Danitol) per acre, diluted in water to make a minimum spray volume of 30 gallons per acre. A 14-day pre-harvest interval would be observed. This is the third year that the Applicant has requested this use of fenpropathrin. The

Applicant was granted a specific exemption for this use in 1990 and 1991. The last exemption expired on June 15, 1991. The Applicant indicates that the use of fenpropathrin on citrus for managing citrus thrips populations was very successful.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

Dated: January 26, 1992.

Anne E. Lindsay,

Director, Registration, Office of Pesticide Programs.

[FR Doc. 92-2655 Filed 2-3-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1873]

Petitions for Reconsideration of Actions in Rule Making Proceedings

January 29, 1992.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed February 19, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Telephone Company Cable Television Cross-Ownership Rules, Section 63.54-63.58. (CC Docket No. 87-266)

Number of Petitions: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-2684 Filed 2-3-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1869]

Petitions for Reconsideration and Clarification and Application for Review of Actions in Rulemaking Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: This document corrects a public notice, 56 FR 65479, December 17, 1991, which listed petitions for reconsideration filed in Commission rulemaking proceedings.

FOR FURTHER INFORMATION CONTACT: La 'Shon Lee, (202) 632-7535.

SUPPLEMENTARY INFORMATION: In FR Doc 91-30049, published in the **Federal Register** of December 17, 1991, on page 65479, in the first column, in the heading of the document, Report No. "1868" is corrected to read "1869".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-2685 Filed 2-3-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Port of Portland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200277-001.

Title: Port of Portland/Oregon Terminal Company Terminal Agreement.

Parties:

Port of Portland, Oregon Terminal Company

Synopsis: This Agreement, filed January 24, 1992, provides for a change in the method to calculate escalation of the base management fee. Escalation will occur as of the anniversary date of the Agreement (September) and shall be based on increases, if any, in the National Consumer Price Index.

Agreement No.: 224-002582-004.

Title: City of Kodiak/Sea-Land Services, Inc. Preferential Use Agreement.

Parties:

City of Kodiak, Alaska, Sea-Land Services, Inc.

Synopsis: This Agreement, filed on January 22, 1992, provides for an extension of the existing Preferential Use Agreement between the parties for an eleven month period, until February 1, 1993.

Agreement No.: 224-200608.

Title: South Carolina State Ports Authority/Orient Overseas Container Line, Inc. Terminal Agreement.

Parties:

South Carolina State Ports Authority ("Port"),

Orient Overseas Container Line, Inc. ("OOCL")

Synopsis: This Agreement, filed January 23, 1992, permits OOCL to use 17.7 acres at the Waldo Terminal for container shipping terminal operations. OOCL will be charged a per container license fee. OOCL will guarantee a certain container throughput annually. The term of the agreement is two years.

Agreement No.: 224-200609.

Title: Jacksonville Port Authority/Columbus Line, Inc. Lease Agreement.

Parties:

Jacksonville Port Authority, Columbus Line, Inc.

Synopsis: This Agreement, filed January 24, 1992, provides charges for the lease of a container handling and storage facility for throughput and for reefer jack usage. The term of the Agreement is for three years.

Dated: January 29, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2584 Filed 2-3-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BRAD, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 25, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BRAD, Inc., Black River Falls, Wisconsin; to become a bank holding company by acquiring 88.87 percent of the voting shares of Bank of Melrose, Melrose, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire at least 80 percent of the voting shares of The Farmers and Merchants Bank, Prairie Grove, Arkansas.

2. Mid-South Bancorp, Inc., Franklin, Kentucky; to acquire at least 80 percent of the voting shares of First Citizens Bank, Franklin, Tennessee.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. CFB Acquisition Corp., Fargo, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate of North Dakota, Inc., Fargo, North Dakota, and thereby indirectly acquire First Interstate of Fargo, N.A., Fargo, North Dakota. **Comments on this application must be received by February 11, 1992.**

2. Dairyland Bank Holding Company, LaCrosse, Wisconsin; to become a bank holding company by acquiring 91.85 percent of the voting shares of La Farge State Bank, La Farge, Wisconsin, and 100 percent of the voting shares of Bank of Alma, Alma, Wisconsin.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. HNB Corporation, Arkansas City, Kansas; to merge with American Bancorp of Ponca City, Inc., Ponca City, Oklahoma, and thereby indirectly acquire American National Bank, Ponca City, Oklahoma.

2. Tulsa Valley Bancshares Corporation, Tulsa, Oklahoma; to acquire 80.76 percent of the voting shares of Valley National Bank, Tulsa, Oklahoma.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Tule Bancorp of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Tulia.

Board of Governors of the Federal Reserve System, January 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2610 Filed 2-3-92; 8:45 am]

BILLING CODE 6210-01-F

Community Independent Bancorp, Inc.; Notice of 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 25, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community Independent Bancorp, Inc., West Salem, Ohio; to engage *de novo* through its subsidiary, CIB Appraisal Services, Inc., West Salem, Ohio, in performing appraisals of real estate and tangible and intangible personal property including securities, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2611 Filed 2-3-92; 8:45 am]

BILLING CODE 6210-01-F

Charles Dutcher; 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 25, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles Dutcher, Wichita, Kansas; to acquire an additional 67.18 percent of the voting shares of Yoder Bancshares, Inc., Yoder, Kansas, for a total of 72.74

percent, and thereby indirectly acquire Farmers State Bank, Yoder, Kansas.

2. C.B. Graft, Clinton, Oklahoma, and Don C. McNeill, Edmond, Oklahoma; to each acquire 50 percent of the voting shares of Leedey Bancorporation, Inc., Leedey, Oklahoma, and thereby indirectly acquire The First National Bank of Leedey, Leedey, Oklahoma.

Board of Governors of the Federal Reserve System, January 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2612 Filed 2-3-92; 8:45 am]

BILLING CODE 6210-01-F

Provident Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 25, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Provident Bancorp, Inc., Cincinnati, Ohio; to acquire Brooks Capital Management, Inc., Cleveland, Ohio, and thereby engage in serving as investment advisor pursuant to § 225.25(b)(4)(ii); providing portfolio investment advice to any other person pursuant to § 225.25(b)(4)(iii); furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to § 225.25(b)(4)(iv); and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4)(v) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire National Ag Underwriters, Inc., Anoka, Minnesota, and thereby engage in managing crop, hail and multiperil crop insurance pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2613 Filed 2-3-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3360; C-3359; C-3362; and C-3361]

Keystone Carbon Company; The Kobacker Company; Macy's Northeast, Inc., et al.; and McDonnell Douglas Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, and of the Fair Credit Reporting Act ("FCRA"), the four consent orders require, among other things, the respondents to comply with the consumer disclosure provisions of the FCRA for future job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondents with the reports.

DATES: Complaint and Order issued January 3, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Cynthia Lamb, FTC/S-4429, Washington, DC 20580. (202) 326-3001.

SUPPLEMENTARY INFORMATION: On Friday, October 25, 1991, there was published in the **Federal Register**, 56 FR 55313, four proposed consent agreements with analysis In the Matter of Keystone Carbon Company; The Kobacker Company; Macy's Northeast, Inc., et al.; and McDonnell Douglas Corporation for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the orders.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreements, made its jurisdictional findings and entered four orders to cease and desist, as set forth in the proposed consent agreements, in disposition of these proceedings.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681(f))

Donald S. Clark,

Secretary.

[FR Doc. 92-2643 Filed 2-3-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. No. 9245]

Viral Response Systems, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Connecticut based corporation and its president from making false and unsubstantiated claims regarding the efficacy of their "Viralizer System", a hand-held device for treating colds and allergies, and also would prohibit respondents from misrepresenting the existence, content,

[1] Copies of the Complaints, the Decision and Orders, and the statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

validity, results, conclusions, or interpretations of any test or study.

DATES: Comments must be received on or before April 6, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

This agreement, by and between Viral Response Systems, Inc., a corporation, and Robert S. Krauser, individually and as an officer of Viral Response Systems, Inc., and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly,

It Is Hereby Agreed:

1. Respondent Viral Response Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 34 East Putnam Avenue, Greenwich, Connecticut 06830.

Respondent Robert S. Krauser is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation. His office and place of business is the same as that of said corporation.

2. Respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert S. Krauser, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Viralizer System, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such product, or any component of such product, can or will:

A. Destroy, disable, or help destroy or disable any virus responsible for the onset or continuance of colds;

B. Prevent or help prevent the spread or transmission of colds;

C. Provide or help provide permanent or long term relief from any allergy symptom;

D. Destroy, disable, or help destroy or disable any antibody that plays a part in the manifestation of any allergic reaction; or

E. Cure or help cure colds;

unless at the time of making the representation:

1. Respondents possess and rely upon competent and reliable scientific evidence which substantiates such representation; *Provided, however,* That, for purposes of this Part, for any evidence to be competent and reliable it must include at least two adequate and well-controlled, double-blind clinical studies conforming to acceptable designs and protocols and conducted by different persons, independently of each other, who are qualified by training and experience to conduct such studies; or

2. Respondents possess and rely upon (a) a tentative or final standard promulgated by the Food and Drug Administration which substantiates such representation; or (b) other evidence which demonstrates that the making of such representation is approved by the Food and Drug Administration.

II

It is Further Ordered, That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert

S. Krauser, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Viralizer System or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication, that such product, or any component of such product, can or will eliminate, alleviate, relieve, or reduce temporarily cold symptoms and/or allergy symptoms unless at the time of making the representation:

1. Respondents possess and rely upon competent and reliable scientific evidence which substantiates such representation; *Provided, however,* That, for purposes of this Part, for any evidence to be competent and reliable it must include at least one adequate and well-controlled, double-blind clinical study conforming to acceptable designs and protocols and conducted by a person who is qualified by training and experience to conduct such a study; or

2. Respondents possess and rely upon (a) a tentative or final standard promulgated by the Food and Drug Administration which substantiates such representation; or (b) other evidence which demonstrates that the making of such representation is approved by the Food and Drug Administration.

III

It is Further Ordered That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert S. Krauser, individually and as an officer of said corporation, and respondents' representatives, agents and employees, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Viralizer System, or any other health-related product or service, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV

It is further ordered That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying;

A. All advertisements, promotional materials, documents, or other materials relating to the offer for sale or sale of any product covered by this Order that make any representation covered by this Order;

B. All materials relied upon by respondents to substantiate any representation covered by this Order;

C. All test reports, studies, experiments, analyses, research, surveys, demonstrations, or other materials in the possession or control of respondents that contradict, qualify, or call into question any representation covered by this Order or the basis on which respondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this Order.

V

It is Further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is Further ordered That the individual respondent shall, for a period of five (5) years after the date of service of this Order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment that involves the marketing of a product designed to treat colds and/or allergies. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII

It is Further ordered That respondents shall, within thirty (30) days from the date of service of this Order upon them, delivery by first class mail or in person a copy of this Order to present distributors and retail dealers of the Viralizer System.

VIII

It is Further ordered That respondents shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Viral Response Systems, Inc., a Delaware corporation, and Robert S. Krauser, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the pubic record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the labeling and advertising of the Viralizer System, a hand-held device, similar to a portable hair dryer, that is designed to blow warm, dry air and spray medicated mists into nasal or oral passages. The Commission's complaint charges that respondents' advertising contained unsubstantiated representations concerning the Viralizer System's alleged efficacy against colds and allergies. Specifically, the complaint alleges that respondents lacked substantiation for claims that the Viralizer System will: (1) Eliminate or help eliminate cold symptoms in one day or less; (2) destroy, disable, or help destroy or disable, the viruses reponsible for colds; (3) prevent or help prevent the spread or transmission of colds; (4) provide or help provide permanent or long-term relief from allergy symptoms; and (5) destroy, disable, or help destroy or disable, the antibodies that play a part in the manifestation of allergic reactions.

The complaint also alleges that respondents falsely represented that certain efficacy claims were established by scientific evidence. Specifically, the respondents are alleged to have falsely claimed that competent and reliable scientific tests have established that the Viralizer System will: (1) Eliminate or help eliminate cold symptoms in one day or less or (2) destroy, disable, or help destroy or disable the viruses responsible for colds.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order provides that if the respondents represent that the Viralizer System, or any other product, can or will: (1) Destroy, disable, or help destroy or disable any virus responsible for the onset or continuance of colds; (2) prevent or help prevent the spread or transmission of colds; (3) provide or help provide permanent or long term relief from any allergy symptom; (4) destroy, disable, or help destroy or disable any antibody that plays a part in the manifestation of any allergic reaction; or (5) cure or help cure colds, they must posses at least two adequate and well-controlled, double-blinded clinical studies that support the claim or, alternatively, FDA approval of the claim.

Part II of the proposed order provides that if the respondents represent that the Viralizer System, or other product, can or will eliminate, alleviate, relieve, or reduce temporarily cold symptoms and/or allergy symptoms, they must possess at least one adequate and well-controlled, double-blinded clinical study that supports the claim, or, alternatively, FDA approval of the claim.

Part III of the proposed order requires the respondents to cease misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

The proposed order also requires the respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to present distributors and retail dealers of the Viralizer System, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of certain changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-2644 Filed 2-3-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel; Delegation of Authority To Certify True Copies

Under the authority delegated by the Secretary to the Assistant Secretary for Management and Budget (43 FR 58870-71 12/18/1978) and redelegated to me by the Assistant Secretary for Management and Budget (56 FR 58910):

1. I hereby redelegate to the following the authority to certify true copies of any books, records, papers or other documents on file within the Department, or extracts from such, to certify that true copies are true copies of the entire file of the Department, to certify the complete original record, or to certify the nonexistence of records on file within the Department, and to cause the seal of the Department to be affixed to such certifications.

These same officials are authorized to cause the Seal to be affixed to agreement, awards, citations, diplomas, and similar documents.

To whom delegated: Principal Deputy General Counsel, Deputy General Counsels, Executive Officer, Communications Staff Assistant, Regional Chief Counsels, Secretary to the General Counsel, Secretary to the Principal Deputy General Counsel, Associate General Counsel, Business and Administrative Law Division, Secretary to the Associate General Counsel, Business and Administrative Law Division.

The above redelegations supersede the redelegations made under previous authority (47 FR 30653 dated 7/14/82). Any actions taken since July 14, 1982, not inconsistent with these delegations are hereby ratified.

These authorities may not be redelegated.

Dated: January 27, 1992.

Michael J. Astrue,

General Counsel.

[FR Doc. 92-2573 Filed 2-3-92; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, NW., Attalla, AL 35954-0770, 205-538-0012.

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119-5412, 702-733-7866.
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.
Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414-496-2487.
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900.
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.
Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117.
Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, Suite 200, Columbia, SC 29206, 800-848-4245/803-782-2700.
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263/800-833-3984.
Continental Bio-Clinical Laboratory Service, Inc., A MetPath Laboratory, 2740 28th Street, SW., Grand Rapids, MI 49509, 800-777-0706/616-538-6700.
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093.
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab).
Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535.
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006.
Drug Labs of Texas, 15201 I 10 East, suite 125, Channelview, TX 77530, 713-457-3784.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310.
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305-946-4324.
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-8800.
ElSohly Laboratories, Inc., 1215-½ Jackson Ave., Oxford, MS 38655, 601-236-2609.
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200 (name changed: formerly Alpha Medical Laboratory, Inc.).
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267.
Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294.
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672.
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961.
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631.
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburth, PA 15229, 412-931-7200.
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515.
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc., Abused Drug Laboratories).
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312-800-6900
(name changed: formerly Bio-Analytical Technologies).
Medtox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 612-636-7466/800-832-3244.
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 North Senate Boulevard, Indianapolis, IN 46202, 317-929-3587.
Methodist Medical Center Toxicology Laboratory, 221 NE. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199.
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888.
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000.
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191.
National Center for Forensic Science, 1901 Sulphur String Road, Baltimore, MD 21227, 401-536-1485 (name changed; formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (named changed: formerly Med Arts Lab).
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/572-3734 (inside VA)/800-336-0391 (outside VA).
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522.
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (inside NC).
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250.
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050 (name changed: formerly Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134.
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062 708-480-4680.
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080 908-769-8500/237-7352.
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025 415-328-6200/800-446-5177.
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite 150, San Antonio, TX 78216, 512-493-3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601-264-3856/800-844-8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537.
Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404-939-4811.

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770.

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986.

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671 601-342-1286.

Scott & White Drug Testing Laboratory, 600 South 25th Street, Temple, TX 76504, 800-749-3788.

S.E.D. Medical Laboratories, 500 Walter NE suite 500, Albuquerque, NM 87102, 505-848-8800.

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472.

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520.

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205. (name changed: formerly SmithKline Bio—Science Laboratories).

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburgh, IL 60173, 708-885-2010. (name changed: formerly International Toxicology Laboratories).

SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314-567-3905.

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (named changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly Smith Kline Bio-Science Laboratories).

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176.

Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137-3054, 800-338-0166 (outside OH) / 800-362-8913 (inside OH) (name changed: formerly Southgate Medical Laboratory).

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052.

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314-577-8628.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314-882-1273.

Toxicology Testing Service, Inc., 5426 NW., 79th Avenue, Miami, FL 33166, 305-593-2260.

Richard A. Millstein,

Acting Director, National Institute on Drug Abuse.

[FR Doc. 92-2744 Filed 2-3-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91E-0492]

Determination of Regulatory Review Period for Purposes of Patent Extension; Accupril®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Accupril® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health affairs (HFY-20), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g) (1)(B).

FDA recently approved for marketing the human drug product Accupril®. Accupril® (quinapril hydrochloride) is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Accupril® (U.S. Patent No. 4,344,949) from Warner-Lambert Co., and the Petent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 20, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Accupril® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Accupril® is 3,441 days. Of this time, 2,414 days occurred during the testing phase of the regulatory review period, while 1,027 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: June 18, 1982. FDA has verified the applicant's claim that the date the investigational new drug application became effective was June 18, 1982.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: January 26, 1989. FDA has verified the applicant's claim that the new drug application (NDA) for Accupril® (NDA 19-885) was filed on January 26, 1989.

3. The date the application was approved: November 19, 1991. FDA has verified the applicant's claim that NDA 19-885 was approved on November 19, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2,204 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 6, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 3, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92–2633 Filed 2–3–92; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting

Notice is hereby given that the Office of Research on Women's Health (ORWH) in the Office of the Director, National Institutes of Health, will hold a public hearing on March 2 and 3, 1992, from 8 a.m. to 4:30 p.m., in Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The purpose of this hearing is to accept public testimony from individuals and organizations interested in the subject of recruitment, retention, re-entry, and advancement of women in biomedical careers.

This testimony will be used to help the members of the ORWH Planning Task Force on Women in Biomedical Careers (the Task Force) to frame the issues and develop the agenda for an ORWH-sponsored workshop to formulate recommendations to increase the recruitment, retention, re-entry, and advancement of women in biomedical careers to be held on June 11 and 12, 1992, in Bethesda, Maryland. Task Force members will be present at the public hearing to accept testimony.

The number of women admitted to health professional schools and into doctoral and post-doctoral programs is increasing. Yet, the numbers of women in leadership positions in biomedical careers (such as tenured professors, department chairs, deans, senior scientists, and principle investigators) is not commensurate.

Barriers to entry and advancement continue to exist. Training grants and fellowships often do not take into account a woman scientist's family responsibilities and assumption of non-traditional roles, which often occur at crucial times in her scientific career. Minority women, in particular, often are not presented with opportunities to prepare themselves for scientific and/or academic careers during critical stages in their education. The "glass ceiling" effect, a situation where women are promoted to within close proximity of major leadership positions but infrequently attain these positions, continues unabated. New ways to retain and advance women in these careers must be identified and implemented.

All sessions are open to the public. However, seating is limited and will be on a first-come, first-served basis. Testimony for the public hearing should be confined to comments relating to recruitment, retention, re-entry, and advancement of women in biomedical careers. Due to time constraints, only *one* representative from each organization will be allowed to present oral testimony. Each presentation must be limited to 5 to 7 minutes.

A letter of intent to present such testimony should be sent by interested individuals and organizations to the attention of Ms. Margaret Pickerel of Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852. The letter of intent to present testimony must be received by Prospect Associates no later than 5 p.m. (EST) on February 17, 1992. The date and time at which the letter of intent is received at Prospect Associates will establish the order of presentation at the March meeting.

Presenters should send three (3) written copies of their testimony, including a brief description of their organization, to the above address, no later than 5 p.m. (EST) on February 24, 1992. Written testimony received after that date and time will be accepted, but may not be included in the materials available to the Task Force members at the March 2 and 3, 1992, hearing.

Organizations wishing to provide only written statements may send three (3) copies of their statements to the above address by February 24th, 1992, no later than 5 p.m. (EST). All written testimony received by that date will be made available to Task Force members prior to the March meeting. Testimony received after that date will be sent to the Task Force, but may not be available at the March meeting.

For additional information contact Ms. Margaret Pickerel of Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, 301–468–6555, 301–770–5164 (FAX).

Dated: January 28, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–2564 Filed 2–3–92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Rescission of Social Security Ruling 69–33c Child's Insurance Benefits—Full Time Attendance at Evening High School—20-Hour Per Week Requirement

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Ruling (SSR) 69–33c.

SUMMARY: The Commissioner of Social Security gives notice of the Rescission of SSR 69–33c Child's Insurance Benefits—Full-Time Attendance at Evening High School—20-Hour Per Week Requirement.

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castelo, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security rulings make available to the public precedential decisions relating to the Federal Old-Age, Survivors, Disability, Supplemental Security Income, and Black Lung Benefits Programs. Social Security rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 69–33c was published in the 1966–1970 Cumulative Edition of the Rulings. This Ruling concerns a claimant who was enrolled in an evening high school program at a fully accredited private school that enabled her to take 16½ hours of class per week. The school considered this scheduled attendance to be the equivalent of full-time day instruction under its standards and practices. However, SSR 69–33c held that, since the claimant's scheduled attendance was at the rate of less than 20 hours per week (a strict 20 hours of attendance per week requirement was mandated by the regulation then in effect), the claimant did not meet the

full-time attendance requirement under section 202(d) of the Social Security Act and its implementing regulation to qualify as a full-time student.

On July 30, 1991, SSA published a final regulation in the **Federal Register** at 56 FR 35998 amending 20 CFR 404.367(b). The regulation now provides for exceptions to the 20-hour rule where the student is considered to be full-time for day students under the school's standards and practices and either the school does not schedule at least 20 hours per week for the child and attending that school is the student's only reasonable alternative, or the student's medical condition prevents him or her from scheduled attendance of at least 20 hours per week. Because of this change, SSR 69-33c is out of date. Consequently, we are rescinding this Ruling.

Catalog of Federal Domestic Assistance Programs Nos. 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivor's Insurance

Dated: January 24, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92-2634 Filed 2-3-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Vancouver Historical Study Commission: Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of correction of dates.

This notice corrects the dates published in the **Federal Register** November 8, 1991, (Volume 56, No. 217, Page 57353) for public meetings of the Vancouver Historical Study Commission to be held in the Vancouver, Washington City Council Chambers, 210 East 13th Street, Vancouver, Washington. The scheduled meeting for February 11, 1992 has been canceled. The Commission meetings for Tuesday, March 10, 1992 and Tuesday, April 14, 1992 will remain as scheduled. Commission meetings start at 1 p.m., and are planned to adjourn no later than 5 p.m. In addition, the Commission will hold a study session prior to the March 10, 1992 meeting from 10 a.m. to 12 noon.

Dated: January 29, 1992.

Roy D. Westberg,

Acting Regional Director.

[FR Doc. 92-2673 Filed 2-3 92; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0112), Washington, DC 20503, telephone 202-395-3470.

Title: Gas Well Data—Survey of Helium-Bearing Natural Gas.

OMB Approval Number: 1032-0112.

Abstract: Respondents supply information which will be used by the Bureau of Mines, Division of Helium Field Operations, to evaluate the helium resources of the United States. This evaluation helps assure a continued supply of the valuable natural resource to meet essential Government needs. Results of the gas analyses, along with the data supplied, are published to provide valuable information to industry and to the public when those data are released by the supplier.

Bureau Form Number: 6-1579-A.

Frequency: Annually.

Description of Respondents: Owners and operator of helium-bearing natural gas wells and transmission lines.

Estimated Completion Time: 15 minutes.

Annual Responses: 200.

Annual Burden Hours: 50.

Bureau Clearance Officer: Alice J. Wissman (202) 501-9569.

Dated: January 10, 1992.

T.S. Ary,

Director, Bureau of Mines.

[FR Doc. 92-2618 Filed 2-3-92, 8:45 am]

BILLING CODE 4310-53-M

Fish and Wildlife Service

Availability of a Draft Joint Environmental Assessment/Supplemental Environmental Impact Report to Amend the Habitat Conservation Plan of an Incidental Take Permit for Development in Riverside County, California

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Environmental Assessment (EA)/Supplemental Environmental Impact Report (EIR) concerning the proposed amendment to the section 10(a)(1)(B) permit to allow incidental take of the endangered Stephens kangaroo rat (*Dipodomys stephensi*) in Riverside County, California, is available for public review. Comments and suggestions are requested. This notice is provided pursuant to section 10(c) of the Endangered Species Act, as amended (Act), and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments are requested by March 5, 1992.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing the Riverside County Habitat Conservation Agency (RCHCA). Documents will be available for public inspection during normal business hours (8 a.m. to 5 p.m.) at the RCHCA and the Riverside Central Library. Written data or comments concerning the proposed amendment and draft EA/supplemental EIR should be submitted to the Laguna Niguel, California Field Office. Please reference permit number PRT 739678 with your comments.

Riverside County Habitat Conservation Agency, 12th Floor, Administrative Center, 4080 Lemon Street, Riverside, California 92501.

Riverside Central Library, Government Publications Section, 3581 Seventy Street, Riverside, California 92501-3651.

U.S. Fish and Wildlife Service, Laguna Niguel Field Office, 24000 Avila Road, room 3106, Laguna Niguel, California 92656.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper at the above Laguna Niguel, California Field Office.

SUPPLEMENTARY INFORMATION: The County of Riverside, California, has applied to the Fish and Wildlife Service for a proposed amendment to their existing incidental take permit that

would authorize changes in the Stephens' kangaroo rat (SKR) reserve study area boundaries, and is known as the "second go-round boundary modification." These changes are being promulgated pursuant to the terms and conditions of the existing short-term (2-year) SKR Habitat Conservation Plan (HCP). This short-term plan requires review of the proposed boundary changes every 6 months until such time as the final SKR reserve study area boundaries and the long-term HCP are completed and approved.

The proposed action authorizes specific modifications of the boundaries of seven SKR study areas. This proposed action is detailed in section II.D—Alternatives Including the Proposed Action. The proposed action includes 23 modifications from seven study areas which would result in the deletion of a total of 4,132.5 acres, including a net decrease of 337.2 acres of SKR occupied habitat.

(Notice of availability: Stephen's kangaroo rat—incidental take permit and Environmental Assessment.)

Dated: January 28, 1992.

Marvin L. Plenert,

Regional Director.

[FR Doc. 92-2620 Filed 2-3-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 25, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 19, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Elmore County

Tallassee Commercial Historic District. Roughly, 3 blocks on S side Barnett Blvd. between old River Rd. and DuBois St., Tallassee, 92000072

ARKANSAS

Washington County

Devil's Den State Park Historic District (Facilities Constructed by the CCC in Arkansas MPS). AR 74 W of Winslow, Winslow vicinity, 92000071

CALIFORNIA

Los Angeles County

Fern Avenue School, 1314 Fern Ave., Torrance, 92000067

ILLINOIS

Cook County

Humboldt Park (Chicago Park District MPS), Roughly bounded by N. Sacramento and Augusta Blvds., and N. Kedzie, North and N. California Aves. and W. Division St., Chicago, 92000074

Sangamon County

Rippon—Kinsella House, 1317 N. Third St., Springfield, 92000073

MARYLAND

Anne Arundel County

Douglass Summer House, 3200 Wayman Ave., Highland Beach, 92000069

Charles County

Acquinsicke, Billingsley Rd. W. of jct. with MD 228, Pomfret vicinity, 92000070

NEW YORK

Chautauqua County

School No. 7, Jct. of E. Lake Shore Dr. and N. Serval St., Dunkirk, 92000068

OREGON

Benton County

Bexel, John, House, 3009 NW. Van Buren Ave., Corvallis, 92000064

Monroe State Bank Building, 190 S. Fifth St., Monroe, 92000065

Clatsop County

West, Oswald, Coastal Retreat, 1981 Pacific Ave., Cannon Beach, 92000066

Deschutes County

Stover, B. A. and Ruth, House, 1 NW. Rocklyn Rd., Bend, 92000061

Jackson County

Pedigrift, S. and Sarah J., House, 407 Scenic Ave., Ashland, 92000063

Peil, Emil and Alice Applegate, House, 52 Granite St., Ashland, 92000062

[FR Doc. 92-2506 Filed 2-3-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 237X)]

Exemption and of Interim Trail Use or Abandonment; Chicago and North Western Transportation Company—Abandonment Exemption—In Douglas County, NE

Decided: January 29, 1992.

Chicago and North Western Transportation Company (CNW) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 5.8-mile line of railroad between milepost 0.00, at Summit Street, and milepost 5.8, near Dodge Street, in Omaha, Douglas County, NE.[1]

CNW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

On January 21, 1992, The City of Omaha (Parks, Recreation & Public Property Department), filed a request for a notice of interim trail use (NITU) as well as a statement of willingness to assume financial responsibility for that segment of line between milepost 1.2, near 42nd Street, and milepost 4.16, near Mercy Road. CNW by telecopier letter filed January 24, 1992, indicates its willingness to negotiate with the City of Omaha for interim trail use for this segment of the line.

While a petition for interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** (49 CFR 1152.29(b)(2)), the provisions of 16 U.S.C. 1247(d) are applicable and all the criteria for imposing interim trail use/rail banking have been met. Accordingly, in light of CNW's willingness to enter into negotiations, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, CNW may fully abandon the line. See 49 CFR 1152.29(d)(1).

Any other political subdivision, state, or qualified private entity interested in acquiring or using the involved right-of-way for interim trail use/rail banking may file an appropriate petition before February 14, 1992. If additional statements are filed, CNW is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

[1] CNW in its verified notice indicates that the segment of line between mileposts 0.2 and 1.2 will be acquired by the Union Pacific Railroad Company (UP). UP was granted interim overhead trackage rights over the segment in Finance Docket No. 31962, Union Pacific Railroad Company and Chicago and North Western Transportation Company—Joint Relocation Project Exemption, (not printed), served December 23, 1991.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 5, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 14, 1992.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 24, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to CNW's representative: Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

CNW has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 7, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is Ordered:

1. Subject to the conditions set forth above, CNW may discontinue service, cancel tariffs for this line on not less than 10 day's notice to the Commission, and salvage track and related material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer of use (if the user is immune from liability, it need only indemnify CNW against any potential liability), and the payment of any taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, CNW may fully abandon the line.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective March 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2640 Filed 2-3-92; 8:45 am]

BILLING CODE 7035-01-M

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with 42 U.S.C. 9622(1), notice is hereby given that on January 10, 1992, a proposed consent decree in *United States* v. *Ciba-Geigy Corporation, et al.*, Civil Action No. 91-2531, has been lodged with the United States District Court for the District of New Jersey. The United States' amended complaint sought recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against Ciba-Geigy and 15 other corporations responsible for hazardous wastes found at the Atlantic Resources site in Sayreville, New Jersey.

The consent decree provides that the settling defendants will reimburse EPA for $625,000 in past response costs incurred by the United States in connection with the Atlantic Resources site. In addition, the consent decree provides that the settling federal agency will pay $175,000 in past response cost.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Ciba-Geigy Corporation, et al.*, D.J. Ref. 90-11-3-480.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., room 502, Newark, N.J. 07102 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-2569 Filed 2-3-92; 8:45 am]

BILLING CODE 4410-01-M

Mass Merchandisers, Inc.; Lodging of Consent Decree Pursuant to CERCLA

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7 notice is hereby given that a complaint styled *United*

States. v. *Mass Merchandisers, Inc.* was filed in the United States District Court for the Western District of Arkansas on December 17, 1991, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for injunctive relief, and for the recovery of response costs incurred by the United States with respect to a Site located approximately one-half mile southwest of Omaha, Arkansas. The complaint alleged, among other things, that the defendant is a person who owned the Site and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances from the Site.

Under the terms of the proposed consent decree, the defendant agrees to fund and implement a remedy at the Site which includes excavation of affected soils, sieve and washing of the soils, followed by onsite incineration of washed soils not meeting certain objectives. Additionally, groundwater will be monitored and, if necessary, treated to meet certain objectives.

The consent decree also calls for the defendant to pay the United States the sum of $282,608.10 for past response costs incurred by the United States, and to pay for all future response and oversight cost incurred by the United States related to the remedial action to be undertaken at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Mass Merchandiser, Inc.*, D.J. Ref. 90-11-2-190A.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202) 347-2072; at the U.S. Attorney, Western District of Arkansas, 6th & Rogers Avenue, room 216, Post Office Box 1524, Fort Smith, Arkansas, 72902; and at the Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $51.50 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-2671 Filed 2-3-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26, 481]

Bentley Industries, Inc., Evans City, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 1991 in response to a worker petition which was filed on behalf of workers at Bentley Industries, Incorporated, Evans City, Pennsylvania.

A certification of eligibility applicable to the petitioning group of workers was issued on December 30, 1991 (TA-W-26, 321). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-2577 Filed 2-3-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,431; Globe Steel Abrasive Co., Mansfield, OH

TA-W-26,562; Calgon Carbon Corp., Big Sandy Plant, Catlettsburg, KY

TA-W-26,536; Galva Foundry Co., Galva, IL

TA-W-26,239; Allegheny Ludlum Steel Corp., West Leechburg, PA

TA-W-26,381; Fruehauf Trailer Operations, Uniontown, PA

TA-W-26,330; Joy Technologies, Mining Machinery Div., Franklin, PA

TA-W-26,506; Detroit Steel Product, Inc., Morristown, IN

TA-W-26,520; Maine Mountain Footwear, Wilton, ME

TA-W-26,543; Mohawk Tools, Inc., Montpelier, OH

TA-W-26,316; Worthington Precision Metals, Mentor, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,551; Plymouth, Inc., Bellmawr, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,600; GP/Sorensen, Glasgow, KY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,459; Down East Manufacturing, Livermore Falls, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,604; Kaiser Aluminum and Chemical Corp., Toledo, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,577; Omar L. Fulfer Well Servicing Co., Kamay, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,539, TA-W-26,540, TA-W-26,541; Maxus Exploration Co., Mills, WY, Douglas, WY, and Gillette, WY

U.S. imports of crude oil declined absolutely and relative to domestic shipments in the first eight months of 1991 compared to the same period in 1990.

TA-W-26,565; Dyco Petroleum Co., Tulsa, OK

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,554; Susan Bates, Inc., Chester, CT

A certification was issued covering all workers separated on or after October 28, 1990.

TA-W-26,480; Bayline Co., Inc., Parsonsburg, MD

A certification was issued covering all workers separated on or after October 18, 1990.

TA-W-26,606; Logtech Wireline Services, Inc., Edmond, OK

A certification was issued covering all workers separated on or after January 1, 1991 and before January 1, 1992.

TA-W-26,585; Western Atlas International/ Atlas Wireline Services, Bossier City, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,579; Sharlyn Fashions, Inc., East Newark, NJ

A certification was issued covering all workers separated on or after November 4, 1990.

TA-W-26,560; Baxter Healthcare Corp., Eaton, OH

A certification was issued covering all workers separated on or after November 17, 1991.

TA-W-26,552; Samsung International, Inc., Ledgewood, NJ

A certification was issued covering all workers separated on or after October 28, 1990.

TA-W-26,578; Schlumberger Well Service, Midland, TX

A certification was issued covering all workers separated on or after August 23, 1991.

TA-W-26,534; Elra Dress Co., Jersey City, NJ

A certification was issued covering all workers separated on or after October 30, 1990.

TA-W-26,570; Key Tronic Corp., Spokane, WA

A certification was issued covering all workers separated on or after November 4, 1990.

TA-W-26,564; Down East Footwear Mfg., East Corinth, ME

A certification was issued covering all workers separated on or after October 31, 1990.

TA-W-26,566; Gandalf Systems, Corp., Cherry Hill, NJ

A certification was issued covering all workers separated on or after October 31, 1990.

TA-W-26,458; Down East Casuals Footwear, Lewiston, ME

A certification was issued covering all workers separated on or after October 4, 1990.

TA-W-26,430; Euro Knit, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after September 30, 1990.

TA-W-26,512; Frigidaire Co., Athens, TN

A certification was issued covering all workers separated on or after October 23, 1990.

TA-W-26,610; Obion Denton Co., Oxford, MS

A certification was issued covering all workers separated on or after November 12, 1990.

I hereby certify that the aforementioned determinations were issued during the month of January, 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 27, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-2578 Filed 2-3-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Forum: To Follow Up on White House Conference on Library and Information Services

AGENCY: U.S. National Commission on Libraries and Information Science (NCLIS).

ACTION: Notice of public meeting.

SUMMARY: In July 1991, The White House Conference on Library and Information Services (WHCLIS) was held. Delegates adopted 95 recommendations.

AGENDA: The U.S. NCLIS is holding an Open Forum to give national library and information organizations and allied groups—including those of elected and appointed officials from government and education—an opportunity to review the WHCLIS recommendations of special concern and interest to them and to provide their plans in support of the recommendations. All data gathered as a result of the forum will be considered in formulating NCLIS initiatives to address the implementation of the WHCLIS recommendations.

DATE/LOCATION: Tuesday, March 19, 1992, 9 a.m. to 5 p.m. Henry Barnard Auditorium, room 1134, U.S. Department of Education, FOB 6, 400 Maryland Avenue, SW., Washington, DC.

PARTICIPATION: Invitations to participate in the Open Forum are being sent to national organizations. Regional and local groups are welcome to attend as well, but opportunity to address the forum will be designated first for national representatives. Because of limited space, participation is limited to 100.

WRITTEN COMMENTS: Written comments on the WHCLIS Recommendations should be received in the NCLIS office by March 31, 1992.

NCLIS ADDRESS: NCLIS, 1111—18th Street, NW., suite 310, Washington, DC 20036. (202) 254-3100.

FOR FURTHER INFORMATION CONTACT: Jane Williams, Research Associate, at above address.

Access to the meeting for handicapped individuals is available. Please call Jane Williams (202) 254-3100, no later than one week in advance of the meeting.

Dated: January 28, 1992.

Jane Williams,

Acting Executive Director.

[FR Doc. 92-2581 Filed 2-3-92; 8:45 am]

BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Adivory Committee on Reactor Safeguards will hold a meeting on February 6-8, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 23, 1992 (57 FR 2793). This revised notice reflects changes in the schedule for topics to be considered on Thursday, February 6, 1992.

Thursday, February 6, 1992

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.–10 a.m.: Key Technical Issues (Open)—The Committee will discuss proposed plans for resolution of key technical issues in need of early resolution with respect to future nuclear power plant designs.

10:15 a.m.–12:15 p.m.: Integral Systems Testing for the Westinghouse AP-600 Nuclear Plant (Open/Closed)—The Committee will review and report on integral systems testing requirements for the Westinghouse AP-600 standardized nuclear power plant.

Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

1:15 p.m.–3:15 p.m.: Meeting with Senior NRC Staff Managers (Open)—The Committee will hold a discussion regarding proposed reconciliation of ACRS comments and recommendations regarding several safety related and regulatory matters such as consistent use of PRA in the regulatory process, the NRC Regulatory Impact Survey, and criteria to accommodate severe accidents in containment design.

3:30 p.m.–5 p.m.: Reactor Operating Experience (Open)—The Committee will hear a briefing by and hold a discussion with representatives of the NRC staff regarding recent events and incidents at operating nuclear power plants, including the causes and consequences of a turbine overspeed failure at the Salem Nuclear Generating Station and a main coolant system leak at the Oconee Nuclear Station.

Representatives of the licensees and other elements of the nuclear industry will participate, as appropriate.

5 p.m.–6 p.m. Policies and Practices of Public Utility Commissions (Open)—The Committee will hear a briefing by and hold a discussion with an invited expert regarding the impact that policies and practices of Public Utility Commissions have on the safety of nuclear power plants.

6 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss issues to be addressed in reports related to matters considered during this meeting session.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1991 (56 FR 49880). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Farley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: January 29, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–2580 Filed 2–3–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Exemption

I

The Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is the holder of Facility Operating License No. DPR–61 which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. The plant is a single-unit pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II

Because the Haddam Neck Plant has used only stainless steel clad fuel, CYAPCO has previously only been required to demonstrate emergency core cooling system (ECCS) performance capability in accordance with the "AEC Interim Policy Statement for Emergency Core Cooling" (36 FR 12247). With the conversion to Zircaloy-clad fuel the plant must now be in compliance with 10 CFR 50.46 and appendix K. The appendix K model has been reviewed and approved by the staff for its utilization as part of the licensing basis for the Haddam Nick plant. In the process of reviewing this new model against the 10 CFR part 50, appendix K requirements, three requirements were identified as not applicable for the Haddam Neck Plant. These three requirements in sections I.D.3, I.D.4, and I.D.5 were written for bottom flooding plants. More specifically, the sections I.D.3, I.D.4, and I.D.5 of appendix K require the following:

Section I.D.3 of appendix K requires that the ratio of the total fluid at the core exit plane to the total liquid flow at the core inlet plane (carryover fraction) shall be used to determine the core exit flow and shall be determined in accordance with applicable experimental data.

Section I.D.4 of appendix K requires that the thermal-hydraulic interaction between steam and all emergency core cooling water shall be taken into account in calculating the core reflooding rate. During refill and reflood, the calculated steam flow in the unbroken reactor coolant pipes shall be taken to be zero during the time that acculators are discharging water into those pipes unless experimental evidence is available regarding the realistic thermal-hydraulic interaction between the steam and liquid. In that case, experimental data may be used to support an alternate assumption.

Section I.D.5 of appendix K requires that for reflood rates of 1-inch per second or higher, reflood heat transfer coefficients shall be based on applicable experimental data for unblocked cores, including FLECHT results ("PWR FLECHT (Full Length Emergency Cooling Heat Transfer) Final Report", Westinghouse Report WCAP–7665, April 1971). The use of a correlation derived from FLECHT data shall be demonstrated to be conservative for the

transient to which it is applied; presently available FLECHT heat transfer correlations ("PWR FLECHT Croup I Test Report", Westinghouse Report WCAP-7544, September 1970; "PWR FLECHT Final Report Supplement", Westinghouse Report WCAP-7931, October 1972) are not acceptable. New correlations are acceptable only after they are demonstrated to be conservative, by comparison with FLECHT data, for a range of parameters consistent with the transient to which they are applied.

By letter dated September 26, 1990, CYAPCO requested exemptions from the above requirements for the Haddam Neck Plant.

III

In the past, loss-of-coolant accident (LOCA) analyses for reactors with upper plenum injection (UPI) assumed that during reflood the low pressure safety injection (LPSI) flow was injected into the lower plenum (core flooding from below) in the same manner as for the three-loop and four-loop plants rather than in the upper plenum. Also, since Haddam Neck had no cold leg accumlators, none were required to be modeled. With these assumptions, the Interim Acceptance Criteria (IAC) in the Interim Policy Statement for Emergency Core Cooling could be applied to the analyses without exception. With the conversion of the Haddam Neck Plant to Zircaloy-clad fuel, the Haddam Neck Plant needs to be in compliance with 10 CFR 50.46 and appendix K rather than the IAC.

The U.S. Nuclear Regulatory Commission (NRC) was concerned that the simplifying assumption of low pressure water injecting into the lower plenum was unrealistic, and potentially nonconservative for pressurized water reactors with an upper plenum ECCS. As a result of this concern, Westinghouse developed a new LOCA model for plants with UPI which the NRC has reviewed and approved. The new Best Estimate Methodology models the injection of low pressure ECCS water directly into the upper plenum. In the process of reviewing this new model against the 10 CFR part 50, appendix K requirements, to which the Haddam Neck Plant will have to conform because of unique plant design, exemptions from certain portions of the appendix K requirements are necessary, since portions of the appendix K do not apply to the plant design. By letter dated September 26, 1990, the licensee requested exemptions from sections I.D.3, I.D.4, and I.D.5 of appendix K.

The ECCS for the Westinghouse Haddam Neck pressurized water reactor injects the low pressure ECCS cooling water directly into the upper plenum through core deluge pipes in the reactor vessel upper head in the event of a LOCA. The newer Westinghouse Plants inject the low pressure cooling water into the cold legs where it flows into the downcomer and then into the lower plenum (bottom flooding plants). In addition, the newer plants have cold leg accumulators which the Haddam Neck Plant does not have. Sections I.D.3, I.D.4, and I.D.5 of appendix K were written for the bottom flooding plants and not for plants with UPI and without accumulators.

The staff has reviewed the three exemption requests and has concluded that an acceptable basis for granting these exemptions exists. The exemptions are discussed below.

1.0 Section I.D.3

An exemption was requested from the specific requirements of section I.D.3 of appendix K to 10 CFR part 50.

1.1 Discussion

When appendix K was written, the NRC felt that available computer codes could not accurately calculate core exist flow rate. As a result, appendix K required core exit flow rate to be calculated using experimental data. Specifically, the core exist flow had to be determined from the code-calculated core inlet flow times a carryover fraction developed from FLECHT data. The intent of this requirement was to ensure that the flow existing the core to the loops was calculated by the most appropriate means.

1.2 Staff's Evaluation

Section I.D.3 deals with the calculation of reflood rate for pressurized water reactors (PWRs). The specific provision of this section from which the licensee requested to be exempted is the calculation of core exist flow based on carryover fraction. The licensee identified that the prescriptions for this calculation given in section I.D.3 are based on data for a bottom flooding configuration design. Since the Haddam Neck design does not feature cold leg accumulators, the preponderence of ECCS injection is provided by UPI. Since UPI is not a lower flooding design, the licensee concludes that the Section I.D.3 prescriptions do not apply to Haddam Neck. The approved evaluation model for Haddam Neck contains an empirically verified model more directly applicable to top flooding situations to calculate water carryover to the hot legs, which satisfies the intent of appendix K, section I.D.3

1.3 Conclusion

Based on the above evaluation, the staff concludes that the requirements of section I.D.3 are not applicable to the Haddam Neck Plant and that the licensee has verified an empirical model in the evaluation model that is more applicable to top flooding plants to satisfy the intent of section I.D.3. The staff has reviewed and approved this model in the staff's Safety Evaluation related to this exemption. Therefore, the licensee's exemption request from the requirement of section I.D.3 of 10 CFR part 50, appendix K should be granted.

2.0 Section I.D.4

An exemption was requested from the specific requirements of section I.D.4 of appendix K to 10 CFR part 50.

2.1 Discussion

The intent of the requirement was to provide a basis for modeling the accumulator injection into the cold legs. It was postulated that the cold leg accumulator injection was so large that the cold legs would become plugged with the accumulator water thereby preventing the venting of the steam through the loops. The flow regime that was observed in the intact cold legs during experiments was an oscillating plug flow in which the accumulator water condensed all the steam. The oscillating plug flow in the intact loops during accumulator injection resulted in an increased pressure drop in the intact cold legs which slowed the core reflooding rate for a bottom flooding plant.

2.2 Staff's Evaluation

Section I.D.4, dealing with the interaction of steam with ECCS water in a PWR, requires that during refill and reflood, the calculated steam flow in the unbroken reactor coolant pipes be taken to be zero during the time that accumulators are discharging into those pipes unless experimental evidence is available regarding the realistic thermal-hydraulic interaction between the steam and the liquid. The licensee stated that the intent of this item is to account for the plugging of the cold leg by the large accumulator flow, ultimately resulting in a slowing of the core reflooding rate for a bottom flooding plant. The licensee requested an exemption from this because the Haddam Neck Plant does not have cold leg accumulators and its high pressure cold leg injection does not have sufficient capacity to produce the plugging phenomenon addressed in section I.D.4. The licensee stated that the approved evaluation model contains an empirically verified model to

calculate steam/water mixing effects, which satisfies the intent of the appendix K, section I.D.4 requirement.

2.3 Conclusion

Based on the above evaluation, the staff concludes that the requirements of Section I.D.4 are not applicable to the Haddam Neck Plant and that the licensee has verified an empirical model in the evaluation model which calculates the steam/water mixing effects to satisfy the intent of section I.D.4. The staff has reviewed and approved this model in the staff's Safety Evaluation related to this exemption. Therefore, the licensee's exemption request from the requirement of section I.D.4 of 10 CFR part 50, appendix K should be granted.

3.0 Section I.D.5

An exemption was requested from the requirements of section I.D.5 of appendix K to 10 CFR part 50.

3.1 Discussion

The rule prescribes heat transfer calculation methods for three cases; refill, reflood with flooding rate less than 1-inch per second, and reflood with flooding rate greater than 1-inch per second. For refill, the assumption of steam cooling is required in the rule and on the view that there would be no water in the core during this period. For reflood, the prescribed heat transfer calculation methods and the 1-inch per second threshold were chosen to ensure the effects of flow blockage were conservatively accounted for.

3.2 Staff's Evaluation

Section I.D.5, dealing with refill and reflood heat transfer for PWRs, provides heat transfer prescriptions for refill, reflood with a flooding rate of greater than 1-inch per second, and reflood with a flooding rate of greater than 1-inch per second. The licensee correctly identified that the prescriptions of this Section are based only on empirical data from bottom flooding plant experiments. Therefore, the licensee requested an exemption from the prescriptions of this Section because the Haddam Neck design is not a bottom flooding plant. The licensee identified that the approved evaluation model contains an empirically verified model which accounts for refill and reflood heat transfer, which satisfies the intent of Section I.D.5 requirement.

3.3 Conclusion

Based on the above evaluation, the staff concludes that the requirements of Section I.D.5 are not applicable to the Haddam Neck Plant and that the licensee has verified an empirical model in the evaluation model which accounts for refill and reflood heat transfer to satisfy the intent of Section I.D.5. The staff has reviewed and approved this model in the staff's Safety Evaluation related to this exemption. Therefore, the licensee's exemption request from the requirement of section I.D.5 of 10 CFR part 50, appendix K should be granted.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of sections I.D.3, I.D.4, and I.D.5 is to provide an acceptable method for developing ECCS evaluation models which conform with the Appendix K requirements. CYAPCO has demonstrated the inapplicability of these Sections of appendix K to the Haddam Neck Plant as they are requirements applicable to bottom flooding plants with accumulators. As noted before Haddam Neck has UPI with no accumulators. In addition, CYAPCO has provided models more directly applicable to the Haddam Neck Plant in their ECCS evaluation model to satisfy the intent of these sections of appendix K. The staff has reviewed and approved these models in the Safety Evaluation related to this exemption, dated January 23, 1992.

In summary, the staff has concluded that sections I.D.3, I.D.4, and I.D.5 are not applicable to the Haddam Neck Plant and literal compliance with the rule is not required. Therefore, the staff concludes that "special circumstances" exist for the licensee's requested exemptions in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of appendix K to 10 CFR part 50.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances exist in that sections I.D.3, I.D.4, and I.D.5 are not applicable to the plant and provisions have been made to provide models to the ECCS evaluation models which satisfy the underlying intent of sections I.D.3, I.D.4, and I.D.5 of appendix K to 10 CFR part 50. Further, the staff has concluded that the requested exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby grants the exemption requests from the requirements of sections I.D.3, I.D.4, and I.D.5 of appendix K to 10 CFR part 50 described in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the human environment (57 FR 2290).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 23rd day of January 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 92-2852 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Exemption

I

The Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes operation of the Haddam Neck Plant (the facility) at steady state reactor core power levels not in excess of 1825 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a single-unit pressurized water reactor located at the licensee's site in Middlesex County, Connecticut.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is the primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. By letter dated July 31, 1985, the staff concluded that it was acceptable to defer implementation of specific appendix J modifications until an integrated assessment, i.e., Integrated Safety Assessment Program (ISAP), could be performed.

In a July 31, 1985, letter, the NRC staff formally established the scope of the Haddam Neck Plant ISAP and designated the appendix J issues as ISAP Topic 1.03, "Containment Penetration Evaluations." In that letter, the staff recognized that some issues

would require exemptions to defer action until such time as the Haddam Neck Plant ISAP could be completed.

III

By letters dated March 12 and July 15, 1986, the licensee requested exemptions from sections II.H. III.A and III.C of appendix J. By Exemption dated September 29, 1987, the NRC granted schedular exemptions for two refueling outages in response to CYAPCO's exemption requests. By letters dated April 28 and September 8, 1989, as amended by letter dated October 19, 1990, the licensee requested exemptions for eight penetrations. By Exemption dated December 11, 1991, the NRC issued exemptions for three penetrations, determined one exemption was not required, and denied exemptions for four other penetrations (P-8, P-33, P-62 and P-78). By letter dated December 20, 1991, the licensee requested schedular exemptions from the requirements of appendix J for penetrations P-8, P-33, P-62 and P-78. Each request for temporary relief has been evaluated individually in the Safety Evaluation dated January 24, 1992, and is summarized below:

A. Exemptions for Temporary Relief

By letter dated December 20, 1991, CYAPCO requested schedular exemptions from 10 CFR part 50, appendix J, for four separate penetrations. The four requests can be categorized into two groups as described below. These categories include valves that require Type C testing or Type C testing in the reverse direction.

1. Exemption for Modifications of Valves Requiring Type C Testing

By letter dated December 20, 1991, CYAPCO identified the reactor coolant charging system penetration P-8 for which a schedular exemption from the Type C testing requirements of section III.C of appendix J was requested. A discussion of penetration P-8 follows.

Penetration P-8. CYAPCO had previously requested an exemption from the Type C testing requirements for the reactor coolant system charging (P-8) penetration. This previous request was based on the seismic design of system piping inside containment and the proposed seismic qualification (upgrading) of system piping from the isolation valves of penetration P-8 to its water source. Subsequent evaluations by the licensee determined such qualification to be a more lengthy and costly effort than is justified for this circumstance alone. Consequently, the licensee requested a schedular exemption so that alternative corrective actions could be evaluated in relation to other issues concerning the charging system.

This valve is tested at maximum containment design accident pressure during the integrated leak rate test (ILRT). While the ILRT is not an individual test, it does assure that leakage through this valve is limited. System leakage to the environment is inspected and limited to three liters/hour by technical specifications (TS). Additionally, the physical configuration and operation of the charging system during a loss-of-coolant accident (LOCA) provides a natural deterrent to containment leakage through this system. Based on the foregoing discussion, the NRC staff concludes that a schedular exemption is technically justified for the period of one refueling outage given the compensatory measures provided by the ILRT, the TS-required system leakage test and the system configuration. This time period would provide a reasonable time to implement necessary modifications to this system to achieve compliance with appendix J.

2. Exemption to Continue Reverse Direction Type C Testing

By letter dated December 20, 1991, CYAPCO requested schedular exemptions from Section III.C.1 of 10 CFR part 50, appendix J, to continue reverse direction testing of the refueling cavity purification system (P-33), pressurizer relief tank drain (P-78), and the service air to containment (P-62) penetrations.

The refueling cavity purification penetration (P-33) is isolated by two containment isolation valves; valve PU-V-242A is Type C tested in the direction of accident pressure and valve PU-V-242 is tested in the reverse direction. The pressurizer relief tank drain penetration (P-78) is isolated by valves DT-TV-1844 and DR-TV-554; valve DT-TV-1844 is tested in the direction of accident pressure and value DH-TV-554 is tested in the reverse direction. In both of the foregoing cases, testing is accomplished by pressurizing between the isolation valves.

As a general outline, the staff considers reverse testing conservative if the seating force is 10 times the calculated peak pressure force. While this ensures that the leak geometry is dominated by the seating force instead of the test direction, there is no rigorous calculation for determining what other seating force may be acceptable. The licensee's reverse direction testing is currently performed with a seating force less than four times the calculated containment peak pressure and therefore does not satisfy the established criteria for approval of reverse direction testing of valves. However, in the interim period of one refueling outage, the staff believes that with the current seating forces, the current leak rate tests will provide a reasonable indication of the leak tightness of the subject valves. In addition, DT-TV-554 and PU-V-242 valves are exposed to containment atmosphere in the accident direction during the ILRT. As stated earlier, although the ILRT is not performed as frequently as Type C leak rate tests, the ILRT does provide reasonable assurance that leakage through any penetration is limited. Based on the results of the current reverse direction test in conjunction with the ILRT, the NRC staff concludes that a schedular exemption is technically justified for the period of one refueling outage. This time period would permit a reasonable time to implement necessary modifications to these valves to achieve compliance with appendix J.

The service air to containment penetration P-62 is isolated by CIV SA-V-413, a solid wedge gate valve with female thread connections. This valve is Type C tested in the reverse direction. The licensee states that the seating force is greater than the calculated peak pressure force but cannot quantify it. While this does not meet the established criteria, the reverse-direction test does provide a reasonable indication of the leak tightness of the valve. The licensee will also soap bubble test the body-to-bonnet and stem packing every outage. In addition, the system configuration is such that two check valves, that are not leak tested, will provide additional assurance of leak tightness of the penetration. Based on the foregoing discussion, the NRC staff concludes that a schedular exemption is technically justified for the period of one refueling outage given the compensatory measures provided by the seating force, soap bubble test, and system configuration. This time period would provide a reasonable time to implement necessary modifications to this system to achieve compliance with appendix J.

B. 10 CFR 50.12 Determinations for Special Circumstances

In an April 5, 1984 letter, the NRC staff noted that not all containment penetrations are tested in accordance with appendix J. The staff concluded that it was acceptable to defer implementation of specific Appendix J and Appendix A modifications until an integrated assessment, i.e., ISAP, could be performed. The basis for the staff's

conclusion was that, although the integrated containment (Type A) leak test is not performed as frequently as local leak rate tests (LLRTs) would be, the ILRT does provide an indication of overall containment leak-tightness, including penetrations.

In a July 31, 1985 letter, the NRC staff formally established the scope of the Haddam Neck Plant ISAP and designated appendix J issues as ISAP Topic 1.03, "Containment Penetration Evaluations." In this letter, the staff notified CYAPCO that some issues would require exemptions to defer action until such time as the necessary modifications could be completed.

By letters dated March 12 and July 15, 1986, CYAPCO requested 29 exemptions from the requirements of various sections of 10 CFR part 50, appendix J. In almost all cases, CYAPCO described plant modifications required to bring the subject penetrations into compliance with the requirements of 10 CFR part 50, Appendix J. The licensee had requested exemptions for the 29 penetrations until these modifications could be evaluated and ranked using an integrated safety assessment. As part of this effort, CYAPCO scheduled plant modifications based on the safety significance of each item and then incorporated the planned modification schedule into an integrated implementation schedule.

As part of this effort to bring the Haddam Neck Plant into compliance with 10 CFR part 50, appendix J, CYAPCO has made several modifications to the Haddam Neck Plant. In the 1983 outage, two penetrations were modified to permit testing as required by Appendix J. Following the 1984 test, CYAPCO identified those containment penetrations with excessively high leakage rates and formulated a corrective action plan that would reduce leakage and improve the plant's overall containment integrity. This program was implemented during the 1986 refueling outage and included the following actions:

(1) Improving test procedures and methods,

(2) Making modifications to penetrations of poor performers,

(3) Making modifications to the Service Water System to limit silt to the Component Cooling Water System,

(4) Conducting a supplemental Type C test, and

(5) Pursuing an enhanced testing and maintenance program to identify, test, repair and reduce containment leakage.

In 1987, CYAPCO introduced the use of local leak rate monitors (LRMs) in LLRT tests. LRMs employ state-of-the-art mass thermal flow meters and have very small measurement errors. In addition the licensee performed the containment integrated leak rate test (CILRT) at the design accident pressure for the first time since the preoperational test. CYAPCO continued its corrective action plan and modified additional penetrations prior to the 1989 outage. The results of these additional modifications and continuing improvements in testing methods and procedures have resulted in reducing the "as found" LLRT combined leakage from approximately 23,608 lbs per day to 1,110 lbs per day. In addition, during the outage, CYAPCO modified Penetrations P-20, P-23A, P-63, P-68, P-74, P-75, P-76, and P-77 to further enhance containment integrity. As a result of these improvements the Haddam Neck Plant passed their "as found" CILRT for the first time since 1984.

The LLRT enhancement program will continue in the 1991 refueling outage. Modifications are scheduled which will allow for testing of 14 penetrations with air rather than water. The penetrations will be fitted with air test connections or testable blanks.

The staff concludes that with the installed and planned modifications, CYAPCO has taken prudent steps in improving the Haddam Neck Plant containment integrity from both a risk and operating experience perspective. The modifications made during the previous outages demonstrate CYAPCO's good faith efforts in seeking ultimate resolution of appendix J issues.

Pursuant to 10 CFR 50.12(a)(2)(v), the Commission will not consider granting an exemption unless the licensee has made good faith efforts to comply with the regulation. The NRC concludes that special circumstances, as described in 10 CFR 50.12(a)(2)(v), exist and the schedular exemptions from 10 CFR part 50, appendix J, should be granted.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a) that (1) these schedular exemptions as described in section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Special circumstances, as described in section III.B of this exemption, are present to justify exemptions granting temporary relief as described in section III.A above. In summary CYAPCO has demonstrated a good faith effort to comply with the regulations by modifying existing penetrations over the last five outages in an effort to reduce containment leakage problems and to assure compliance with appendix J. Therefore, the Commission hereby grants the exemption requests identified in Section III above.

Further, the Commission grants the schedular exemptions from the requirements of 10 CFR part 50, appendix J, for all penetrations identified in this Exemption for a period of one refueling outage following the 1991 outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact of the human environment (57 FR 1771).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 24th day of January 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2651 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. NPF-82, issued to the Long Island Lighting Company (LILCO, the license), with revised paragraph 2.E. of the license for operation of the Shoreham Nuclear Power Station (SNPS, the facility) located in Suffolk County, New York. The amendment was effective as of the date of its issuance.

The amendment revised paragraph 2.E. to the SNPS license allowing reduction of the SNPS Physical Security requirements, such as, vital areas and equipment, systems and procedures, and the required number of armed responders. These physical security program reductions were determined to be acceptable for a nuclear facility such as SNPS, which is in a shutdown and permanently defueled condition.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action

was published in the **Federal Register** on October 2, 1991 (56 FR 49923). No comments for requests for a hearing were received.

For further details with respect to the action, see (1) the application for amendment dated October 9, 1990, and supplemented by letters dated November 4 and 8, 1991 (the supplemental letters did not change the original intent of the application request and did not affect the staff's original no significant hazards determination), (2) Amendment No. 8 to Facility Operating License No. NPF-82, (3) the Commission's related Safety Evaluation, (4) Environmental Assessment, and (5) the Exemption dated January 28, 1992. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697. A copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 28th day of January 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2650 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Exemption

I

Long Island Lighting Company (LILCO, the licensee) is the holder of Facility Operating License No. NPF-82, which authorizes possession, but not operation of Shoreham Nuclear Power Station (SNPS, the facility). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a boiling water reactor located at the licensee's site in Suffolk County, New York, and is currently defueled.

II

By letter dated October 9, 1990, and as supplemented by letters dated November 4 and 8, 1991, the license requested an exemption concerning certain safeguards requirements of 10 CFR 73.55. The requirements of 10 CFR 73.55 were designed to provide for onsite physical protection systems to guard against a design basis threat of radiological sabotage of activities involving special nuclear material.

III

The licensee's proposed action would relieve SNPS of certain requirements of 10 CFR 73.55. The exemption request is based on the following conditions: (1) the licensee's authority to operate SNPS was revoked on June 14, 1991, and (2) the reactor vessel is void of any nuclear fuel. Under these conditions, a radiological release would not result in a whole body dose in excess of 10 CFR part 100 limits, thus, an act of sabotage that would result in a dose in excess of these limits is not a credible event. The licensee performed dose calculations using conservative assumptions from the Updated Safety Analysis Report, Chapter 15 and determined that all doses are well within the guidelines of 10 CFR part 100 for all credible threats.

The requirements of 10 CFR 73.55 were promulgated to provide protection of a facility against a design basis sabotage threat in consideration of the conditions associated with an operational power reactor. When compared with an operational power reactor facility, the status of SNPS provides a significantly reduced risk from a radiological release as a consequence of sabotage. The Long Term Defueled Condition Security Plan, which remains relevant to the defueled status, provides an adequate basis for an acceptable safeguards program. A special circumstance as defined in 10 CFR 50.12(a)(2)(ii) exists, in that application of all the measures required by 10 CFR 73.55 would not serve the underlying purpose of the rule.

Based on a review of the licensee's analysis of defueled condition threats and calculated dose rates, the Commission concurs with the analysis and concludes that there are no credible acts while SNPS is in the long-term defueled condition that could result in a radiological sabotage. Consequently, based on the aforementioned reasons, the Commission finds the licensee has provided an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 55.11.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 55.11, this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify the exemption.

Based on the foregoing, the Commission hereby grants the following exemption:

The Shoreham Nuclear Power Station, Unit 1 is exempt from certain requirements of 10 CFR Part 73.55 provided that (1) the reactor is void of all fuel, (2) the fuel is stored in the spent fuel pool or removed from the site, and (3) the Shoreham Long Term Defueled Condition Security Plan is implemented.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (57 FR 3224, dated January 28, 1992).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 28th day of January 1992.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Acting Associate Director for Advanced Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2654 Filed 2-3-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30294; File No. SR-BSE-91-07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Boston Stock Exchange, Inc. Relating to New Listing Guidelines—Chapter XXVII, ¶ 2261

January 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The

[1] The BSE has requested that the Commission approve this proposed rule change on an

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add ¶ 2261 to the BSE's Listing Criteria, as set forth in Chapter XXVII of its rules, to provide listing guidelines to accommodate securities not otherwise covered under its existing guidelines.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Listing guidelines.* In today's financial markets, issuers and underwriters increasingly are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities, and their specific form will depend upon the particular objectives being sought as well as general market conditions. In this regard, the Exchange seeks to provide separate listing criteria to accommodate securities that cannot be readily categorized under the Exchange's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants.

Accordingly, the Exchange desires to provide flexibility in its guidelines in order to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing requirements. The guidelines set forth in proposed ¶ 2261 are intended to provide the desired flexibility to enable the Exchange to consider the listing of new securities, on a case-by-case basis, in light of the suitability of the issue for auction market trading. The guidelines set forth in proposed ¶ 2261, however, are not intended to accommodate the listing of securities that raise significant new regulatory issues, and therefore, would require a separate filing with the Commission pursuant to Rule 19b–4 of the Act.[2]

The numerical listing criteria in proposed ¶ 2261 are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed entities which meet the Exchange's original listing standards. Such issuers will generally be required to have assets of $100 million, stockholders' equity of $10 million, and current earnings of at least $750,000 in pre-tax income in the last fiscal year or in two of the three last fiscal years. Issuers not meeting the earnings criteria will generally be required to have assets in excess of $200 million and stockholders' equity of $10 million, or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria for equity securities, as set forth in proposed ¶ 2261, require that domestic companies have a public distribution of 1,000,000 trading units with a minimum aggregate market value of $18 million. An issue must have a minimum of 400 holders. When trading is expected to occur in larger than average trading units (for example a $1,000 principal amount), a minimum of 100 holders will be required. The distribution criterion for debt securities requires a minimum public market value of $5 million.

Where such an issue contains cash settlement provisions, settlement will be required to be made in U.S. dollars. And, where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.[3]

In addition, the Exchange will apply the guidelines for continued listing as set forth by the Exchange to ¶ 2261 securities when appropriate (*e.g.* debt/equity characteristics).

(b) *Membership circular.* Securities listed for trading under proposed ¶ 2261 are likely to possess characteristics common to both debt, equity, and derivative instruments. For this reason, prior to trading securities admitted to listing under ¶ 2261, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities particular to handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: Unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

accelerated basis (*see* letter from George W. Mann, Senior Vice President and General Counsel, BSE, to Mary Revell, Branch Chief, SEC, dated January 3, 1992).

[2] The Commission notes that securities that have raised significant new regulatory issues in the past include Americus Trusts [*See* Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR–Amex–84–35)]; currency warrants [*See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR–Amex–87–15) (proposal to list warrants on foreign currencies)]; index warrants [*See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR–Amex–87–27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR–Amex–89–22) (proposal to list index warrants based on the Nikkei Stock Average)]; and unbundled stock units ("USUs") [*See* File Nos. SR–NYSE–88–39 and 88–40 (proposals to list USUs and constituent securities, subsequently withdrawn by the NYSE)].

[3] The BSE amended proposed ¶ 2216 to add provisions regarding cash settlement and redemption. *See* letter from George W. Mann, Senior Vice President and General Counsel, BSE, to Laurie Petrell, Division of Market Regulation, SEC, dated January 14, 1992.

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-91-07 and should be submitted by February 25, 1992.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to amend Chapter XXVII, ¶ 2261 of its rules, in order to provide listing guidelines to accommodate certain new types of securities which cannot be readily categorized under the BSE's existing listing guidelines, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[4] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. In this regard, the Commission believes that the proposed guidelines applicable to the listing of new, innovative securities will provide the flexibility desired by the BSE, while helping to ensure that only the more financially substantial companies are eligible to have their new products listed on the Exchange. Proposed ¶ 2261, therefore, should provide a more efficient and expedient process for listing new securities, and will protect investors and the public interest by ensuring that the financial products listed on the Exchange have met predetermined financial criteria set forth by the Exchange,[5] an important consideration due to the additional or contingent financial obligations created by these instruments.

In addition, the Commission believes that the portion of proposed ¶ 2261 relating to the membership circular addresses the additional regulatory concerns raised by these products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities will provide the BSE with the ability to address, in a flexible manner, any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their brokers' recommendations. In this regard, the membership circular requirement will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the BSE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[6]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission has approved substantially similar proposed rule changes submitted by the American Stock Exchange, Inc. ("Amex"), the New York Stock Exchange, Inc. ("NYSE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Stock Exchange, Inc. ("PSE") all of which adopted listing criteria for hybrid securities.[7] In addition, the Commission recently approved proposals submitted by the PSE, the NYSE, and the Midwest Stock Exchange ("MSE") to adopt listing criteria to trade CVRs, which are akin to the type of hybrid products the BSE proposal would include.[8] The Commission did not receive any comments on those proposals, or on the Amex, NYSE, CSE, PSE or CBOE hybrid products filings. In light of the lack of new regulatory issues raised by the BSE proposal, the Commission believes it is in the public interest to approve it on an accelerated basis so that the BSE will be able to compete with the other exchanges for hybrid securities.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act [9] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2585 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78f (1988).

[5] This standard, however, would not preclude the BSE from submitting specific standards for other companies to have similar securities traded on the Exchange.

[6] *See* note 2, *supra*.

[7] *See* Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29); 28217 (July 18, 1990), 55 FR 30056 (order granting accelerated approval to File No. SR-NYSE-90-30); 28528 (October 11, 1990), 55 FR 42112 (order approving File No. SR-CSE-90-11); 28662 (November 30, 1990), 55 FR 50428 (order approving File No. SR-CBOE-90-29); and 30087 (December 17, 1991), 56 FR 66465 (order granting accelerated approval to File No. SR-PSE-91-48).

[8] *See* Securities Exchange Act Release Nos. 28558 (October 22, 1990), 55 FR 43238 (order approving File No. SR-PSE-90-34); 28072 (May 30, 1990), 55 FR 23166 (order approving the NYSE proposal to list CVRs on the Exchange); and 28143, (June 25, 1990), 55 FR 27317 (granting accelerated approval to the MSE's proposal to list CVRs).

[9] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34-30288; File No. SR-CBOE-91-49]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Reduced Transaction Charges for Certain Index Option Spread Transactions

January 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend, through March 31, 1992, a pilot program [1] which provides a 50% rebate on transaction and trade match fees for "box" [2] trades by public customers in Standard & Poor's 500 Stock Index options ("SPX"), provided the "box" trade totals 500 or more contracts for the four sides of the trade. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to extend, through March 31, 1992, a pilot program which provides a 50% rebate on transaction and trade match fees for "box" [3] trades by public customers in SPX options, provided the "box" trade totals 500 or more contracts for the four sides of the trade. The rebate is available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program. At the end of each month, member firms must submit their rebate requests to the Exchange's Accounting Department.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, and that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and those persons associated with its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2586 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The program was approved by the Commission on a three-month pilot basis, effective from July 1, 1991, through September 30, 1991. *See* Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180 (order approving File No. SR-CBOE-91-27) ("Pilot Approval Order"). The pilot was extended through December 31, 1991. *See* Securities Exchange Act Release No. 30025 (December 3, 1991), 56 FR 64537.

[2] The CBOE defines a "box trade" as a four-sided SPX option spread composed of (i) a long call and short put at one strike price and (ii) a short call and long put at a different strike price, where all four positions expire in the same month.

[3] *See supra* note 2 for the CBOE's definition of "box" trade.

[Release No. 34-30295; File No. SR-NASD-91-66]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change Relating to Contracts for Securities When, As and If Issued or When, As and If Distributed

January 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 10, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the terms of Substance of the Proposed Rule Change

The NASD is proposing to amend section 4 [2] of its Uniform Practice Code ("UPC" or "Code") to codify the "Memorandum of the Committee" ("Memorandum") relating to "When, As and If Issued" and "When, As and If Distributed" contracts (hereinafter collectively referred to as "when issued" contracts or securities). Currently, the Memorandum is published in the NASD Manual in the provisions following section 4.[3] The NASD also is proposing to delete the Memorandum in its entirety from the Manual.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NASD Manual (CCH) ¶3504, at 3513-3515 (November 6, 1991).

[3] *Id.* at 3516-3519.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend section 4 of the UPC to codify the Memorandum of the Committee relating to "when issued" contracts published in the NASD Manual following section 4.[4] As part of the proposed amendments, the NASD will delete the Memorandum from the UPC.[5]

The proposed amendments to Section 4 cover confirmations, accrued interest, marks to the market, margin requirements, deposit requests, segregation of funds, contract settlement, and contract cancellation. Except for confirmations, all of the subjects were covered in the Memorandum and are now proposed to be incorporated into Section 4. Further, with the exception of the cancellation provision in proposed subsection 4(h), there are no substantive changes from the current provisions of Section 4 or the provisions of the Memorandum. The language incorporated in the codification proposed in this rule filing, however, is mandatory in certain cases, rather than precatory, and the explanatory language of the Memorandum is not included.

Current subsections 4(a) and 4(b) were previously located in Section 11 of the Code and were moved to section 4 in an NASD rule filing approved by the Commission in September 1991.[6] Proposed new subsection 4(a) requires that confirmations of "when issued" contracts containing certain minimum information shall be sent. The information required to be sent is drawn from current subsections 4(a) and 4 (b) and from section .10 of the Memorandum.[7] The minimum required information is a description of the security and the plan under which it will be distributed, designation of the NASD as the authority for ruling on contract performance, and a provision for marking the contract to the market. Proposed new subsection 4(a)(3) states that the Committee will provide a description of the security and any plan of issuance or distribution for inclusion in "when issued" contracts or confirmations. This language is based on Section 11 of the Memorandum.[8]

Proposed new subsection 4(b) specifies the treatment of accrued interest in "when issued" contracts and is based on section .12 of the Memorandum.[9] Proposed new subsection 4(c) provides that because issuance or distribution of "when issued" securities may be significantly delayed, such contracts should be marked to the market pursuant to the provisions of section 58 in order to protect a party whose interest becomes partially unsecured as a result of market value changes to the subject of the contract. This provision is different from section .13 of the Memorandum.[10] The NASD has determined that separate marks to the market standards for "when issued" contracts are not necessary and, instead, members can rely on section 58 requirements.

Proposed subsection 4(d) requires "when issued" contracts to comply with §§ 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System. This provision differs from section 20 of the Memorandum,[11] which is only precatory in nature.

Proposed subsection 4(e) allows members to require deposits or collateral for "when issued" contracts even if not required by Regulation T. This provision is based on the last paragraph of section .13 of the Memorandum.[12]

Proposed subsection 4(f) recommends the segregation of "when issued" contracts and deposits made in connection with them on the books of a member firm and is drawn from section 30 of the Memorandum.[13]

Proposed subsection 4(g) specifies the rules for settlement of "when issued" contracts and incorporates current subsections 4(c) and 4(d).[14]

Finally, proposed subsection 4(h) provides for (*i.e.*, codifies) the authority for cancellation of "when issued" contracts by the NASD's Operations Committee, formerly the Uniform Practice Committee, ("Committee"). In the past, the Committee has exercised its discretion to cancel "when issued" contracts under its authority to rule on issues related to "when issued" contracts as specified in section 2 of the UPC.[15] In addition, the Memorandum states that the date for settlement of "when issued" contracts must be determined after the date of issuance becomes known and that if the securities which eventually are issued or distributed differ substantially from those contemplated in the contract, the contract cannot be settled and must be cancelled.[16]

Proposed subsection 4(h) is intended to codify the general authority of the Committee to cancel "when issued" contracts and to provide more specific guidance about the Committee's intentions in exercising its cancellation authority consistent with the Committee's prior rulings. The structure of new subsection 4(h) is intended to differentiate between situations where the contract will (1) always be cancelled; (2) generally be cancelled; and (3) generally not be cancelled.

Subsection 4(h)(1) retains the original language from section 10 of the Memorandum [17] and section 2 of the UPC [18] granting the Committee broad discretionary power to cancel "when issued" contracts if there is a change in circumstances. This general authority to cancel contracts is retained in the new proposed subsection 4(h) to provide for situations which are not anticipated by the more specific provisions of proposed new subsections 4(h) (3) and (4). Thus, notwithstanding the fact that the circumstances surrounding the performance of a contract may fit within subsections 4(h) (3) and (4), the Committee retains the discretion to act inconsistently with those subparagraphs if, in its judgement, such action is necessary to effectuate the purposes of section 2 of the Code.

Subsection 4(h)(2) states that the Committee will cancel contracts if the securities will not be issued or distributed. This provides for the situation where securities commence

[4] *Supra* note 2.

[5] The NASD notes that the Standard Forms of "When Issued" Contracts to be used in confirming transactions in "when issued" securities following section 4 in the NASD Manual, with minor modifications to reflect the amendments proposed in this rule filing, are attached as Exhibit 3 to the proposed rule change on file with the SEC.

[6] Securities Exchange Act Release No. 29687 (September 13 1991), 56 FR 47819 (File No. SR-NASD-91-13).

[7] NASF Manual (CCH) ¶3540.10, at 3516 (November 6, 1991).

[8] *Id.*, ¶ 3504.11, at 3516.

[9] *Id.*, ¶ 3504.12, at 3517.

[10] *Id.*, ¶ 3504.13, at 3517.

[11] *Id.*, ¶ 3504.20, at 3518.

[12] *Id.*, ¶ 3504.13, at 3518.

[13] *Id.*, ¶ 3504.30, at 3518.

[14] Current Subsections 4(c) and 4(d), previously numbered 4(e) and 4(f), were renumbered in File No. SR-NASD-91-13, which was approved by the Commission in Securities Exchange Act Release No. 29687. *Supra* note 6.

[15] NASD Manual (CCH) ¶ 3502, at 3512 (November 6, 1991).

[16] *See* section 10 of the Memorandum, NASD Manual (CCH) ¶ 3504.10, at 3516 (November 6, 1991).

[17] *Id.*

[18] NASD Manual (CCH) ¶ 3502, at 3512 (November 6, 1991).

trading on a "when issued" basis in anticipation of an announced merger, reorganization, or distribution, but the plan fails or is terminated. In such a case, the securities called for under the "when issued" contract cannot be delivered because they will not be issued or distributed. Therefore, the NASD has determined to cancel such contracts in every instance.

Subsection 4(h)(3) provides that "when issued" contracts will generally be cancelled if the "securities which are to be issued or distributed are not substantially the same as those contemplated in the contract." A nonexclusive list of the types of material changes which will generally result in cancellation is included in the subsection. These are changes to the redemption provision schedule, dividend payments, interest rate, maturity, yield, and exercise price. The NASD regards these as changes to the terms of the security and, therefore, material to the contract to purchase the security.

Subsection 4(h)(4) provides that certain changes prior to effectiveness of the plan of distribution "shall not require cancellation of contracts * * *." The enumerated events are those which change the terms underlying the plan of distribution, not the terms of the security, and are, therefore, not material to the contract to purchase the security: (1) A change in the amount of equity or debt to be issued; (2) restructuring of the financing arrangements; and (3) settlement of a legal action directly related to the distribution plan which also affects the financial statement of the issuer.

The NASD believes that the proposed new subsections 4(h) (3) and (4) will clarify the NASD's standards for the cancellation of "when issued" contracts under the enumerated situations. Such standards will assist risk/benefit analysis by participants in "when issued" transactions thereby advancing the purposes of section 2 of the Code.

The NASD's preference, as expressed in the two proposed subsections, is to cancel "when issued" contracts only if the security to be issued is substantially different, not if the plan under which the securities will be issued or distributed is different. The NASD also believes, however, that the effect of changes to particular securities and plans of distribution are not predictable and, therefore, may not be appropriately resolved by rigidly adhering to the formula in the proposed new subsection 4(h) (3) and (4). It is for this reason that the NASD has retained its general authority to cancel "when issued" contacts as necessary.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act [19] which requires that the rules of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities.

B. SRO's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SRO consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-91-66 and should be submitted by February 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2587 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01-M

[19] 15 U.S.C. 78o-3(b)(6) (1988).

[20] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30293; File No. SR-NYSE-91-36]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving a Proposed Rule Change Relating to Electronic "T+1" Overnight Comparison of Exchange Options Transactions

January 27, 1992.

On October 10, 1991, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] a proposed rule change (File No. SR-NYSE-91-36) relating to the overnight comparison of Exchange options transactions. The Commission published notice of this proposed rule change in the **Federal Register** on November 6, 1991.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change consists of amendments to Exchange rules 760 and 765, the rescission of present rules 761 and 764, and the adoption of new rules 761 and 764. The purpose of the proposal is to provide for electronic overnight "T+1" comparison of Exchange option transactions on and after March 31, 1992.[3]

In September of 1988, the Exchange began to implement its "T+1" [4]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29887 (Oct. 30, 1991), 56 FR 56679.

[3] The proposal is to be implemented on a gradual basis beginning on January 27, 1992, with options with ticker symbols from A to E. Full implementation of "T+1" overnight comparison of all Exchange option transactions is expected to be accomplished by March 31, 1992. Telephone conversation between Harry F. Day, Counsel, Regulation, Exchange; Stanley Jacoby, Manager, Post Trade Services, Exchange; And Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (January 23, 1992).

[4] The term "T+1" as used herein refers to the number of elapsed business days after the day of the trade.

Overnight Comparison System ("T+1"OCS) by adopting, in principal, rule 130. This rule requires that "regular way" transactions in listed stocks, rights, and warrants (but not listed bonds) be compared or closed out within one business day of the trade date.[5]

Because implementation of the "T+1"OCS requires a complete overhaul of the Exchange's uncompared trade resolution process, including replacement of a labor-intensive, manual process with a largely electronic process, it was implemented over a seventeen-month period. The conversion process was completed on August 6, 1990. The Exchange received several informal requests after that time to expand the use of the "T+1" OCS to the comparison of options transactions. As a result of these request, the Exchange proposed the following rule changes to facilitate the expansion of the "T+1" OCS to the comparison of options transactions.

(a) *Amended rule 760—"Overnight Comparison of Exchange Options Transactions"*

Amended rule 760 is a general comparison and clearance rule requiring that members submit all options transactions [6] to the Exchange for comparison of trade information and that all compared options transactions be submitted to The Options Clearing Corporation ("OCC") for clearance. The amendments require that, on and after March 31, 1992, each options transaction effected on the Exchange must be compared or closed out by "T+1." If an options contract cannot be closed out because trading in the options series that is the subject of the contract has been suspended or terminated, amended rule 760 states that the options contract must be resolved pursuant to the provisions of rule 770(b). Amended rule 760 also requires that all clearing member be responsible for the clearance of their own options transactions and the transactions of other members and member organizations that have been authorized by and give up the name of the clearing member. Certain provisions of present rule 760 were repositioned to amended rule 761, and some provisions of present rule 761 were repositioned to amended rule 760 for consistency and clarity.

(b) *Amended rule 761—"Omnibus Comparison and Clearance Rule"*

Rule 761, as amended, contains requirements for the comparison and clearance of exchange omnibus transactions.[7] Certain provisions of present rule 761 were repositioned to amended rule 760, and some provisions of present rule 760 were repositioned to amended rule 761 for consistence and clarity.

(c) *Amended Rule 764—"Verification of Contract Lists and Reconciliation of Uncompared Trades"*

The proposal revises rule 764 in its entirety to require clearing members to verify data and reconcile all uncompared and advisory transactions as displayed on Exchange-provided terminals. The amended rule allows members to make additions, deletions, or other changes to their own data displayed on the terminal.

In addition, under amended rule 764, when an index group option or option of any class will trade ex-divided or ex-distribution, each member and member organization must submit all of its trades in such index group option or class of option to overnight comparison under rule 760. Under these circumstances, each clearing member must provide a representative to resolve unmatched trades resulting from the first data processing pass. These representatives also must be available during the entire time that OCS is available for use and must make every effort to detect errors or omissions in its comparison data prior to the second pass of comparison data processing. Any member failing to comply with comparison representative provisions will be liable for any of its uncompared trades which should have been compared prior to the second processing pass.[8]

On the morning of the first business day after the trade date, all members and representatives of member organizations must be present at an area designated by the Exchange to resolve uncompared options transactions.[9] Each member must review its file of uncompared transactions as displayed on the Exchange-provided terminal and must make any necessary additions, deletions, or other changes.[10] Amended rule 764 also required all Exchange members and member organizations or their representatives to make readily available and to produce on request all trade records for the resolution of uncompared trades.

(d) *Amended Rule 765—"Unreconciled Trade Reports"*

Amended rule 765 provides that, after the process of reconciling uncompared trades has been completed on "T+1," the Exchange will issue to each clearing member a report delineating any new or remaining uncompared trades and advisory trades of that clearing member. Such unresolved transactions must be closed in accordance with the provisions of rule 770.[11]

[5] For a description of the "T+1" OCS, *see* Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR-NYSE-88-36] (order approving next-day comparison of securities transactions).

[6] Rule 760, as amended, permits the Exchange to establish and change the time of times, which may include a time or times during the trading session, that data is submitted to it for comparison. Any significant change, however, must be filed with the commission for review under section 19(b) of the Act.

[7] An Exchange omnibus transaction is one where a clearing member's trade is not immediately matched to a contra-party. In the holding period between the time the trade is made and the time it is compared and netted, the effective contra-party is the Exchange omnibus account. Prior to the end of each trading day, the omnibus account is closed out by locating contra-parties for the uncompared trades or by assigning specialists as the contra-parties to the trades. Therefore, the Exchange never holds positions in the omnibus account past the end of the trading day. Telephone conversation between Stanley Jacoby, Manager, Post Trade Services, Exchange, and Richard C. Strasser, Attorney, Division, Commission (January 24, 1992).

[8] Members who repeatedly violate these provisions risk the imposition of fines and referral to the Options and Index Products Division.

[9] No member or member organization or person associated with them, while engaged in the reconciliation and resolution of uncompared and compared trades, may agree to accept any transaction in which the accepting party or its principal was not involved or decline to accept any transaction in which the declining party or its principal was involved. Amended rule 764(3).

[10] Once a clearing member enters into OCS that a transaction is OK, it may not subsequently change that response to a DK. Likewise, a DK'd response cannot subsequently be changed to an OK. Amended rule 764(d). Transactions which have been DK'd or which remain unresolved fifteen minutes prior to the opening of business on the first day of business following the trade date shall be closed out under the provisions of rule 770. Amended rule 764(f).

[11] In the event an uncompared Exchange options transaction cannot be resolved fifteen minutes prior to the opening of trading on T+1, the parties shall close out promptly, but not later than 3:30 p.m., the transaction in the following manner. The purchaser must enter into a new Exchange option transaction on the floor of the Exchange to purchase the option contract that was the subject of the uncompared transaction. The writer in the uncompared transaction shall enter into a new Exchange option transaction on the floor of the Exchange to sell the option contract that was the subject of the uncompared transaction. Where the member is acting for a firm account rather than for a customer account in an uncompared Exchange option transaction, however, the member need not enter into a new transaction. In such a case, money differences will be based solely on the closing transaction of the other party to the uncompared transaction. Exchange rule 770(a).

Where an uncompared transaction involves an option contract of a series in which trading has been terminated or suspended before a new Exchange option transaction can be affected to establish the amount of any loss, the member not at fault may claim damages against the other member

Continued

II. Discussion

The Commission believes that the Exchange's proposal is consistent with the Act and in particular with sections 6 and 17A of the Act. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

Section 6(b)(5) of the Act requires a registered national securities exchange to remove impediments to and perfect the mechanism of a national market system. Section 6(b)(5) also requires the fostering of cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. In adopting section 17A(a)(1), Congress, in its mandate for the establishment of a national system for the clearance and settlement of transactions in securities, set forth the prompt and accurate clearance and settlement of securities transactions as a critical goal. Also in that section, Congress stated that new data processing techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. With the expansion of the "T+1" OCS to include Exchange options transactions, the Exchange will automate the process for comparing Exchange members' options trades executed on the Exchange.

The Exchange has represented that adding members' trades in options to OCS will not diminish the system's capability to accommodate ordinary and peak message traffic. Additionally, the Exchange has represented that the changes to the "T+1" OCS security measures are satisfactory to prevent internal and external violations. The Exchange concedes that since options transactions presently are compared on "T+1," there will be no reduction in exposure to risk due to market fluctuations as was the case with the implementation of "T+1" OCS for stock transactions. However, changing what is now largely a manual process to an automated process will greatly improve operations, reduce errors, and enhance efficiency.

Furthermore, the introduction of options into the "T+1" OCS will provide the Exchange with a test environment for the development of an intraday or "floor-derived" comparison process for options.[12] The Exchange will implement "T+1" OCS for options on a gradual basis as it did with stocks.[13]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with sections 6 and 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-91-36) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2588 Filed 2-3-92; 8:45 am]

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or member organization involved in the transaction based on the terms of that transaction. Exchange rule 770(b).

[12] This approval order should not be construed as giving the Exchange authority to mandate or to establish a pilot program for an intraday or floor-derived comparison process for options transactions. If the Exchange decides to establish such a system, whether on a permanent or a pilot basis, it will be required to submit for approval a rule change at that time.

[13] *See* supra note 3.

[14] 17 CFR 200.30-3(a)(12).

[Release No. 34-30297; International Series Release No. 362; File No. SR-OCC-92-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Filing of a Proposed Rule Change Relating to Amendments to Canadian Depository Receipts

January 27, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the Canadian Clearing Fund Depository Receipt and Securities Agreement and the Canadian Margin Depository Receipt and Security Agreement ("Agreements") to provide for transmission of the Agreements by electronic means. The amendment would provide, in essence, that the Canadian depository will accept as an original of the document transmitted a written order or Endorsement for Release transmitted by electronic means provided the document is signed by an authorized signature of OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 6, 1987, OCC filed a proposed rule change (File No. SR-OCC-87-17) with the Commission to permit the deposit of Canadian government securities by clearing members for purposes of satisfying their clearing fund and margin requirements. The Commission approved that rule change on April 22, 1988, and further approved two depository receipts to be used in connection with the deposit of such securities.[1] In 1989, OCC filed a rule change (File No. OCC-89-08) to amend the depository receipts in order to enhance OCC's lien on securities deposited in accordance with the receipts. That rule change was effective on filing with the Commission.[2]

At this time, OCC proposes to additionally amend the depository receipts to provide for the transmission of such receipts by electronic means which produces a facsimile copy of the document being transmitted. This means of transmitting the depository receipts is the same as the means used by OCC and its Canadian settlement bank to transmit and receive instructions to effectuate premium and margin settlement with Canadian clearing members.

The proposed rule change is consistent with purposes and requirement of section 17A of the Act because it will further assure the safeguarding of securities and funds in the custody of control of OCC.

[1] Securities Exchange Act Release No. 25610 (April 22, 1988), 53 FR 15323.

[2] Securities Exchange Act Release No. 27128 (August 11, 1989), 54 FR 34279.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to file number SR-OCC-91-02 and should be submitted by February 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2589 Filed 2-3-92; 8:45 am]

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[Release No. 34-30269; File No. SR-PTC-90-02]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to the Formation of a Subsidiary

January 27, 1992.

On October 10, 1990, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-90-02) with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On November 15, 1990, PTC amended the proposed rule change to include an intercompany agreement between PTC and its wholly owned subsidiary, PTC Services Inc. ("PTS").[2] The purpose of the proposed rule change is to enable PTC to operate PTS as a backup processing facility in case of an environmental disaster that would prevent PTC from operating out of its primary New York facility. Notice of the proposed rule change appeared in the **Federal Register** on December 26, 1990 to solicit comments from interested persons.[3] No comments were received regarding the proposed rule change. This order approves the proposed rule change as amended.

I. Description

PTC formed PTS to serve as alternative site data processing facility in New Jersey and to provide additional capacity for timely and efficient computer processing. Under the proposed rule change, PTS will operate as a backup processing facility in case of an environmental disaster that would prevent PTC from operating out of its primary New York facility. PTS will perform data processing pursuant to the terms specified in the intercompany agreement.

Pursuant to the agreement, PTC will be responsible for both the supervision and the management of the operations of PTS and the prompt and accurate clearance and settlement of all depository transactions. As provided in the agreement, PTS will provide only data processing, communications, backup and related services for PTC upon the instruction and direction of PTC. PTS will perform no services on its own or directly for any participant in PTC.

[1] 15 U.S.C. 78s(b).

[2] See Amendment 1. to File No. SR-PTC-90-02, filed November 15, 1990.

[3] Securities Exchange Act Release No. 28704 (December 17, 1990), 55 FR 53091.

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).[4] Sections 17A(b)(3) (A) and (F) of the Act require a clearing agency be 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 its custody or under its control or for which it is responsible. As discussed below, the Commission is approving the proposal.

PTC performs its own processing at its New York data center. The proposed rule change will enable PTC to maintain a secondary "hot" processing facility in case of power failure at PTC's primary New York facility and, in the ordinary course of business, to provide additional capacity for timely and efficient computer processing for PTC. PTC's current contingency safeguards also include computer backup capability which provides 100% computer hardware redundancy, copies of both operating systems software and applications software, dial backup support for modems to protect against leased line outages, and an internal audit program which reviews the adequacy of PTC's systems and controls.

In order to assure the safeguarding of securities and funds and the prompt and accurate clearance and settlement, a clearing agency should have detailed plans to assure the physical safeguarding of securities and funds, the integrity of the automated data processing system and the recovery under a variety of contingencies from loss or destruction of securities, funds or data.[5] The Commission believes that PTC's proposed rule change is a substantial step in improving PTC's contingency and recovery planning. PTC's contingency backup site should enable PTC to recover processing in the event of a power failure or other similar disaster at PTC's New York data processing center. Thus the Commission believes that the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions and promotes the safeguarding of securities and funds which are in PTC's custody or control or for which it is responsible.

PTC formed its contingency backup site as a subsidiary corporation

[4] 15 U.S.C. 78q-1(b)(3)(F).

[5] See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

organized under the state of New Jersey. PTC, as a limited purpose trust company organized under the banking law of the state of New York, could be considered a bank under New Jersey law if PTC is considered as doing business in New Jersey. It so considered, PTC would be prohibited under New Jersey banking law from operating a backup facility in New Jersey. PTC established PTC to hold the lease in New Jersey and to perform data processing for PTC. PTS will not perform any banking functions but will perform data processing pursuant to the terms specified in the PTC–PTS intercompany agreement.

In order to assure the safeguarding of securities and funds within PTC's custody or control, PTC entered into an intercompany agreement with PTS whereby PTC shall be entirely responsible for the performance of services PTS provides to PTC and its participants.[6] Additionally, PTC will supervise and manage the operations of PTS to assure compliance with Section 17A of the Act, and specifically, the prompt and accurate clearance and settlement of all depository transactions processed through PTS.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File no. SR–PTC–90–02) 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. 92–2590 Filed 2–3–92; 8:45 am]

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[6] Similarly, the Nationally Securities Clearing Corporation ("NSCC") entered into an agreement with the Securities Industry Automation Corporation ("SIAC"), whereby SIAC performs direct clearing services for NSCC. Under the agreement, NSCC has the right to monitor all phases of SIAC's operation in order to ensure that the operation is adequate and in compliance with NSCC's responsibility to conduct its affairs in a manner consistent with section 17A of the Act. Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[Release No. 34–30298; File No. SR–PHLX–91–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Responsibility to Make Ten-Up Markets

January 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC " or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Options Floor Procedure Advice ("OFPA") A–11, entitled "Responsibility to Make Ten-Up Markets." First, the Exchange proposes to define eligible orders as "market or marketable limit orders for accounts other than broker-dealer accounts," rather than "non-contingent public customer market or marketable limit orders." Second, the proposal provides that a broker seeking to fill a customer order with respect to a displayed quotation must avail upon the displayed market immediately or it may be revised. Third, the proposal prohibits members from unbundling customer orders, or soliciting customers to unbundle orders, for the primary purpose of availing upon the ten-up market requirement. Finally, the proposal requires floor brokers to make a reasonable effort to determine whether an order is for the account of a customer or a broker-dealer. If the order is for the account of broker-dealer, the floor broker must advise the crowd of the fact before bidding/offering on behalf of the order or executing the order. The text of the proposal is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OFPA A–11 requires specialists and Registered Options Traders to fill certain eligible customer orders at the best market to a minimum of ten contracts. The PHLX has proposed several amendments to OFPA A–11. First, the PHLX's proposal defines eligible orders as "market or marketable limit orders for accounts other than broker-dealer accounts," rather than "non-contingent public customer market or marketable limit orders." Second, the proposal provides that a broker seeking to fill a customer order with respect to a displayed quotation must avail upon the displayed market immediately or it may be revised. Specifically, the amendment states that once the crowd market has been sought the screen market (if superior) is available and may be revised if it is not availed upon immediately. Third, the proposal prohibits members from unbundling customer orders, or soliciting customers to unbundle orders, for the primary purpose of availing upon the ten-up market requirements. The PHLX notes that this provision underscores the fact that the ten-up guarantee is offered only to certain smaller orders.

The proposal also requires floor brokers to make a reasonable effort to determine whether an order is for the account of a customer or a broker-dealer. If the order is for the account of a broker-dealer, the floor broker must advise the crowd of the fact before bidding/offering on behalf of the order or executing the order. The PHLX explains that this amendment focuses on requiring disclosure of broker-dealer orders while such orders are in the crowd. Since disclosure need not be made prior to the time the broker-dealer requests the market from the crowd, it is only necessary that disclosure be made prior to working the order (by bidding or offering on behalf of the order) or, in the alternative, prior to executing the order. The PHLX believes that requiring disclosure at that time will result in a greater inclination by specialists to guarantee more than the minimum ten-up amount. Since the PHLX's policy on the options floor requires that volume

guarantees made for automated systems also applies to hand held orders, the PHLX believes that knowing whether a hand-held order is for the account of a broker-dealer is a matter directly related to the level of volume quotes through the PHLX's Automated Options Market ("AUTOM") system.[1]

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it provides for the protection of investors and the public interest and fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2646 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01-M

[1] AUTOM is an electronic system that allows delivery of small options orders from member firms directly to the PHLX trading floor and also provides automatic execution for certain options orders. Auto-X is the automatic execution feature of AUTOM.

[Rel. No. IC-18504; 812-7736]

Prudential-Bache Short-Term Global Income Fund, Inc. (Doing Business as Prudential Short-Term Global Income Fund), et al.; Second Notice of Application

January 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Second Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act" or "Investment Company Act").

APPLICANTS: Prudential-Bache Short-Term Global Income Fund, Inc. (doing business as Prudential Short-Term Global Income Fund) and existing or future series thereof (the "Short-Term Global Income Fund"), and any open-end management investment companies, currently in existence or to be established in the future, that are part of the same group of investment companies and (i) whose investment adviser is Prudential Mutual Fund Management, Inc. ("PMF") or Prudential Securities Incorporated ("Prudential Securities") or an investment adviser that is an affiliated person, as defined in the 1940 Act, of PMF or Prudential Securities, (ii) whose principal underwriter is Prudential Mutual Fund Distributors, Inc. ("PMFD") or Prudential Securities or a principal underwriter that is an affiliated person of PMFD or Prudential Securities, and (iii) which hold themselves out to investors as being related for purposes of investment and investor services (the "Fund" or the "Funds"), Prudential Securities, PMF and PMFD.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 18(f), 18(g) and 18(i) of the Act.

SUMMARY OF APPLICATION: The applicants are requesting an order of the SEC to permit the Funds to sell two classes of securities and implement a conversion feature for the purpose of establishing an alternative purchase and conversion plan (the "Alternative Purchase and Conversion Plan"). On January 17, 1992, a notice [1] was issued giving interested persons until February 10, 1992 to request a hearing on the application. During the notice period, counsel for the applicants contacted the SEC staff and indicated that the description of the conversion feature in the application was inaccurate. Applicants filed an amended application on January 24, 1992 with a corrected description of the conversion feature, which is reflected in this notice.

FILING DATE: The application was filed on June 11, 1991 and amended on November 18, 1991, January 9, 1992, and January 24, 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 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 24, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504-2259, 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.

[1] Investment Company Act Release No. 18490 (Jan. 16, 1992).

Applicants' Representations

1. The Short-Term Global Income Fund is an open-end management investment company registered under the 1940 Act, comprised of two separate portfolios, the Short-Term Global Income Portfolio (the "Global Income Portfolio") and the Global Assets Portfolio. The Short-Term Global Income Fund has entered into a management agreement with PMF and distribution agreements with PMFD and Prudential Securities (collectively, the "Distributor") pursuant to which the Distributor acts as principal underwriter for the Short-Term Global Income Fund.

2. The Short-Term Global Income Fund currently offers two classes of shares in each of its two portfolios in reliance on an order of the SEC (the "Prior Order").[2] Pursuant to the Prior Order, it offers investors the option of either purchasing shares with a front-end sales load together with a rule 12b–1 distribution plan ("Class A" shares) or subject to a CDSC and a rule 12b–1 distribution plan ("Class B" shares). The Prior Order prohibits exchanges between classes and does not provide for the conversion feature described herein.

3. Class A shares of the Global Assets Portfolio are subject to an initial sales charge of .99% and an annual Rule 12b–1 distribution fee of .50% of the average daily net asset value of the portfolio's Class A shares. Class B shares are subject to a contingent deferred sales charge of 1% which will be imposed on certain redemptions made within one year of purchase and an annual rule 12b–1 distribution fee of up to 1% of the average daily net asset value of the portfolio's Class B shares.

4. If the relief sought in this application is granted, Class B shares of the Global Assets Portfolio will automatically convert into Class A shares after approximately one year, as more fully described below, in order to relieve the holders of Class B shares of the higher distribution fee to which that class is subject after the Distributor has been compensated for the distribution expenses related to sales of those shares. Currently, the Global Assets Portfolio is the only portfolio that is expected to participate in the Alternative Purchase and Conversion Plan.

5. All Class B shares of the Global Assets Portfolio, including those purchased prior to the implementation of the Alternative Purchase and Conversion Plan, will automatically convert to Class A shares without the imposition of any additional sales charge on a date (the "Conversion Date") to be determined as follows. For purposes of determining the Conversion Date, Class B shares will be deemed to have been purchased on the last day of the month (the "Deemed Purchase Date") in which the purchase order for those shares was accepted. The Conversion Date will be the first Friday following the expiration of one year from the Deemed Purchase Date, or the previous business day if that Friday is a holiday. However, Class B shares in a shareholder's fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's fund account convert to Class A, all of the Class B shares then in the sub-account will also convert to Class A. Thus, Class A shares will consist of Class A shares purchased by investors prior to and after the implementation of the Alternative Purchase and Conversion Plan, Class B shares (including Class B shares purchased through the reinvestment of dividends and other distributions in respect of Class B shares) that have converted to Class A status, and shares purchased by holders of outstanding Class A shares through the reinvestment of dividends and distributions paid in respect of those outstanding Class A shares.

6. Net asset value will be computed separately for each class of shares by first allocating gross income and expenses (other than rule 12b–1 fees and any other incremental expenses properly attributable to one class which the Commission shall approve by an amended order) to each class of shares based on the net assets attributable to each class at the beginning of the day and then by separately recording the differing 12b–1 fees and other incremental expenses to the appropriate class. The net asset value attributable to each share of each class will then be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class. Because of the higher ongoing distribution fees paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares will be lower than the net income attributable to and the dividends payable on Class A shares. To the extent that the Fund has undistributed net income, the net asset value of the Class A shares will be higher than the net asset value of the Class B shares.

7. Distribution expenses attributable to the sale of both classes of shares will be allocated annually to each class of shares on the basis hereinafter described. It is recognized by the applicants that expenditures attributable to the sale of one class of shares cannot be presented to the Board of Directors to justify rule 12b–1 distribution fees of the other class of shares.

8. On a quarterly basis, the Board of Directors of the Short-Term Global Income Fund receive statements of distribution revenues and expenditures for each class of shares ("Statements") containing sufficient information so that they may generally monitor distribution revenues and expenditures. On an annual basis, the Board of Directors receive annual Statements which will be reviewed by an independent expert which set forth the distribution revenues received from the distribution fee and the CDSC and the distribution expenses to be considered by the Board of Directors in determining that there is a reasonable likelihood that the rule 12b–1 plan will benefit the Short-Term Global Income Fund and its shareholders.

9. The annual Statements include two categories of distribution expenses. The first category is comprised of distribution expenses that are exclusively attributable to selling shares of the Short-Term Global Income Fund ("direct expenses"). Direct expenses are comprised of financial adviser compensation, interest (where applicable) on accumulated and unreimbursed distribution expenses, financial printing and specific fund advertising, if any, solely directed to selling the shares of the Short-Term Global Income Fund.[3] Because direct expenses are exclusively attributable to the Short-Term Global Income Fund, the entire amount thereof is reported as a distribution expense in the Short-Term Global Income Fund's Statements.

10. The principal direct expense will be payments made to sales personnel for selling shares of a particular class and will require no allocation between classes. However, certain other direct expenses properly attributable to the Short-Term Global Income Fund as a whole if only a single class existed will apply to both classes ("other direct expenses") and will be allocated as expenses to both classes of shares. Such other direct expenses are comprised of

[2] *Prudential-Bache California Municipal Fund*, Investment Company Act Release Nos. 17277 (Dec. 20, 1989) (notice) and 17308 (Jan. 18, 1990) (order).

[3] As used herein, "financial adviser" refers to all salespersons who are compensated for selling shares of the Fund.

certain financial printing expenses for prospectuses, statements of additional information, shareholder reports and brochures used for distribution purposes as well as advertising, if any, solely directed to selling shares of the Short-Term Global Income Fund. The allocation of these direct expenses will be made according to the ratios which the sales of the shares of each class bear to the total sales of the Short-Term Global Income Fund's shares each year. As a result of this allocation, the expenses reported in the Statement with respect to Class B shares will exclude those expenses which resulted in the distribution of the Class A shares.

11. The second category consists of indirect expenses attributable to the distribution of all investment products sold by the Distributor, including shares of the Short-Term Global Income Fund ("indirect expenses"). Indirect expenses are comprised of management sales compensation (as distinguished from financial adviser compensation), other employee compensation and benefits, communications, postage, stationery and printing, occupancy and equipment, general sales promotion which is not directed specifically to selling shares of the Short-Term Global Income Fund, and general overhead expenses. Unlike direct expenses, indirect expenses are not exclusively attributable to the Short-Term Global Income Fund, or even a single product line. Therefore, the Short-Term Global Income Fund bears only an allocated portion of indirect expenses.

12. Once allocable distribution-related indirect expenses have been identified and accumulated, such costs will be allocated to the Short-Term Global Income Fund, and each class within the Short-Term Global Income Fund, based upon the ratio which the Short-Term Global Income Fund's (and class) financial adviser compensation bears to the total financial adviser compensation paid on all products distributed by the Distributor. The denominator of total financial adviser compensation is used because indirect distribution expenses being allocated may relate to all investment products and not exclusively to the Short-Term Global Income Fund and because the Distributor believes that financial adviser compensation is the most meaningful common element relating to all the products which it sells.

13. The Distributor's allocations of indirect expenses will be attributed to the Class A shares and the Class B shares based upon the same cost accounting methodologies described above as though each class of shares was a separate fund.

14. Financial advisers selling shares of the Short-Term Global Income Fund will be compensated differently as a result of whether an investor chooses Class A or Class B. Because the size of a financial adviser's compensation will vary from case to case depending on breakpoints, performance of the financial adviser, size of the client accounts in the Short-Term Global Income Fund, length of time client accounts are maintained in the Short-Term Global Income Fund and other factors, it is not possible to generalize as to which class will provide the financial adviser with the highest levels of compensation. The applicants will include a statement in the Short-Term Global Income Fund's prospectus to the effect that a financial adviser may receive different levels of compensation for selling Class A shares or Class B shares. Also, the Distributor has adopted compliance standards as to when Class A shares and Class B shares may appropriately be sold to particular investors, and will amend these standards to reflect the addition of the conversion feature for the Class B shares.

15. Applicants believe that the Alternative Purchase and Conversion Plan will provide a meaningful choice for investors. An investor's decision to invest in Class A or Class B shares at any given time will depend on a number of factors, including, among others, the amount of money to be invested initially and, over a period of time, the current level of the front-end sales load or CDSC imposed by the Short-Term Global Income Fund and the period of time over which the investor proposes to retain his or her investment in the Short-Term Global Income Fund and the anticipated level of yield from the Class A and Class B shares.

16. Without the conversion feature, an investor wishing to convert his or her Class B shares to Class A shares to take advantage of the lower Class A distribution fee would have to first redeem his or her Class B shares and then buy Class A shares subject to the front-end sales charge.

Applicants' Legal Conclusions

17. The applicants do not believe that the implementation of the Alternative Purchase and Conversion Plan will give rise to any conflicts between the interests of the two classes.

18. The proposed Alternative Purchase and Conversion Plan does not create the potential for the abuses relating to complex capital structures and mutuality of risk which section 18 of the 1940 Act was intended to redress. The proposed arrangement will not increase the speculative character of the shares of the Short-Term Global Income Fund, since each class of shares will participate in all of the Short-Term Global Income Fund's income and all of the Short-Term Global Income Fund's expenses, with the exception of the differing distribution fees payable by each class of shares which will disproportionately reduce the net income of each such class, in the same proportion that the net assets attributable to that class bears to the Short-Term Global Income Fund's total net assets. Further, both classes of shares would be redeemable at all times, and no class of shares will have any preference or priority over any other class in the Short-Term Global Income Fund in the usual sense (that is, no class will have a distribution or liquidation preference with respect to particular assets and no class would be protected by any reserve or other account).

19. The applicants believe that the interests of the two classes of shares as to the management and advisory fees of the Short-Term Global Income Fund participating in the Alternative Purchase and Conversion Plan are the same and not in conflict. These fees are used to compensate the Manager for providing management and advisory services that are common to all investors, regardless of the class of shares.

20. The Alternative Purchase and Conversion Plan permits investors to choose the method of purchasing shares that is most beneficial given the length of time the investor expects to hold his or her shares and other relevant circumstances and affords investors the opportunity to defer any sales charge by purchasing Class B shares initially and relieves them of the higher distribution fee associated with the Class B shares by allowing for the automatic conversion of those shares to Class A shares without the imposition of any additional sales charge after the Distributor has been compensated for distribution expenses related to the Class B shares.

Applicants' Conditions

The Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of the Fund will relate solely to: (a) The impact of the disproportionate payments made under the rule 12b–1 distribution plans and any other incremental expenses subsequently identified that should be properly allocated to one class which

shall be approved by the Commission pursuant to an amended order, (b) the fact that the classes will vote separately with respect to the Fund's rule 12b–1 distribution plans, (c) the different exchange privileges of the classes of shares, (d) the designation of each class of shares of the Fund, and (e) the fact that only Class B shares will have a conversion feature.

2. The directors of the Fund, including a majority of the independent directors, have approved the Alternative Purchase and Conversion Plan. The minutes of the meeting of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the Alternative Purchase and Conversion Plan reflect in detail the reasons for the directors' determination that the proposed Alternative Purchase and Conversion Plan is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Investment Company Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the two classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Manager and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b 1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The directors of the Fund will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution payments relating to each respective class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Independent Examiner"), which has rendered a report to the Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Investment Company Act. The work papers of the Independent Examiner with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

9. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor has adopted compliance standards as to when each class of shares may appropriately be sold to particular investors, and will amend these standards to reflect the addition of the conversion feature for Class B shares. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Fund with respect to the Alternative Purchase and Conversion Plan will be set forth in guidelines which will be furnished to the directors.

12. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication

in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

13. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b-1 distribution plans in reliance on the exemptive order.

14. Class B shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 92-2591 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 24, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47963.

Dated filed: January 24, 1992.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 21, 1992.

Description: Application of Viking International Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 45723.

Dated filed: January 24, 1992.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 21, 1992.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit to permit TAESA to engage in the scheduled air transportation of persons, property and mail on the following routes: (1) Mexico City (MEX-Benito Juarez), Mexico on the one hand, and Vail/Eagle, CO(EGE), on the other hand; and (2) Guadalajara, Mexico (GDL), on the one hand, and Laredo, Texas (LRD), on the other hand.

Docket Number: 42061.

Dated filed: January 24, 1992.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 21, 1992.

Description: Amendment No. 3 to the Application of Malaysia Airlines, pursuant to section 402 of the Act and subpart Q of Regulations, for authority to operate scheduled foreign air transportation of persons, property and mail between Malaysia and the U.S. coterminal points Los Angeles, California, and Honolulu, Hawaii, via the intermediate points Taipei, Taiwan, and Tokyo, Japan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-2625 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During Week Ending January 24, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47958.

Date filed: January 21, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/P 0479 dated November 21, 1991, Africa-TC3 Resos, R-1 To R-21.

Proposed Effective Date: April 1, 1992.

Docket Number: 47959.

Date filed: January 23, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC123 Reso/P 0094 dated November 22, 1991, North/Mid/South Atlantic Resos, R-1 To R-26, intended effective date: March 1, 1992. TC123 Reso/P 0095 dated November 22, 1991, North/Mid/South Atlantic Resos, R-27 To R-28.

Proposed Effective Date: March 1/April 1, 1992.

Docket Number: 47960.

Date filed: January 23, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1374 dated November 20, 1991, North Atlantic-Middle East (Except Israel) R-1 To R-14.

Proposed Effective Date: April 1, 1992.

Docket Number: 47961.

Date filed: January 23, 1992.

Parties: Members of the International Air Transport Association.

Subject: Telex dated January 15, 1992, TC23 Mail Vote 530 (Fares involving Africa-TC3).

Proposed Effective Date: February 1, 1992.

Docket Number: 47965.

Date filed: January 24, 1992.

Parties: Members of the International Air Transport Association.

Subject: Telex dated January 17, 1992, TC12 Mail Vote 533 (South Atlantic-Europe/Mideast revalidation).

Proposed Effective Date: April 1, 1992.

Docket Number: 47966.

Date filed: January 24, 1992.

Parties: Members of the International Air Transport Association.

Subject: Telex dated January 17, 1992, Comp Mail Vote 534 (Argentina Currency-Reso 024d).

Proposed Effective Date: February 1, 1992.

Docket Number: 47967.

Date filed: January 24, 1992.

Parties: Members of the International Air Transport Association.

Subject: Telex dated January 17, 1992, TC1 Mail Vote 532 (TC1 Standard Revalidation).

Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-2624 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Change #2 to FAA P-8110-2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Change #2 to FAA P-8110-2, Airship Design Criteria (ADC); request for comments.

SUMMARY: Federal Aviation Administration report FAA P-8110-2 Airship Design Criteria (ADC), issued November 2, 1987, contains the first

acceptable design criteria for type certification of airships. While applying the ADC to actual type certification projects, the FAA has discovered portions of the report that require clarification or revision. This notice announces the FAA's intent to change portions of the ADC and requests comments on the intended changes.

DATES: Comments must be received on or before April 1, 1992.

ADDRESSES: Comments on the Proposed Change #2 to FAA P-8110-2, Airship Design Criteria (ADC), may be mailed or delivered to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-4688, or FTS 867-5688.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit such written data, views, or arguments as they may desire. Commenters must identify the report number (FAA P-8110-2) and submit comments to the address specified above. All written comments received on or before the closing date for comments will be considered by the FAA before the ADC is revised. The proposed changes to the ADC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Prior to revision of section 21.17(b) of the Federal Aviation Regulations (FAR), in Amendment 21-60, effective April 13, 1987, airworthiness criteria for the type certification of airships were not covered in the FAR. Federal Aviation Administration report P-8110-2, Airship Design Criteria (ADC), issued November 2, 1987, contains the first acceptable design criteria for type certification of airships. The airship design criteria contained in the report are suitable for the U.S. type certification of nonrigid, near-equilibrium, conventional airships. The criteria are based primarily on part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes, U.S. Navy detail design specifications for airships, and additional criteria developed by the FAA and the National Aeronautics and Space Administration.

The Airship Design Criteria are only one means of showing compliance with section 21.17(b). The associated advisory circular, AC21.17-1, Type Certification—Airships, describes the procedures that an applicant may follow for development and approval of its own airship design criteria in the event that the airworthiness criteria prescribed in the ADC are inadequate or otherwise inappropriate as a certification basis of an airship due to its unique design or design features.

Related FAR:

Applicants for approval of airship design criteria should also be aware of the provisions contained in the following related FAR:

Section 21.5—Airplane or Rotorcraft Flight Manual.

Section 21.17—Designation of applicable regulations.

Part 23—Airworthiness standards: normal, utility, acrobatic, and commuter category airplanes. 31

Part 33—Airworthiness standards: aircraft engines.

Part 35—Airworthiness standards: propellers.

Part 45, Subpart C—Nationality and Registration Marks.

Section 91.9—Civil aircraft flight manual, marking, and placard requirements.

Section 91.205—Powered civil aircraft with standard category U.S. airworthiness certificates; Instrument and equipment requirements.

Issued in Kansas City, Missouri, January 17, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2362 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular: Installation of Electronic Display Instrument Systems in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC which provides information and guidance concerning installation of electronic display instrument systems in part 23 airplanes.

DATES: Comments must be received on or before April 6, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-6941 or FTS 867-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23.1311-X, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Part 23 of the Federal Aviation Regulations (FAR) was amended by amendment 23-41 which became effective November 26, 1990. This amendment 23-41 established airworthiness standards in § 23.1311 for the installation of electronic display instrument system in normal, utility, acrobatic, and commuter category airplanes. Prior to amendment 23-41, most electronic display instrument systems were approved for installation

in part 23 airplanes by means of special conditions. Accordingly, the FAA is proposing and requesting comments on AC 23.1311-X which will provide an acceptable means of compliance with the FAR, applicable to installation of electronic display instrument systems in part 23 airplanes.

Issued in Kansas City, Missouri, January 27, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2628 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Cheyenne Airport (CYS), Cheyenne, Wyoming, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Cheyenne Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before July 23, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the Cheyenne Airport noise exposure maps and the start of its review of the associated noise compatibility program is January 24, 1992. The public comment period ends February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 1601 Lind Avenue, SW., Renton, Washington, 98055-4056.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Cheyenne Airport are in compliance with applicable requirements of part 150, effective January 24, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 23, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as "the Act"), and airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Airport Manager for Cheyenne Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related description submitted by CYS. The specific maps under consideration are Figures C11 and G1 in the submission. The FAA has determined that these maps for Cheyenne Airport are in compliance with applicable requirements. This determination is effective on January 24, 1992. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable for the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for CYS, also effective on January 24, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 23, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, paragraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the purposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., room 615, Washington, DC.
Federal Aviation Administration, Airports Division, ANM-600, 1601 Lind Avenue, SW., Renton, Washington, 98055-4056.
Cheyenne Airport, Cheyenne, Wyoming.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, January 24, 1992.

Edward G. Tatum,

Manager, Airports Division, ANM-600, Northwest Mountain Region.

[FR Doc. 92-2630 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Busch, Finance Manager, Metropolitan Airports Commission, at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450-2799.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Minneapolis-St. Paul Metropolitan Airports Commission under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725-4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 31, 1991, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Minneapolis-St. Paul Metropolitan Airports Commission was not substantially complete within the requirements of § 158.25 of part 158. The following items are required to complete the application: § 158.23(b) requires that certain information be provided to the air carriers at or before the consultation meeting, including a description of the projects, justification for the projects, and financial plan for the projects. As a result of the consultation meeting, the Minneapolis-St. Paul Metropolitan Airports Commission added the "Lindbergh Terminal Vertical Circulation" project to the application. However, the application contains no evidence that the required information for the "Lindbergh Terminal Vertical Circulation" project was provided to the air carriers at or before the meeting. If such information was provided, the application must so indicate; if such information was not provided, the air carriers must be provided the information and given an opportunity to provide written comments on the altered work scope.

The Minneapolis-St. Paul Metropolitan Airports Commission has not submitted supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, not later than March 31, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1992.

Proposed charge expiration date: September 30, 1994.

Total estimated PFC revenue: $69,275,000.

Brief description of proposed projects:

1. Upper Level Roadway Construction—Charles A. Lindbergh Terminal.

2. Lower Level Roadway Construction—Charles A. Lindbergh Terminal.

3. Ground Transportation Center Program—Charles A. Lindbergh Terminal.

4. Lindbergh Terminal Vertical Circulation.

5. Taxiway C Reconstruction.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT".**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Minneapolis-St. Paul Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on January 21, 1992.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 92-2629 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 1992, there was one application approved in part.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of Passenger Facility Charge (PFC) approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Application Approved in Part

Public Agency: Savannah Airport Commission.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PCF Revenue $39,501,502.

Earliest Permissible Charge Effective date: July 1, 1992.

Duration of Authority to Impose: March 1, 2004.

Class of Air Carriers to be Exempted from Collecting PFCs: part 135 air carriers.

Brief Description of Projects Approved:

Terminal building (items which are Airport Improvement Program eligible).

Terminal apron and associated taxiways.

Entrance road less landscaping).

Service road.

Site work in development area for approved projects.

Utilities in development area for approved projects.

Brief Description of Projects Disapproved:

I-95 interchange. (Note: The I-95 interchange is disapproved at this time since it is not AIP eligible. To be eligible, the airport must demonstrate an adequate property interest.)

Support facilities.

Decision date: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Catherine M. Nelmes, FAA Atlanta Airports District Office, 404-994-5306.

Issued in Washington, DC, on January 30, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92-2692 Filed 1-31-92; 12:01 pm]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Robert Mueller Municipal Airport, Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose a PFC at Robert Mueller Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Gates of the city of Austin, Department of Aviation at the following address: Robert Mueller Municipal Airport, 3600 Manor Road, Austin, Texas 78723.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of Austin, Department of Aviation under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0611, (817) 624-5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose a PFC at Robert Mueller municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-500) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 22, 1992, the FAA determined that the application to impose a PFC submitted by the city of Austin was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 22, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1992

Proposed charge expiration date: May 31, 1995

Total estimated PFC revenue: $18,347,200

Brief description of proposed project(s): Supplement funding for costs associated with the conversion of Bergstrom Air Force Base to a commercial service airport.

Proposed class or classes of air carriers to be exempted form collecting PFC's: Part 135 Carriers whose enplanements individually are less than or equal to 1 percent of total enplanements at Robert Mueller Municipal Airport.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA Regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch, ASW-610D, 4400 Blue Mound Road, Fort Worth, Texas 76193-0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Austin, Department of Aviation.

Issued in Fort Worth, Texas, on January 22, 1992.

Hugh W. Lyon,

Assistant Manager, Airports Division, Southwest Region.

[FR Doc. 92-2631 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

Transit Technology Program: Advisory Committee Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces the second meeting of the Federal Transit Administration's (FTA) Transit Industry Technology Development Advisory Committee. The Advisory Committee is assisting the FTA in establishing guidelines and developing a transit technology program.

DATE: The second meeting of the Transit Industry Technology Development Advisory Committee will take place March 2, 1992, at 9 a.m.

ADDRESS: The meeting will be held at the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, rooms 6332-6336.

FOR FURTHER INFORMATION CONTACT: Jeffrey G. Mora, Federal Transit Administration, Office of Technical Assistance and Safety, 400 7th Street, SW., room 6423, Washington, DC 20590, (202) 366-0215.

SUPPLEMENTARY INFORMATION:

Major Issues

In response to concerns raised by the Committee about problems in both direct Federal and third party procurement, FTA officials will provide information at the meeting on FTA's current procurement practices for both direct Federal procurements and third party procurements. The Committee will then consider proposals to improve FTA's procurement practices. The Committee will also consider the priority projects recommended by the FTA's Planning and Research Workshop.

Procedures

The FTA will provide interpreters for the hearing impaired if requested no later than close of business February 26, 1992. All meetings of the Transit Industry Technology Development Advisory Committee will be open to the public.

Issued on: January 29, 1992.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 92-2563 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 4-92]

Treasury Notes, Series H-1997

January 24, 1992.

The Secretary announced on January 23, 1992, that the interest rate on the notes designated Series H-1997, described in Department Circular—Public Dept Series—No. 4-92 dated January 16, 1992, will be 6¼ percent. Interest on the notes will be payable at the rate of 6¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-2638 Filed 2-3-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 3-92]

Treasury Notes, Series V-1994

January 23, 1992.

The Secretary announced on January 22, 1992, that the interest rate on the notes designated Series V-1994, described in Department Circular—Public Debt Series—No. 3-92 dated January 16, 1992, will be 4⅞ percent. Interest on the notes will be payable at the rate of 4⅞ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-2637 Filed 2-3-92; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Donated Book Assistance Awards

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: Subject to the availability of funds, the Book Promotion Branch of the U.S. Information Agency will provide limited assistance awards to non-profit U.S. institutions and organizations in the private sector to administer donated books projects during FY'92. All interested organizations wishing to compete for awards to administer one or several of the following projects are invited to request detailed proposal guidelines. The proposals will be evaluated by a review panel and recommendations for awards will be based on professional staff assessment of relevant qualifications and compliance with established criteria.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on March 13, 1992. Faxed documents will not be accepted, nor will documents postmarked on March 13, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

Duration: The duration of the award will be twelve months. No funds may be expended until award agreement is signed. Awards should begin September 1, 1992.

ADDRESSES: One signed original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Donated Book Assistance Awards, Grants Management Division, E/XE, Room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations/institutions should contact Ms. Carol Nelson at the U.S. Information Agency, room 320, 301 4th Street, SW., Book Program Division, E/CBP, Washington, DC 20547, tele: (202) 619-5899 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

To be eligible for consideration an organization must be incorporated in the U.S. as a 501(c)(3), not-for-profit organization as determined by the IRS, and be able to demonstrate expertise in administering the project(s) on which it is bidding. An organization may apply for awards to administer more than one regional project. Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Regional Projects

Africa: One or more assistance awards, not to exceed a total of $80,000 for this region, will be made to a non profit organizations(s) to help defray costs for distributing appropriate donated books to Cameroon, Ethiopia, Ghana, Kenya, Malawi, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia and any other countries in sub-Sahara Africa designated by the Agency. Donated book shipments for this region must consist of at least 75% new materials and no more than 25% used materials in subject areas requested by each country and that are consistent with Agency guidelines. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history legal system, government, literature, arts, education, science and technology, foreign policy, TEFL and English teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. The award recipient, prior to the shipment of any books, must identify a local consignee/distributor in each recipient country who will be responsible for handling in country-logistics, processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information i.e. ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

American Republics: One or more assistance awards, not to exceed a total of $40,000 for this region, will be made to a non-profit organization(s) to help defray costs for distributing appropriate donated books to Paraguay, Panama, Venezuela, Peru, Jamaica, Barbados, Nassau and any other countries designated by the Agency in the American Republics. Donated book shipments for this region, in Spanish and English (both new and used), and in subject areas requested by each country and that are consistent with Agency guidelines, must be distributed with funds from this award. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, education, science and technology, foreign policy, TEFL and English

teaching. The books will Be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books,the award recipient must identify a local consignee/distributor in each recipient country who will be responsible for handling in-country logistics, processing and distribution. To unsure books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country providing all pertinent shipping information, i.e. ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

East Asia: One or more assistance awards, not to exceed a total of $50,000 for this region, will be made to help defray costs for distributing appropriate donated books to the island nations of the pacific, the Philippines and other countries designated by the Agency. Donated books (new and used), and in subject areas requested by each country, must be distributed with funds from this award. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, education, science and technology, foreign policy, TEFL and English Teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books, the award recipient must identify a consignee who will be responsible for handling in-country processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information, i.e. ETD, Shipping line, vessel, size of shipment, consignee, ETA, etc.

Eastern Europe: One or more assistance awards, not to exceed a total of $150,000 for this region, will be made to help defray costs for distributing appropriate donated books to Poland, Hungary, Czechoslovakia, Bulgaria, Albania, Estonia, Latvia, Lithuania and/or other countries in Eastern Europe that are designated by the Agency. Donated books in subject areas requested by each country must be distributed with funds from this award. Book shipments for this region must consist of a least 75% new material and no more than 25% used materials. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, education, foreign policy, TEFL and English teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books, the award recipient must identify a local consigness/distributor who will be responsible for handling in-country logistics, processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information, i.e. ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

In addition to general E Bureau review criteria, technically eligible applications will be competitively reviewed according to the following criteria:

1. *Procurement*:

—Applicant's ability to procure and ship the types of books in the instructional levels that are compatible with Agency guidelines and the needs of recipient countries.

2. *Distribution*:

—Applicant's previous experience or demonstrated potential in conducting a quality controlled and high impact program in the selected region.

—The reliability/feasibility of the distribution network planned through individual contacts, public and private institutions, or through joint planning and coordination with USIS posts in the potential recipient countries/region.

—Applicant's ability to demonstrate that arrangements have been made in advance to handle all transportation, warehousing, processing and book distribution costs in the recipient country(s).

—The percentage of cost-sharing (in-kind contribution or currency equivalent) applicant will contribute to the program. Administrative vs program costs ratio.

—Applicant's ability to implement a workable reporting system to ensure that book transaction data is routinely transmitted to recipient country and Agency (e.g. aggregate number of books, annotated list of titles and/or packing lists, name of author, volume or edition, place of publication, publisher, date, shipping information, etc.) prior to the shipment of books.

3. *Program Evaluation*:

—Applicant's plans for evaluating the effective administration of the program both in the U.S. and overseas. Applicant's ability to measure quality control and program impact in the recipient countries.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 30, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 29, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-2639 Filed 2-3-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 23
Tuesday, February 4, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 7, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–2783 Filed 1–31–92; 3:01 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 11, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application for designation as a contract market in Gulf Coast Unleaded Gasoline futures/New York Mercantile Exchange

Application for designation as a contract market in S&P MidCap 400 Stock Price Index futures and options/Chicago Mercantile Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–2784 Filed 1–31–92; 3:01 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 14, 1992.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A Webb,
Secretary of the Commission.
[FR Doc. 92–2785 Filed 1–31–92; 3:01 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 21, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–2786 Filed 1–31–92; 3:01 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30, a.m., Friday, February 21, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–2787 Filed 1–31–92; 3:01 p.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 28, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb.
Secretary of the Commission.
[FR Doc. 92–2788 Filed 1–31–92; 3:01 pm]
BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 27, 1992, 57 FR 3085.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 29, 1992, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG–8 on the Agenda Schedule for January 29, 1992:

Item No, Docket No., and Company

CAG–8—RP90–104–000, Texas Gas Transmission Corporation

Lois D. Cashell,
Secretary.
[FR Doc. 92–2704 Filed 1–30–92; 4:32 pm]
BILLING CODE 6717-02-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, February 10, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (2020 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 31, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92–2767 Filed 1–31–92; 2:22 pm]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, February 11, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30582 (Sub-No. 2), *Norfolk and Western Railway Company, Southern Railway Company and Interstate Railroad Company—Exemption—Contract to Operate and Trackage Rights.*

Finance Docket No. 21510 (Sub-No. 4), *Norfolk and Western Railroad Company and New York, Chicago and St. Louis Railroad Company—Merger, Etc. (Arbitration Review).*

Docket No. AB-12 (Sub-No. 139X), *Southern Pacific Transportation Company—Abandonment Exemption, Los Angeles County, CA;* Docket No. AB-12 (Sub-No. 140X), *Southern Pacific Transportation Company—Abandonment Exemption—Los Angeles County, CA;* Docket No. AB-12 (Sub-No. 141X), *Southern Pacific Transportation Company—Abandonment Exemption, Los Angeles and San Bernardino Counties, CA.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2641 Filed 1-30-92; 1:26 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 3, 10, 17, and 24, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 3

Wednesday, February 5

9:30 a.m.
Briefing on Pending Investigations (Closed—Ex. 5 and 7)

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday, February 6

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Appeal of LBP-91-17 and LBP-91-30, Sacramento Municipal Utility District (Possession Only License Amendment (Tentative)

Week of February 10—Tentative

Wednesday, February 12

1:30 p.m.
Briefing on Requirements for Integral System Testing of Westinghouse AP/600 (Public Meeting)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 17—Tentative

Friday, February 21

10:00 a.m.
IG Briefing on Review of NRC Programs (Closed—Ex. 2)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.
Briefing on Design Basis Reconstitution Programs (Public Meeting)

Wednesday, February 26

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: January 30, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92-2751 Filed 1-31-92; 1:44 pm]

BILLING CODE 7590-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 13, 1992.

PLACE: Room 410, 1825 K Street, N.W., Washington, D.C. 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in—

Johnson Controls, Inc.
OSHRC Docket No. 89-2614

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

Dated: January 30, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-2770 Filed 1-31-92; 2:23 pm]

BILLING CODE 7600-01-M

Corrections

Federal Register
Vol. 57, No. 23
Tuesday, February 4, 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

Foreign-Trade Zones Board

[Order No. 557]

Resolution and Order Approving With Restriction the Application of the City of Battle Creek, MI, for a Subzone at the Infant Formula/Nutritional Products Manufacturing Facilities of Mead Johnson & Company in Zeeland, MI

Correction

In notice document 92-684 beginning on page 1143 in the issue of Friday, January 10, 1992, make the following correction:

On page 1144, in the first column, after the second line, insert the heading "**Grant of Authority For Subzone Status at the Mead Johnson & Company Facilities in Zeeland, Michigan**".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 550]

Resolution and Order Approving the Application of Foreign Trade Zone of Central Texas, Inc. for a Foreign-Trade Zone in the Austin, TX, Area

Correction

In notice document 91-31312 beginning on page 42 in the issue of Thursday, January 2, 1992, make the following correction:

On page 42, in the third column, under **Resolution and Order**, after the fourth paragraph, insert the heading "**Grant of Authority; Establishment of a Foreign-Trade Zone; Austin, Texas, Area**".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 911194-1294]

Summer Flounder Fishery

Correction

In rule document 91-31323, beginning on page 213, in the issue of Friday, January 3, 1992, make the following corrections:

1. On page 213, in the first column, under **ACTION:**, in the first line, "two-time" should read "tow-time".
2. On the same page, in the 2d column, under **Background**, in the 18th line, insert "New" in front of "England".
3. On the same page, in the third column, in the second line, insert a comma after "turtles".
4. In the same column, in the seventh line, "distribution" was misspelled.
5. On page 214, in the first column, in the first line, "24" should read "25".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-4214-10; WYW 123105]

Proposed Withdrawal and Public Meeting; Wyoming

Correction

In notice document 92-1158, appearing on page 1924, in the issue of Thursday, January 16, 1992, make the following corrections:

1. In the second column, in the land description, under Sec. 21, "W½SE¼" should read "W½SW¼".
2. In the third column, in the seventh paragraph, in the last line, insert "the" before "area".

BILLING CODE 1505-01-D

federal register

Tuesday
February 4, 1992

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 20, 25 and 301

Special Valuation Rules; Final Regulations and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25 and 301

[T.D. 8395]

RIN 1545-AP44

Special Valuation Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to chapter 14 of the Internal Revenue Code as enacted in the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. These regulations provide special valuation rules for purposes of the Federal estate and gift taxes imposed under chapters 1 and 12 of the Code. In addition these regulations provide rules involving lapsing rights and other transactions that are treated as completed transfers under chapter 14.

EFFECTIVE DATES: These regulations are effective as of January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman, (202) 535-9512 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-1241 and 1545-1273. The estimated average annual burden per recordkeeper is two minutes. The estimated average annual burden per respondent is ten minutes.

These estimates approximate the average time expected to be necessary for the collection of information. They are based upon the information available to the Internal Revenue Service and do not include the estimate of burden that is included in the burden applicable to Forms 706 and 709. Individual respondents and record keepers may require more 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, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

B. Background

April 9, 1991 Proposed Regulations

On April 9, 1991, a Notice of Proposed Rulemaking (PS-92-90 (1991-1 C.B. 998)) relating to the special valuation rules of sections 2701 through 2703 of the Internal Revenue Code was published in the **Federal Register** (56 FR 14321). These sections, along with section 2704, were enacted as chapter 14 of the Code in the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 [1991-48 I.R.B. 7]. The Internal Revenue Service received written comments on the proposed regulations and, on September 20, 1991, held a public hearing on those regulations. After consideration of the comments received and the statements made at the public hearing, the proposed regulations are revised and adopted as final regulations by this Treasury decision.

September 11, 1991 Proposed Regulations

On September 11, 1991, a Notice of Proposed Rulemaking (PS-30-91 (1991-42 I.R.B. 36)) relating to additional special valuation rules under chapter 14 was published in the **Federal Register** (56 FR 46244). This notice proposed rules under sections 2701 and 2702 regarding adjustments to mitigate double taxation. Rules under section 2704 of the Internal Revenue Code were also proposed. The Internal Revenue Service received written comments from the public on the proposed regulations and, on November 1, 1991, held a public hearing concerning the regulations. After consideration of the comments received and the statements made at the public hearing, the proposed regulations, other than proposed § 25.2701-5 (relating to adjustments to mitigate double taxation), are revised and adopted as final regulations by this Treasury decision. An amendment to proposed § 25.2701-5 is proposed by a Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**.

The following discusses the more significant comments received on the proposed regulations and the reasons for accepting or rejecting those comments in the final regulations.

C. Section 2701

Scope of Section 2701

Several commentators urged that the definition of "transfer" should be restricted. In response to this comment, the final regulations clarify the situations in which a "capital structure transaction" will be treated as a transfer subject to section 2701. Generally, if an individual receives an applicable retained interest in connection with a redemption, recapitalization, or other change in the capital structure of an entity, the transaction is subject to section 2701 if the other conditions of that section are met. In addition, if an individual holding an applicable retained interest surrenders a senior equity interest in a corporation or partnership and the fair market value of an applicable retained interest already held by that individual increases, the transaction is potentially subject to section 2701. Similarly, if an individual surrenders a junior equity interest while a member of the individual's family holds a junior equity interest, and the individual or an applicable family member simultaneously holds an applicable retained interest, the transaction is potentially subject to section 2701.

The final regulations also clarify the application of section 2701 to the termination of an interest held indirectly through a trust. As proposed, the rule could unfairly subject an individual to section 2701. The final regulations narrow the application of the rule to circumstances where (1) the indirectly-held property would have been includible in the gross estate of the individual if the individual had died at the time of the termination, or (2) the indirectly-held property is in a trust as to which the individual is considered the owner under the grantor trust rules. See sections 671 through 678.

The final regulations provide that in determining whether a class of interest is proportional to another class, differences between classes attributable to non-lapsing provisions necessary to comply with partnership allocation requirements of the Internal Revenue Code (*e.g.*, section 704(b)) are treated as nonlapsing differences with respect to limitations on liability.

In response to comments regarding the exception for proportionate transfers in § 25.2701-1(c)(4), the final regulations provide that the exception is available to the extent the transfer results in the required proportionate reduction in the holdings of the transferor and applicable family members. The final regulations clarify that this exception applies only with respect to a transfer by a single individual.

Valuation of Applicable Retained Interests

The final regulations clarify that, for purposes of section 2701, a payment that is contingent as to time or amount is not a guaranteed payment of a fixed amount.

The final regulations adopt the recommendation of one commentator that a right to receive a specific amount payable at death should qualify as a mandatory payment right.

Responding to several comments, the final regulations clarify that voting rights that confer an ability to compel liquidation are not valued at zero but instead are valued without regard to the ability to compel liquidation or, if the holder's rights are valued under the "lower of" valuation rule, in a manner consistent with the assumptions of that rule.

Several commentators suggested that partial elections be allowed under § 25.2701–2(c)(2). The final regulations adopt this suggestion.

The Subtraction Method of Valuation

Comments variously suggested that the proposed subtraction method of valuation is too restrictive, acceptable as written, or lacking in necessary specificity.

The valuation of a closely-held business interest is one of the most difficult administrative problems presented by the transfer tax system and courts have varied widely on the applicability of the subtraction method in that process.

Some commentators argue that section 2701 does not require use of a subtraction method. They argue, contrary to the conference report reference to "present law principles," that there are no such present law principles. Other commentators suggest that section 2701 should apply only if (and to the extent) a subtraction method would be appropriate under present law.

These and similar comments are based on the premise that section 2701 operates within the general framework of section 2512 of the Internal Revenue Code, *i.e.*, that the special valuation rules are to be used to determine the value of the transferred property which, in turn, measures the amount of the gift. They ignore the operative language of section 2701 that the amount of the gift is to be determined by valuing certain retained rights under the special rules in section 2701. If use of the subtraction method is not required by section 2701, valuation of retained rights would have no bearing on the amount of the gift. That interpretation would cause section 2701 to be a nullity in that the valuation of retained rights cannot affect the amount of the gift other than by subtraction from a pretransfer aggregate value.

The Treasury Department and the Service do not believe that section 2701 was intended to be a nullity or merely an appendix to section 2512, but rather that chapter 14 provides an independent set of rules intended to ensure more accurate gift tax valuation.

Present gift tax regulations provide a subtraction method for determining the amount of the gift if a donor retains an interest in the transferred property. In such a case, the amount of the gift is the value of the entire property less the value of the donor's retained interest. See § 25.2512–9(a)(1)(i). The proposed regulations paralleled that rule.

Although the Treasury Department and the Service believe that the subtraction method set forth in the April 9, 1991 proposed regulations is the appropriate method for determining the amount of the gift under section 2701, changes have been made, in response to comments, to the specific methodology set forth in the proposed regulations.

The 3-step method of valuation outlined in § 25.2701–3 of the proposed regulations is modified as follows. In Step 1, only the interests held by the individuals whose holdings are taken into account in determining "control" under § 25.2701–2(b)(5) ("family-held interests") are valued. The family-held interests are valued as if held by a single individual. Thus, the final regulations substantially simplify the valuation procedure by eliminating unnecessary valuations with respect to the entire entity and unrelated parties. By providing for a single-shareholder assumption in valuing the family-held interests in Step 1, the final regulations adopt the position of several commentators that the minority discount with respect to the transferred interest is appropriately applied at the end of the section 2701 valuation process rather than at the beginning. Steps 2 and 3 (including the special adjustment in Step 2) remain basically unchanged. However, Step 2 provides a rule that has the effect of allocating any "control premium" reflected in the value determined in Step 1 among the corresponding family-held interests on a pro rata basis. The final regulations add Step 4 to the valuation methodology. In Step 4, adjustments are made to the total amount of the gift to reflect consideration received for the transfer, appropriate discounts, and the value of certain retained interests if the property is transferred in trust. Consistent with the position of the regulations that section 2701 does not affect the value of the transferred property and the legislative history indicating that chapter 4 does not affect minority discounts otherwise available under the law in effect before enactment of chapter 14, any minority discount taken in Step 4 generally is limited to the amount that would have been available under chapter 12 with respect to the transfer if section 2701 had not been applicable.

Minimum Value Rule

The final regulations clarify that, in applying the minimum value rule, the value of any junior equity interest is not less than a pro rata portion of 20 percent of the sum of the value of all equity interests including indebtedness to the transferor and applicable family members determined without regard to guarantees and qualified deferred compensation.

Accumulated Qualified Payments

The final regulations permit a qualified payment to be made in the form of a debt instrument, the term of which does not exceed four years, that bears compound interest at a rate no less than the appropriate discount rate payable from the due date of the qualified payment.

Adjustment to Mitigate Double Taxation

In response to numerous comments, proposed § 25.2701–5 is being substantially modified by a Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**. Rather than provide a credit against the Federal estate tax as contained in the September 11 proposed regulations, the revised proposed regulations provide for a reduction to a decedent's adjusted taxable gifts. In general, the amount of the reduction is the lesser of: (1) The amount by which the transferor's taxable gifts were increased as a result of the application of section 2701, and (2) the increase in the decedent's gross estate (or adjusted taxable gifts) attributable to the portion of the value of the applicable retained interest that was subject to gift tax at the time of the initial transfer. The limitation in the regulation assures that aggregate value includible in the decedent's transfer tax base is the sum of: (1) The value (on the date of the section 2701 transfer) of the family-held applicable retained interests allocable to the transferred subordinate equity interests, and (2) the value (as of the date the interest is subsequently transferred by the transferor) of the transferor's portion of family-held applicable retained interests not previously subject to tax.

Under certain circumstances, the transferor's spouse is treated as the transferor. The reduction is otherwise not assignable or transferable.

Indirect Ownership

Several comments were received regarding the indirect ownership rules in § 25.2701–6. Most of these comments arose from concern over the definition of transfer that included the termination of any indirectly-held interest. The revision to the definition of transfer discussed above generally makes changes to the indirect ownership rules unnecessary. Other suggested changes were rejected because of the additional complexity that would be introduced into these rules.

Effect on Other Internal Revenue Code Sections

Some commentators argued that determining the amount of a gift under section 2701 necessarily affects the results under other provisions of the Internal Revenue Code (such as the determination of basis under section 1015) that are based on the value of the transferred property. As discussed above, the final regulations reject the argument that section 2701 determines the value of the transferred property.

D. Section 2702

Exceptions

The final regulations provide that section 2702 does not apply to the transfer of an interest in trust if the only interest in the trust, other than the remainder interest or a qualified annuity or unitrust interest, is an interest qualifying for the charitable deduction under section 2522 (a charitable lead trust).

Other commentators recommended exceptions for lapses of "Crummey" powers and for certain transfers of annuity or unitrust interests. Those changes are made.

Retained Rights

Several commentators requested that the application of section 2702 to retained powers be clarified. In response, the final regulations provide that an "interest" includes a power if retention of the power prevents the transfer of an interest in property from being a completed gift under chapter 12. Without this rule, section 2702 could be avoided merely by retaining a power over a term income interest rather than the income interest itself.

In response to one comment, the final regulations provide that section 2702 does not apply if the only retained interest is as a permissible recipient of income.

Tangible Property Exception

Several commentators suggested eliminating the evidentiary requirement necessary to qualify for valuation under the special rule for certain tangible property. This change is not made. Without a standard such as that set forth in the proposed regulations (e.g., actual evidence of rentals) against which proffered appraisals can be tested, the likelihood of significant over-valuations is very high. On the other hand, the recommendation that the burden of proof be placed on the transferor rather than the term holder is adopted in the final regulations.

One commentator suggested that depreciable property should qualify for the tangible property exception. This recommendation was not adopted. Generally, the use or non-use of such property during the term would affect the value of the property passing to the remainder beneficiary, and thus, the property would not come within the statutory exception. Congress intended, in enacting this exception, to provide limited relief to a class of property the value of which would not be affected by use or non-use.

As suggested by commentators, the rule regarding valuation of the unexpired portion of a term interest at the time of a conversion is expanded and clarified.

One commentator requested that the regulations permit a term interest in property that ceases to qualify for the tangible property exception to be converted to a qualified unitrust interest rather than a qualified annuity interest. This is not done, primarily because of the complexity involved in determining the appropriate amount of the unitrust payment.

In response to one comment, the final regulations clarify that the date on which tangible property is deemed to be converted as the result of an addition or improvement is the date on which the addition or improvement is commenced.

Qualified Interests

The final regulations clarify that a cumulative power of withdrawal does not meet the requirements of a qualified interest. Congress clearly intended that retained interests that are given value at the time of the transfer must reflect amounts that will actually be paid to the term holder. Section 2702 could be avoided if powers of withdrawal are considered qualified interests.

In response to comments requesting that increases in the annuity and unitrust amounts be permitted throughout the term, the final regulations provide flexibility to taxpayers by permitting the annuity or unitrust amount to be 120 percent of the annuity or unitrust amount paid for the preceding year. The proposed regulations prohibited increases to prevent transferors from "zeroing out" a gift while still effectively transferring the appreciation on all the property during the term to the remainder beneficiary, (*e.g.*, by providing for a balloon payment in the final year of the term). The Treasury Department and the Service believe that such a result would be inconsistent with the principles of section 2702. The final regulations, with minimal complexity, strike a balance between the government's policy concerns and taxpayers' desire for planning flexibility.

In response to a comment, the final regulations permit the payment of the greater (but not the lesser) of an annuity or unitrust amount. In that case, the retained interest is valued at the higher of the values of the two interests.

Commentators suggested allowing additional contributions to a trust from which a qualified annuity interest is payable. This is not done. Without this prohibition, additional contributions would arguably pass to the remainder beneficiary under certain circumstances without appropriate transfer taxes being paid.

Commentators suggested that commutation of qualified interests be permitted. This change is not made. Commutation (*i.e.*, the prepayment of the term holder's interest) shifts the risk of a decline in interest rates from the remainder beneficiaries to the term holder. Therefore, a commuted term interest may not ultimately yield the same value to the term holder as the annuity or unitrust interest originally retained by the transferor. Congress intended in enacting section 2702, that a term interest would be valued at an amount greater than zero, only if the form of the term interest insures that the holder actually receives the value attributed to the interest. Allowing commutation would be inconsistent with this intent.

Joint Purchases

In response to another comment, the limit on the amount the term holder is considered to transfer in a joint purchase is clarified.

Personal Residence Trusts

The final regulations adopt the suggestion of commentators that an individual be permitted in certain circumstances to hold term interests in more than two personal residence trusts (or qualified personal residence trusts).

The final regulations make no changes in the definition of personal residence. Since the transfer in trust of a personal residence arguably presents the same

opportunity for valuation abuse that Congress sought to prevent by enactment of section 2702, the Treasury Department and the Service believe that Congress intended the personal residence exception to be a narrow exception to enable transferors to pass the family home, whether the principal residence or a vacation home, to younger members of the family. Therefore, the most recent Congressional statutory expression of what constitutes a personal residence, as found in section 163(h), is most pertinent in this situation. That provision defines personal residence as the principal residence and one other residence.

The final regulations address the concern of one commentator by permitting a single trust to be used to hold the interests of both spouses in a personal residence under certain circumstances.

The final regulations permit personal residence trusts to hold (for two years) proceeds payable as a result of damage, destruction or involuntary conversion of the personal residence. However, consistent with the explicit statutory language requiring that the only property in the trust be a residence, the final regulations continue to prohibit the holding of any other assets by the trust, including proceeds from the sale of the personal residence.

Qualified Personal Residence Trusts

Because of the restrictive statutory limitations on a personal residence trust, the safe harbor for a qualified personal residence trust is retained with slight modifications.

The final regulations clarify that a qualified personal residence trust must distribute any income to the term holder not less frequently than annually.

Commentators generally proposed that the regulations explicitly permit certain actions during the term of the trust. These comments were not adopted because the regulations are intended only to set out governing instrument requirements. The suggestion of one commentator that, upon termination of the term interest, any cash in the trust be permitted to be used to pay unpaid expenses and termination expenses, was adopted.

The final regulations revise the provisions concerning cessation of use of the residence as a personal residence in several respects. First, the governing instrument must require either that the trust be terminated (and all trust assets distributed to the term holder) or that the term interest be converted to a qualified annuity interest. The trustee may be given the sole discretion to select between those two options. Under the final regulations, the distribution or conversion must occur within 30 days of the date on which the trust ceases to be a qualified personal residence trust. The final regulations also permit excess sale proceeds not reinvested in a new personal residence to be converted to a qualified annuity interest.

Finally, one commentator requested that, upon cessation of use as a personal residence, the interest of the term holder be permitted to convert to a qualified unitrust interest. This is not done because of the complexity in determining the appropriate unitrust amount.

Adjustment to Mitigate Double Taxation

Comments were received suggesting that adjustments be permitted in situations not covered by the proposed regulations. None of these proposed changes are included in the final regulations. Section 2702 does not require an adjustment to mitigate double taxation. The final regulations intend relief only if the retained interest itself is taxed in a transfer subsequent to the original transfer to which section 2702 applied.

The final regulations provide that a reduction in adjusted taxable gifts is available if a term interest is included in the transferor's gross estate solely by reason of section 2033.

In response to one comment, the final regulations clarify the interaction of § 25.2702–6 and section 2001.

E. Section 2703

Exceptions

The final regulations provide that perpetual restrictions on the use of real property that qualified for either the gift or estate tax charitable deduction are not subject to section 2703. The specific reference to section 170(h) is deleted.

As suggested by several commentators, the final regulations expand the exception in the proposed regulations for rights and restrictions among unrelated parties. The final regulations provide that a right or restriction is not disregarded if more than 50 percent by value of the property subject to the right or restriction is owned by persons who are not family members of the transferor. "Member of the family" is defined by cross-reference to § 25.2701–2(b)(5) and also includes any other individual who is the natural object of the transferor's bounty.

One comment asked that the final regulations specifically state that a right of first refusal among family member co-owners of a business is never disregarded if the right can be exercised only by matching the price offered by an outside purchaser. The Treasury Department and the Service do not believe that every such restriction necessarily meets the tests of section 2703.

Substantial Modification

The final regulations clarify when a transfer to a family member of an interest in property that is subject to a right or restriction is a substantial modification of the right or restriction. The final regulations provide that the addition of a family member in a generation no lower than the lowest generation occupied by persons already party to the right or restriction is not a substantial modification.

Other Issues

One commentator requested that the final regulations define the term "natural objects of the bounty." The final regulations do not provide a definition of this term. This concept has long been part of the transfer tax system and cannot be reduced to a simple formula or specific classes of relationship. The class of persons who may be the objects of an individual's bounty is not necessarily limited to persons related by blood or marriage.

In response to a comment, the final regulations clarify that if property is subject to multiple rights or restrictions, each separate right or restriction is tested independently. Whether separate provisions constitute separate rights or restrictions or are integral elements of a single right or restriction depends on the facts and circumstances in the particular case.

An example is added to the final regulations to clarify that a lease is a right or restriction with respect to the use of property that is disregarded in certain circumstances.

F. Section 2704

Lapsing Rights

One set of comments was received regarding section 2704. The commentator argued that applying section 2704(a) to a transfer of a voting interest that results in the termination of a liquidation right with respect to an interest other than the transferred interest was inappropriate in some cases. In response to that comment, the final regulations limit the scope of the rule to situations where the transferred interest is senior to the interest as to which the liquidation right terminates.

The final regulations clarify the exception for the lapse of liquidation rights valued under section 2701 is provided to mitigate double taxation.

As suggested by the commentator, the final regulations provide that a lapse of a liquidation right that occurs solely by reason of a change in State law is not treated as a lapse subject to section 2704(a). A recommendation that the final regulations create an exception for any lapse occurring by reason of State law is not adopted because shareholders or partners are free to alter the rules otherwise applicable under State law.

Applicable Restrictions

The final regulations expand the exception for certain commercially reasonable restrictions on liquidation imposed with respect to debt to include certain commercially reasonable restrictions on liquidation imposed in connection with the issuance of equity.

The commentator suggested that the ability to liquidate be determined under State law without regard to any provisions in the governing instrument regarding liquidation (whether or not the provisions would be more restrictive than the State law that would otherwise apply). Adopting that rule would be inconsistent with the purpose of section 2704(b) which is intended to determine the value of property by reference to actual ability to liquidate without regard to restrictions that will lapse or can be removed.

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 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretative. 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, the proposed regulations were sent to the Chief Counsel for Advocacy for Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Fred E. Grundeman, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

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 Amendments to the Regulations

Accordingly, 26 CFR parts 20, 25 and 301 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read, in part:

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

Par. 2. Section 20.0–2 is amended by removing the last sentence in paragraph (b)(5) and adding the following in its place:

§ 20.0–2 General description of tax.

* * * * *

(b) * * *

(5) * * * Sections 25.2701–5 and 25.2702–6 of this chapter contain rules that provide additional adjustments to mitigate double taxation in cases where the amount of the decedent's gift was previously determined under the special valuation provisions of sections 2701 and 2702. For a detailed explanation of the credits against tax, see sections 2011 through 2016 and the regulations thereunder.

* * * * *

Par. 3. Section 20.2031–2 is amended by adding a sentence to the end of paragraph (h) and adding a new paragraph (j) to read as follows:

§ 20.2031–2 Valuation of stocks and bonds.

* * * * *

(h) * * * See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990.

* * * * *

(j) *Application of chapter 14.* See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a corporation and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

Par. 4. Section 20.2031–3 is amended by adding three new sentences to the end to read as follows:

§ 20.2031–3 Valuation of interests in businesses.

* * * * *

* * * See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a partnership and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member. See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority for part 25 continues to read, in part:

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

Par. 6. Section 25.0–1 is amended by adding a new sentence to the end of paragraph (c)(1) and by revising paragraph (c)(2) to read as follows:

§ 25.0–1 Introduction.

* * * * *

(c) * * *

(1) * * * Sections 25.2701–5 and 25.2702–6 contain rules that provide additional adjustments to mitigate double taxation where the amount of the transferor's property was previously determined under the special valuation provisions of sections 2701 and 2702.

(2) *Transfer.* Subchapter B of chapter 12 and chapter 14 of the Internal Revenue Code pertain to the transfers which constitute the making of gifts and the valuation of those transfers. The regulations pursuant to subchapter B are set forth in §§ 25.2511–1 through 25.2518–3. The regulations pursuant to

chapter 14 are set forth in §§ 25.2701–1 through 25.2704–3.

* * * * *

Par. 7. Section 25.2502–1 is amended by adding a new sentence to the end of paragraph (a)(3) to read as follows:

§ 25.2502–1 · Rate of Tax.

(a) * * *

(3) * * * See § 25.2702–6 for an adjustment to the total amount of an individual's taxable gifts where the individual's current taxable gifts include the transfer of certain interests in trust that were previously valued under the provisions of section 2702.

* * * * *

Par. 8. Section 25.2512–1 is amended by adding two new sentences to the end to read as follows:

§ 25.2512–1 Valuation of property; in general.

* * * See section 2701 and the regulations at § 25.2701 for special rules for valuing transfers of an interest in a corporation or a partnership and for the treatment of unpaid qualified payments at the subsequent transfer of an applicable retained interest by the transferor or by an applicable family member. See section 2704(b) and the regulations at § 25.2704–2 for special valuation rules where an interest in property is subject to an applicable restriction.

Par. 9. Section 25.2512–5 is amended by adding a new sentence to paragraph (a)(1)(i) immediately after the sixth sentence to read as follows:

§ 25.2512–5 Valuation of annuities, life estates, terms for years, remainders, and reversions transferred after November 30, 1983.

(a) *In general.* (1)(i) * * * See section 2702 and the regulations at § 25.2702 for special rules for valuing transfers of interests in trust after October 8, 1990. * * *

Par. 10. Section 25.2512–8 is amended by adding a sentence to the end to read as follows:

§ 25.2512–8 Transfers for insufficient consideration.

* * * See also sections 2701, 2702, 2703 and 2704 and the regulations at §§ 25.2701–0 through 25.2704–3 for special rules for valuing transfers of business interests, transfers in trust, and transfers pursuant to options and purchase agreements.

Par. 11. A new undesignated centerheading and new §§ 25.2701–0 through 25.2701–8, 25.2702–0 through 25.2702–7, 25.2703–1 and 25.2703–2, and 25.2704–1 through 25.2704–3 are added to read as follows:

Special Valuation Rules

§ 25.2701–0 Table of contents.

This section lists the major paragraphs contained in §§ 25.2701–1 through 25.2701–8.

§ 25.2701–1 Special valuation rules in the case of transfers of certain interests in corporations and partnerships.

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(1) Completed transfers.
(2) Transactions treated as transfers.
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(1) Marketable transferred interests.
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(d) Family definitions.
(1) Member of the family.
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(e) Examples.

§ 25.2701–2 Special valuation rules for applicable retained interests.

(a) In general.
(1) Valuing an extraordinary payment right.
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(4) Rights that are not extraordinary payment rights or distribution rights.
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(6) Qualified payment right.
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(1) Election to treat a qualified payment right as other than a qualified payment right.
(2) Election to treat other distribution rights as qualified payment rights.
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§ 25.2701–4 Accumulated qualified payments.

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(1) In general.
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§ 25.2701–5 Adjustments to mitigate double taxation.

[Reserved].

§ 25.2701–6 Indirect holding of interests.

(a) In general.
(1) Attribution to individuals.
(2) Corporations.
(3) Partnerships.
(4) Estates, trusts, and other entities.
(5) Multiple attribution.
(b) Examples.

§ 25.2701–7 Separate interests.

§ 25.2701–8 Effective dates.

§ 25.2701–1 Special valuation rules in the case of transfers of certain interests in corporations and partnerships.

(a) *In general*—(1) *Scope of section 2701.* Section 2701 provides special valuation rules to determine the amount of the gift when an individual transfers an equity interest in a corporation or partnership to a member of the individual's family. For section 2701 to apply, the transferor or an applicable family member (as defined in paragraph (d)(2) of this section) must, immediately after the transfer, hold an applicable retained interest (a type of equity interest defined in § 25.2701–2(b)(1)). If certain subsequent payments with respect to the applicable retained interest do not conform to the assumptions used in valuing the interest at the time of the initial transfer, § 25.2701–4 provides a special rule to increase the individual's later taxable gifts or taxable estate.

(2) *Effect of section 2701.* If section 2701 applies to a transfer, the amount of the transferor's gift, if any, is determined using a subtraction method of valuation (described in § 25.2701–3). Under this

method, the amount of the gift is determined by subtracting the value of any family-held applicable retained interests and other non-transferred equity interests from the aggregate value of family-held interests in the corporation or partnership (the "entity"). Generally, in determining the value of any applicable retained interest held by the transferor or an applicable family member—

(i) Any put, call, or conversion right, any right to compel liquidation, or any similar right is valued at zero if the right is an "extraordinary payment right" (as defined in § 25.2701-2(b)(2));

(ii) Any distribution right in a controlled entity (*e.g.*, a right to receive dividends) is valued at zero unless the right is a "qualified payment right" (as defined in § 25.2701-2(b)(6)); and

(iii) Any other right (including a qualified payment right) is valued as if any right valued at zero did not exist but otherwise without regard to section 2701.

(3) *Example.* The following example illustrates rules of this paragraph (a).

Example. A, an individual, holds all the outstanding stock of S Corporation. A exchanges A's shares in S for 100 shares of 10-percent cumulative preferred stock and 100 shares of voting common stock. A transfers the common stock to A's child. Section 2701 applies to the transfer because A has transferred an equity interest (the common stock) to a member of A's family, and immediately thereafter holds an applicable retained interest (the preferred stock). A's preferred stock is valued under the rules of section 2701. A's gift is determined under the subtraction method by subtracting the value of A's preferred stock from the value of A's interest in S immediately prior to the transfer.

(b) *Transfers and other triggering events*—(1) *Completed transfers.* Section 2701 applies to determine the existence and amount of any gift, whether or not the transfer would otherwise be a taxable gift under chapter 12 of the Internal Revenue Code. For example, section 2701 applies to a transfer that would not otherwise be a gift under chapter 12 because it was a transfer for full and adequate consideration.

(2) *Transactions treated as transfers*—(i) *In general.* Except as provided in paragraph (b)(3) of this section, for purposes of section 2701, transfer includes the following transactions:

(A) A contribution to the capital of a new or existing entity;

(B) A redemption, recapitalization, or other change in the capital structure of an entity (a "capital structure transaction"), if—

(*1*) The transferor or an applicable family member receives an applicable retained interest in the capital structure transaction;

(*2*) The transferor or an applicable family member holding an applicable retained interest before the capital structure transaction surrenders an equity interest that is junior to the applicable retained interest (a "subordinate interest") and receives property other than an applicable retained interest; or

(*3*) The transferor or an applicable family member holding an applicable retained interest before the capital structure transaction surrenders an equity interest in the entity (other than a subordinate interest) and the fair market value of the applicable retained interest is increased; or

(C) The termination of an indirect holding in an entity (as defined in § 25.2701-6), if—

(*1*) The property is held in a trust as to which the indirect holder is treated as the owner under subchapter J of chapter 1 of the Internal Revenue Code; or

(*2*) If the termination is not treated as a transfer under paragraph (b)(2)(i)(C)(*1*) of this section, to the extent the value of the indirectly-held interest would have been included in the value of the indirect holder's gross estate for Federal estate tax purposes if the indirect holder died immediately prior to the termination.

(ii) *Multiple attribution.* For purposes of paragraph (b)(2)(i)(C) of this section, if the termination of an indirect holding in property is treated as a transfer with respect to more than one indirect holder, the transfer is attributed in the following order:

(A) First, to the indirect holder(s) who transferred the interest to the entity (without regard to section 2513);

(B) Second, to the indirect holder(s) possessing a presently exercisable power to designate the person who shall possess or enjoy the property;

(C) Third, to the indirect holder(s) presently entitled to receive the income from the interest;

(D) Fourth, to the indirect holder(s) specifically entitled to receive the interest at a future date; and

(E) Last to any other indirect holder(s) proportionally.

(3) *Excluded transactions.* For purposes of section 2701, a transfer does not include the following transactions:

(i) A capital structure transaction, if the transferor, each applicable family member, and each member of the transferor's family holds substantially the same interest after the transaction as that individual held before the transaction. For this purpose, common stock with non-lapsing voting rights and nonvoting common stock are interests that are substantially the same;

(ii) A shift of rights occurring upon the execution of a qualified disclaimer described in section 2518; and

(iii) A shift of rights occurring upon the release, exercise, or lapse of a power of appointment other than a general power of appointment described in section 2514, except to the extent the release, exercise, or lapse would otherwise be a transfer under chapter 12.

(c) *Circumstances in which section 2701 does not apply.* To the extent provided, section 2701 does not apply in the following cases:

(1) *Marketable transferred interests.* Section 2701 does not apply if there are readily available market quotations on an established securities market for the value of the transferred interests.

(2) *Marketable retained interests.* Section 25.2701-2 does not apply to any applicable retained interest if there are readily available market quotations on an established securities market for the value of the applicable retained interests.

(3) *Interests of the same class.* Section 2701 does not apply if the retained interest is of the same class of equity as the transferred interest or if the retained interest is of a class that is proportional to the class of the transferred interest. A class is proportional to the class of the transferred interest if the rights are identical or proportional to the rights of the transferred interest, except for non-lapsing differences in voting rights (or, for a partnership, non-lapsing differences with respect to management and limitations on liability). For purposes of this section, non-lapsing provisions necessary to comply with partnership allocation requirements of the Internal Revenue Code (*e.g.*, section 704(b)) are non-lapsing differences with respect to limitations on liability. A right that lapses by reason of Federal or State law is treated as a non-lapsing right unless the Secretary determines, by regulation or by published revenue ruling, that it is necessary to treat such a right as a lapsing right to accomplish the purposes of section 2701. An interest in a partnership is not an interest in the same class as the transferred interest if the transferor or applicable family members have the right to alter the liability of the transferee.

(4) *Proportionate transfers.* Section 2701 does not apply to a transfer by an individual of equity interests to the extent the transfer by that individual results in a proportionate reduction of each class of equity interest held by the individual and all applicable family

members in the aggregate immediately before the transfer. Thus, for example, section 2701 does not apply if P owns 50 percent of each class of equity interest in a corporation and transfers a portion of each class to P's child in a manner that reduces each interest held by P and any applicable family members, in the aggregate, by 10 percent even if the transfer does not proportionately reduce P's interest in each class. See § 25.2701-6 regarding indirect holding of interests.

(d) *Family definitions*—(1) *Member of the family.* A member of the family is, with respect to any transferor—

(i) The transferor's spouse;

(ii) Any lineal descendant of the transferor or the transferor's spouse; and

(iii) The spouse of any such lineal descendant.

(2) *Applicable family member.* An applicable family member is, with respect to any transferor—

(i) The transferor's spouse;

(ii) Any ancestor of the transferor or the transferor's spouse; and

(iii) The spouse of any such ancestor.

(3) *Relationship by adoption.* For purposes of section 2701, any relationship by legal adoption is the same as a relationship by blood.

(e) *Examples.* The following examples illustrate provisions of this section:

Example 1. P, an individual, holds all the outstanding stock of X Corporation. Assume the fair market value of P's interest in X immediately prior to the transfer is $1.5 million. X is recapitalized so that P holds 1,000 shares of $1,000 par value preferred stock bearing an annual cumulative dividend of $100 per share (the aggregate fair market value of which is assumed to be $1 million) and 1,000 shares of voting common stock. P transfers the common stock to P's child. Section 2701 applies to the transfer because P has transferred an equity interest (the common stock) to a member of P's family and immediately thereafter holds an applicable retained interest (the preferred stock). P's right to receive annual cumulative dividends is a qualified payment right and is valued for purposes of section 2701 at its fair market value of $1,000,000. The amount of P's gift, determined using the subtraction method of § 25.2701-3, is $500,000 ($1,500,000 minus $1,000,000).

Example 2. The facts are the same as in *Example 1*, except that the preferred dividend right is noncumulative. Under § 25.2701-2, P's preferred dividend right is valued at zero because it is a distribution right in a controlled entity, but is not a qualified payment right. All of P's other rights in the preferred stock are valued as if P's dividend right does not exist but otherwise without regard to section 2701. The amount of P's gift, determined using the subtraction method, is $1,500,000 ($1,500,000 minus $0). P may elect, however, to treat the dividend right as a qualified payment right as provided in § 25.2701-2(c)(2).

§ 25.2701-2 Special valuation rules for applicable retained interests.

(a) *In general.* In determining the amount of a gift under § 25.2701-3, the value of any applicable retained interest (as defined in paragraph (b)(1) of this section) held by the transferor or by an applicable family member is determined using the rules of chapter 12, with the modifications prescribed by this section. See § 25.2701-6 regarding the indirect holding of interests.

(1) *Valuing an extraordinary payment right.* Any extraordinary payment right (as defined in paragraph (b)(2) of this section) is valued at zero.

(2) *Valuing a distribution right.* Any distribution right (as defined in paragraph (b)(3) of this section) in a controlled entity is valued at zero, unless it is a qualified payment right (as defined in paragraph (b)(6) of this section). Controlled entity is defined in paragraph (b)(5) of this section.

(3) *Special rule for valuing a qualified payment right held in conjunction with an extraordinary payment right.* If an applicable retained interest confers a qualified payment right and one or more extraordinary payment rights, the value of all these rights is determined by assuming that each extraordinary payment right is exercised in a manner that results in the lowest total value being determined for all the rights, using a consistent set of assumptions and giving due regard to the entity's net worth, prospective earning power, and other relevant factors (the "lower of" valuation rule). See §§ 20.2031-2(f) and 20.2031-3 for rules relating to the valuation of business interests generally.

(4) *Valuing other rights.* Any other right (including a qualified payment right not subject to the prior paragraph) is valued as if any right valued at zero does not exist and as if any right valued under the lower of rule is exercised in a manner consistent with the assumptions of that rule but otherwise without regard to section 2701. Thus, if an applicable retained interest carries no rights that are valued at zero or under the lower of rule, the value of the interest for purposes of section 2701 is its fair market value.

(5) *Example.* The following example illustrates rules of this paragraph (a).

Example. P, an individual, holds all 1,000 shares of X Corporation's $1,000 par value preferred stock bearing an annual cumulative dividend of $100 per share and holds all 1,000 shares of X's voting common stock. P has the right to put all the preferred stock to X at any time for $900,000. P transfers the common stock to P's child and immediately thereafter holds the preferred stock. Assume that at the time of the transfer, the fair market value of X is $1,500,000, and the fair market value of P's annual cumulative dividend right is $1,000,000. Because the preferred stock confers both an extraordinary payment right (the put right) and a qualified payment right (*i.e.*, the right to receive cumulative dividends), the lower of rule applies and the value of these rights is determined as if the put right will be exercised in a manner that results in the lowest total value being determined for the rights (in this case, by assuming that the put will be exercised immediately). The value of P's preferred stock is $900,000 (the lower of $1,000,000 or $900,000). The amount of the gift is $600,000 ($1,500,000 minus $900,000).

(b) *Definitions*—(1) *Applicable retained interest.* An applicable retained interest is any equity interest in a corporation or partnership with respect to which there is either—

(i) An extraordinary payment right (as defined in paragraph (b)(2) of this section), or

(ii) In the case of a controlled entity (as defined in paragraph (b)(5) of this section), a distribution right (as defined in paragraph (b)(3) of this section).

(2) *Extraordinary payment right.* Except as provided in paragraph (b)(4) of this section, an extraordinary payment right is any put, call, or conversion right, any right to compel liquidation, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest. A call right includes any warrant, option, or other right to acquire one or more equity interests.

(3) *Distribution right.* A distribution right is the right to receive distributions with respect to an equity interest. A distribution right does not include—

(i) Any right to receive distributions with respect to an interest that is of the same class as, or a class that is subordinate to, the transferred interest;

(ii) Any extraordinary payment right; or

(iii) Any right described in paragraph (b)(4) of this section.

(4) *Rights that are not extraordinary payment rights or distribution rights.* Mandatory payment rights, liquidation participation rights, rights to guaranteed payments of a fixed amount under section 707(c), and non-lapsing conversion rights are neither extraordinary payment rights nor distribution rights.

(i) *Mandatory payment right.* A mandatory payment right is a right to receive a payment required to be made at a specific time for a specific amount. For example, a mandatory redemption right in preferred stock requiring that the stock be redeemed at its fixed par value on a date certain is a mandatory payment right and therefore not an

extraordinary payment right or a distribution right. A right to receive a specific amount on the death of the holder is a mandatory payment right.

(ii) *Liquidation participation rights.* A liquidation participation right is a right to participate in a liquidating distribution. If the transferor, members of the transferor's family, or applicable family members have the ability to compel liquidation, the liquidation participation right is valued as if the ability to compel liquidation—

(A) Did not exist, or

(B) If the lower of rule applies, is exercised in a manner that is consistent with that rule.

(iii) *Right to a guaranteed payment of a fixed amount under section 707(c).* The right to a guaranteed payment of a fixed amount under section 707(c) is the right to a guaranteed payment (within the meaning of section 707(c)) the amount of which is determined at a fixed rate (including a rate that bears a fixed relationship to a specified market interest rate). A payment that is contingent as to time or amount is not a guaranteed payment of a fixed amount.

(iv) *Non-lapsing conversion right*—(A) *Corporations.* A non-lapsing conversion right, in the case of a corporation, is a non-lapsing right to convert an equity interest in a corporation into a fixed number or a fixed percentage of shares of the same class as the transferred interest (or into an interest that would be of the same class but for non-lapsing differences in voting rights), that is subject to proportionate adjustments for changes in the equity ownership of the corporation and to adjustments similar to those provided in section 2701(d) for unpaid payments.

(B) *Partnerships.* A non-lapsing conversion right, in the case of a partnership, is a non-lapsing right to convert an equity interest in a partnership into a specified interest (other than an interest represented by a fixed dollar amount) of the same class as the transferred interest (or into an interest that would be of the same class but for non-lapsing differences in management rights or limitations on liability) that is subject to proportionate adjustments for changes in the equity ownership of the partnership and to adjustments similar to those provided in section 2701(d) for unpaid payments.

(C) *Proportionate adjustments in equity ownership.* For purposes of this paragraph (b)(4), an equity interest is subject to proportionate adjustments for changes in equity ownership if, in the case of a corporation, proportionate adjustments are required to be made for splits, combinations, reclassifications, and similar changes in capital stock, or, in the case of a partnership, the equity interest is protected from dilution resulting from changes in the partnership structure.

(D) *Adjustments for unpaid payments.* For purposes of this paragraph (b)(4), an equity interest is subject to adjustments similar to those provided in section 2701(d) if it provides for—

(*1*) Cumulative payments;

(*2*) Compounding of any unpaid payments at the rate specified in § 25.2701–4(c)(2); and

(*3*) Adjustment of the number or percentage of shares or the size of the interest into which it is convertible to take account of accumulated but unpaid payments.

(5) *Controlled entity*—(i) *In general.* For purposes of section 2701, a controlled entity is a corporation or partnership controlled, immediately before a transfer, by the transferor, applicable family members, and any lineal descendants of the parents of the transferor or the transferor's spouse. See § 25.2701–6 regarding indirect holding of interests.

(ii) *Corporations*—(A) *In general.* In the case of a corporation, control means the holding of at least 50 percent of the total voting power or total fair market value of the equity interests in the corporation.

(B) *Voting rights.* Equity interests that carry no right to vote other than on liquidation, merger, or a similar event are not considered to have voting rights for purposes of this paragraph (b)(5)(ii). Generally, a voting right is considered held by an individual to the extent that the individual, either alone or in conjunction with any other person, is entitled to exercise (or direct the exercise of) the right. However, if an equity interest carrying voting rights is held in a fiduciary capacity, the voting rights are not considered held by the fiduciary, but instead are considered held by each beneficial owner of the interest and by each individual who is a permissible recipient of the income from the interest. A voting right does not include a right to vote that is subject to a contingency that has not occurred, other than a contingency that is within the control of the individual holding the right.

(iii) *Partnerships.* In the case of any partnership, control means the holding of at least 50 percent of either the capital interest or the profits interest in the partnership. Any right to a guaranteed payment under section 707(c) of a fixed amount is disregarded in making this determination. In addition, in the case of a limited partnership, control means the holding of any equity interest as a general partner. See § 25.2701–2(b)(4)(iii) for the definition of a right to a guaranteed payment of a fixed amount under section 707(c).

(6) *Qualified payment right*—(i) *In general.* A qualified payment right is a right to receive qualified payments. A qualified payment is a distribution that is—

(A) A dividend payable on a periodic basis (at least annually) under any cumulative preferred stock, to the extent such dividend is determined at a fixed rate;

(B) Any other cumulative distribution payable on a periodic basis (at least annually) with respect to an equity interest, to the extent determined at a fixed rate or as a fixed amount; or

(C) Any distribution right for which an election has been made pursuant to paragraph (c)(2) of this section.

(ii) *Fixed rate.* For purposes of this section, a payment rate that bears a fixed relationship to a specified market interest rate is a payment determined at a fixed rate.

(c) *Qualified payment elections*—(1) *Election to treat a qualified payment right as other than a qualified payment right.* Any transferor holding a qualified payment right may elect to treat all rights held by the transferor of the same class as rights that are not qualified payment rights. An election may be a partial election, in which case the election must be exercised with respect to a consistent portion of each payment right in the class as to which the election has been made.

(2) *Election to treat other distribution rights as qualified payment rights.* Any individual may elect to treat a distribution right held by that individual in a controlled entity as a qualified payment right. An election may be a partial election, in which case the election must be exercised with respect to a consistent portion of each payment right in the class as to which the election has been made. An election under this paragraph (c)(2) will not cause the value of the applicable retained interest conferring the distribution right to exceed the fair market value of the applicable retained interest (determined without regard to section 2701). The election is effective only to the extent—

(i) Specified in the election, and

(ii) That the payments elected are permissible under the legal instrument giving rise to the right and are consistent with the legal right of the entity to make the payment.

(3) *Elections irrevocable.* Any election under paragraph (c)(1) or (c)(2) of this section is revocable only with the consent of the Commissioner.

(4) *Treatment of certain payments to applicable family members.* Any payment right described in paragraph (b)(6) of this section held by an applicable family member is treated as a payment right that is not a qualified payment right unless the applicable family member elects (pursuant to paragraph (c)(2) of this section) to treat the payment right as a qualified payment right. An election may be a partial election, in which case the election must be exercised with respect to a consistent portion of each payment right in the class as to which the election has been made.

(5) *Time and manner of elections.* Any election under paragraph (c)(1) or (c)(2) of this section is made by attaching a statement to the Form 709, Federal Gift Tax Return, filed by the transferor on which the transfer is reported. An election filed after the time of the filing of the Form 709 reporting the transfer is not a valid election. An election filed as of April 6, 1992, for transfers made prior to its publication is effective. The statement must—

(i) Set forth the name, address, and taxpayer identification number of the electing individual and of the transferor, if different;

(ii) If the electing individual is not the transferor filing the return, state the relationship between the individual and the transferor;

(iii) Specifically identify the transfer disclosed on the return to which the election applies;

(iv) Describe in detail the distribution right to which the election applies;

(v) State the provision of the regulation under which the election is being made; and

(vi) If the election is being made under paragraph (c)(2) of this section—

(A) State the amounts that the election assumes will be paid, and the times that the election assumes the payments will be made;

(B) Contain a statement, signed by the electing individual, in which the electing individual agrees that—

(*1*) If payments are not made as provided in the election, the individual's subsequent taxable gifts or taxable estate will, upon the occurrence of a taxable event (as defined in § 25.2701-4(b)), be increased by an amount determined under § 25.2701-4(c), and

(*2*) The individual will be personally liable for any increase in tax attributable thereto.

(d) *Examples.* The following examples illustrate provisions of this section:

Example 1. On March 30, 1991, P transfers non-voting common stock of X Corporation to P's child, while retaining $100 par value voting preferred stock bearing a cumulative annual dividend of $10. Immediately before the transfer, P held 100 percent of the stock. Because X is a controlled entity (within the meaning of paragraph (b)(5) of this section), P's dividend right is a distribution right that is subject to section 2701. See § 25.2701-2(b)(3). Because the distribution right is an annual cumulative dividend, it is a qualified payment right. See § 25.2701-2(b)(6).

Example 2. The facts are the same as in *Example 1*, except that the dividend right is non-cumulative. P's dividend right is a distribution right in a controlled entity, but is not a qualified payment right because the dividend is non-cumulative. Therefore, the non-cumulative dividend right is valued at zero under § 25.2701-2(a)(2). If the corporation were not a controlled entity, P's dividend right would be valued without regard to section 2701.

Example 3. The facts are the same as in *Example 1.* Because P holds sufficient voting power to compel liquidation of X, P's right to participate in liquidation is an extraordinary payment right under paragraph (b)(2) of this section. Because P holds an extraordinary payment right in conjunction with a qualified payment right (the right to receive cumulative dividends), the lower of rule applies.

Example 4. The facts are the same as in *Example 1*, except that immediately before the transfer, P, applicable family members of P, and members of P's family, hold 60 percent of the voting rights in X. Assume that 80 percent of the vote is required to compel liquidation of any interest in X. P's right to participate in liquidation is not an extraordinary payment right under paragraph (b)(2) of this section, because P and P's family cannot compel liquidation of X. P's preferred stock is an applicable retained interest that carries no rights that are valued under the special valuation rules of section 2701. Thus, in applying the valuation method of § 25.2701-3, the value of P's preferred stock is its fair market value determined without regard to section 2701.

Example 5. L holds 10-percent non-cumulative preferred stock and common stock in a corporation that is a controlled entity. L transfers the common stock to L's child. L holds no extraordinary payment rights with respect to the preferred stock. L elects under paragraph (c)(2) of this section to treat the noncumulative dividend right as a qualified payment right consisting of the right to receive a cumulative annual dividend of 5 percent. Under § 25.2701-2(c)(2), the value of the distribution right pursuant to the election is the lesser of—

(A) The fair market value of the right to receive a cumulative 5-percent dividend from the corporation, giving due regard to the corporation's net worth, prospective earning power, and dividend-paying capacity; or

(B) The value of the distribution right determined without regard to section 2701 and without regard to the terms of the qualified payment election.

§ 25.2701-3 Determination of amount of gift.

(a) *Overview*—(1) *In general.* The amount of the gift resulting from any transfer to which section 2701 applies is determined by a subtraction method of valuation. Under this method, the amount of the transfer is determined by subtracting the values of all family-held senior equity interests from the fair market value of all family-held interests in the entity determined immediately before the transfer. The values of the senior equity interests held by the transferor and applicable family members generally are determined under section 2701. Other family-held senior equity interests are valued at their fair market value. The balance is then appropriately allocated among the transferred interests and other family-held subordinate equity interests. Finally, certain discounts and other appropriate reductions are provided, but only to the extent permitted by this section.

(2) *Definitions.* The following definitions apply for purposes of this section.

(i) *Family-held.* Family-held means held (directly or indirectly) by an individual described in § 25.2701-2(b)(5)(i).

(ii) *Senior equity interest.* Senior equity interest means an equity interest in the entity that carries a right to distributions of income or capital that is preferred as to the rights of the transferred interest.

(iii) *Subordinate equity interest.* Subordinate equity interest means an equity interest in the entity as to which an applicable retained interest is a senior equity interest.

(b) *Valuation methodology.* The following methodology is used to determine the amount of the gift when section 2701 applies.

(1) *Step 1—Valuation of family-held interests.* Determine the fair market value of all family-held equity interests in the entity. The fair market value is determined by assuming that the interests are held by one individual, using a consistent set of assumptions.

(2) *Step 2—Subtract the value of senior equity interests.* From the value determined in Step 1, subtract the following amounts:

(i) An amount equal to the fair market value of all family-held senior equity interests, other than applicable retained interests held by the transferor or applicable family members. The fair market value of an interest is its pro rata share of the fair market value of all family-held senior equity interests of the same class (determined as if all family-held senior equity interests were held by one individual); and

(ii) The value of all applicable retained interests held by the transferor or applicable family members determined under § 25.2701-2, taking

into account the adjustment described in paragraph (b)(5) of this section.

(3) *Step 3—Allocate the remaining value among the transferred interests and other family-held subordinate equity interests.* The value remaining after Step 2 is allocated among the transferred interests and other family-held subordinate equity interests. If more than one class of family-held subordinate equity interest exists, the value remaining after Step 2 is allocated, beginning with the most senior class of subordinate equity interest, in the manner that would most fairly approximate their value if all rights valued under section 2701 at zero did not exist (or would be exercised in a manner consistent with the assumptions of the rule of § 25.2702-2(a)(4), if applicable). If there is no clearly appropriate method of allocating the remaining value pursuant to the preceding sentence, the remaining value (or the portion remaining after any partial allocation pursuant to the preceding sentence) is allocated to the interests in proportion to their fair market values determined without regard to section 2701.

(4) *Step 4—Determine the amount of the gift*—(i) *In general.* The amount allocated to the transferred interests in Step 3 is reduced by the amounts determined under this paragraph (b)(4).

(ii) *Reduction for minority or similar discounts.* Except as provided in § 25.2701-3(c), if the value of the transferred interest (determined without regard to section 2701) would be determined after application of a minority or similar discount with respect to the transferred interest, the amount of the gift determined under section 2701 is reduced by the excess, if any, of—

(A) A pro rata portion of the fair market value of the family-held interests of the same class (determined as if all voting rights conferred by family-held equity interests were held by one person who had no other interest in the entity, but otherwise without regard to section 2701), over

(B) The value of the transferred interest (without regard to section 2701).

(iii) *Adjustment for transfers with a retained interest.* If the value of the transferor's gift (determined without regard to section 2701) would be reduced under section 2702 to reflect the value of a retained interest, the value determined under section 2701 is reduced by the same amount.

(iv) *Reduction for consideration.* The amount of the transfer (determined under section 2701) is reduced by the amount of consideration in money or money's worth received by the transferor, but not in excess of the amount of the gift (determined without regard to section 2701). The value of consideration received by the transferor in the form of an applicable retained interest in the entity is determined under section 2701.

(5) *Adjustment in Step 2*—(i) *In general.* For purposes of paragraph (b)(2) of this section, if the percentage of any class of applicable retained interest held by the transferor and by applicable family members exceeds the family interest percentage, the excess is treated as a family-held interest that is not held by the transferor or an applicable family member.

(ii) *Family interest percentage.* The family interest percentage is the highest ownership percentage (determined on the basis of relative fair market values) of family-held interests in—

(A) Any class of subordinate equity interest; or

(B) All subordinate equity interests, valued in the aggregate.

(c) *Minimum value rule*—(1) *In general.* If section 2701 applies to the transfer of an interest in an entity, the value of a junior equity interest is not less than its pro-rata portion of 10 percent of the sum of—

(i) The total value of all equity interests in the entity, and

(ii) The total amount of any indebtedness of the entity owed to the transferor and applicable family members.

(2) *Junior equity interest.* For purposes of paragraph (c)(1) of this section, junior equity interest means common stock or, in the case of a partnership, any partnership interest under which the rights to income and capital are junior to the rights of all other classes of partnership interests. Common stock means the class or classes of stock that, under the facts and circumstances, are entitled to share in the reasonably anticipated residual growth in the entity.

(3) *Indebtedness*—(i) *In general.* For purposes of paragraph (c)(1) of this section, indebtedness owed to the transferor (or an applicable family member) does not include—

(A) Short-term indebtedness incurred with respect to the current conduct of the entity's trade or business (such as amounts payable for current services);

(B) Indebtedness owed to a third party solely because it is guaranteed by the transferor or an applicable family member; or

(C) Amounts permanently set aside in a qualified deferred compensation arrangement, to the extent the amounts are unavailable for use by the entity.

(ii) *Leases.* A lease of property is not indebtedness, without regard to the length of the lease term, if the lease payments represent full and adequate consideration for use of the property. Lease payments are considered full and adequate consideration if a good faith effort is made to determine the fair rental value under the lease and the terms of the lease conform to the value so determined. Arrearages with respect to a lease are indebtedness.

(d) *Examples.* The application of the subtraction method described in this section is illustrated by the following Examples:

Example 1. Corporation X has outstanding 1,000 shares of $1,000 par value voting preferred stock, each share of which carries a cumulative annual dividend of 8 percent and a right to put the stock to X for its par value at any time. In addition, there are outstanding 1,000 shares of non-voting common stock. A holds 600 shares of the preferred stock and 750 shares of the common stock. The balance of the preferred and common stock is held by B, a person unrelated to A. Because the preferred stock confers both a qualified payment right and an extraordinary payment right, A's rights are valued under the "lower of" rule of § 25.2701-2(a)(3). Assume that A's rights in the preferred stock are valued at $800 per share under the "lower of" rule (taking account of A's voting rights). A transfers all of A's common stock to A's child. The method for determining the amount of A's gift is as follows—

Step 1: Assume the fair market value of all the family-held interests in X, taking account of A's control of the corporation, is determined to be $1 million.

Step 2: From the amount determined under Step 1, subtract $480,000 (600 shares × $800 (the section 2701 value of A's preferred stock, computed under the "lower of" rule of § 25.2701-2(a)(3))).

Step 3: The result of Step 2 is a balance of $520,000. This amount is fully allocated to the 750 shares of family-held common stock.

Step 4: No adjustment is made under Step 4 because no consideration was furnished for the transfer and because no minority or similar discount is appropriate. Thus, the amount of A's gift is $520,000.

Example 2. The facts are the same as in *Example 1*, except that prior to the transfer A holds only 50 percent of the common stock and B holds the remaining 50 percent. Assume that the fair market value of A's 600 shares of preferred stock is $600,000.

Step 1: Assume that the result of this step (determining the value of the family-held interest) is $980,000.

Step 2: From the amount determined under Step 1, subtract $500,000 ($400,000, the fair market value of 500 shares of A's preferred stock determined under section 2701 plus $100,000, the fair market value of A's other 100 shares of preferred stock determined without regard to section 2701 pursuant to the valuation adjustment determined under paragraph (b)(5) of this section). The adjustment in step 2 applies in this example because A's percentage ownership of the preferred stock (60 percent) exceeds the family interest percentage of the common

stock (50 percent). Therefore, 100 shares of A's preferred stock are valued at fair market value, or $100,000 (100 × $1,000). The balance of A's preferred stock is valued under section 2701 at $400,000 (500 shares × $800). The value of A's preferred stock for purposes of section 2701 equals $500,000 ($100,000 plus $400,000).

Step 3: The result of Step 2 is $480,000 ($980,000 minus $500,000) which is allocated to the family-held common stock. Because A transferred all of the family-held subordinate equity interests, all of the value determined under Step 2 is allocated to the transferred shares.

Step 4: No adjustment is made under Step 4 for the same reasons set forth in *Example 1*. Thus, the amount of the gift is $480,000.

Example 3. Corporation X has outstanding 1,000 shares of $1,000 par value non-voting preferred stock, each share of which carries a cumulative annual dividend of 8 percent and a right to put the stock to X for its par value at any time. In addition, there are outstanding 1,000 shares of voting common stock. A holds 600 shares of the preferred stock and 750 shares of the common stock. The balance of the preferred and common stock is held by B, a person unrelated to A. Assume further that steps one through three, as in *Example 1*, result in $520,000 being allocated to the family-held common stock and that A transfers only 75 shares of A's common stock. The transfer fragments A's voting interest. Under Step 4, an adjustment is appropriate to reflect the fragmentation of A's voting rights. The amount of the adjustment is the difference between 10 percent (75/750) of the fair market value of A's common shares and the fair market value of the transferred shares, each determined as if the holder thereof had no other interest in the corporation.

Example 4. On December 31, 1990, the capital structure of Y corporation consists of 1,000 shares of voting common stock held three-fourths by A and one-fourth by A's child, B. On January 15, 1991, A transfers 250 shares of common stock to Y in exchange for 300 shares of nonvoting, noncumulative 8% preferred stock with a section 2701 value of zero. Assume that the fair market value of Y is $1,000,000 at the time of the exchange and that the exchange by A is for full and adequate consideration in moneys' worth. However, for purposes of section 2701, if a subordinate equity interest is transferred in exchange for an applicable retained interest, consideration in the exchange is determined with reference to the section 2701 value of the senior interest. Thus, A is treated as transferring the common stock to the corporation for no consideration. Immediately after the transfer, B is treated as holding one-third (250/750) of the common stock and A is treated as holding two-thirds (500/750). The amount of the gift is determined as follows:

Step 1. Because Y is held exclusively by A and B, the Step 1 value is $1,000,000.

Step 2. The result of Step 2 is $1,000,000 ($1,000,000 − 0).

Step 3. The amount allocated to the common stock is $250,000 (250/1,000 × $1,000,000). That amount is further allocated in proportion to the respective holdings of A and B in the common stock ($166,667 and $83,333, respectively).

Step 4. There is no Step 4 adjustment because the section 2701 value of the consideration received by A was zero and no minority discount would have been involved in the exchange. Thus, the amount of the gift is the difference between $83,333 and the fair market value of B's shares immediately prior to the transfer to which section 2701 applied.

Example 5. The facts are the same as in *Example 4*, except that on January 6, 1992, when the fair market value of Y is still $1,000,000, A transfers A's remaining 500 shares of common stock to Y in exchange for 2500 shares of preferred stock. The second transfer is also for full and adequate consideration in money or money's worth. The result of Step 2 is the same—$1,000,000.

Step 3. The amount allocated to the common stock is $666,667 (500/750 × $1,000,000). Since A holds no common stock immediately after the transfer, A is treated as transferring the entire interest to the other shareholder (B). Thus, $666,667 is fully allocated to the shares held by B.

Step 4. There is no Step 4 adjustment because the section 2701 value of the consideration received by A was zero and no minority discount would have been involved in the exchange. Thus, the amount of the gift is the difference between $666,667 and the fair market value of B's shares immediately prior to the transfer to which section 2701 applied.

§ 25.2701-4 Accumulated qualified payments.

(a) *In general.* If a taxable event occurs with respect to any applicable retained interest conferring a distribution right that was previously valued as a qualified payment right (a "qualified payment interest"), the taxable estate or taxable gifts of the individual holding the interest are increased by the amount determined under paragraph (c) of this section.

(b) *Taxable event*—(1) *In general.* Except as otherwise provided in this section, taxable event means the transfer of a qualified payment interest, either during life or at death, by the individual in whose hands the interest was originally valued under section 2701 (the "interest holder") or by any individual treated pursuant to paragraph (b)(3) of this section in the same manner as the interest holder. Except as provided in paragraph (a)(2) of this section, any termination of an individual's rights with respect to a qualified payment interest is a taxable event. Thus, for example, if an individual is treated as indirectly holding a qualified payment interest held by a trust, a taxable event occurs on the earlier of—

(i) The termination of the individual's interest in the trust (whether by death or otherwise), or

(ii) The termination of the trust's interest in the qualified payment interest (whether by disposition or otherwise).

(2) *Exception.* If, at the time of a termination of an individual's rights with respect to a qualified payment interest, the value of the property would be includible in the individual's gross estate for Federal estate tax purposes if the individual died immediately after the termination, a taxable transfer does not occur until the earlier of—

(i) The time the property would no longer be includible in the individual's gross estate (other than by reason of section 2035), or

(ii) The death of the individual.

(3) *Individual treated as interest holder*—(i) *In general.* If a taxable event involves the transfer of a qualified payment interest by the interest holder (or an individual treated as the interest holder) to an applicable family member of the individual who made the transfer to which section 2701 applied (other than the spouse of the individual transferring the qualified payment interest), the transferee applicable family member is treated in the same manner as the interest holder with respect to late or unpaid qualified payments first due after the taxable event. Thus, for example, if an interest holder transfers during life a qualified payment interest to an applicable family member, that transfer is a taxable event with respect to the interest holder whose taxable gifts are increased for the year of the transfer as provided in paragraph (c) of this section. The transferee is treated thereafter in the same manner as the interest holder with respect to late or unpaid qualified payments first due after the taxable event.

(ii) *Transfers to spouse*—(A) *In general.* If an interest holder (or an individual treated as the interest holder) transfers a qualified payment interest, the transfer is not a taxable event to the extent a marital deduction is allowed with respect to the transfer under sections 2056, 2106(a)(3), or 2523 or, in the case of a transfer during the individual's lifetime, to the extent the spouse furnishes consideration for the transfer. If this exception applies, the transferee spouse is treated as if he or she were the holder of the interest from the date the transferor spouse acquired the interest. If the deduction for a transfer to a spouse is allowable under section 2056(b)(8) or 2523(g) (relating to charitable remainder trusts), the transferee spouse is treated as the holder of the entire interest passing to the trust.

(B) *Marital bequests.* If the selection of property with which a marital bequest is funded is discretionary, a transfer of a qualified payment interest will not be considered a transfer to the surviving spouse unless—

(*1*) The marital bequest is funded with the qualified payment interest before the due date for filing the decedent's Federal estate tax return (including extensions actually granted) (the "due date"), or

(*2*) The executor—

(*i*) Files a statement with the return indicating the extent to which the marital bequest will be funded with the qualified payment interest, and

(*ii*) Before the date that is one year prior to the expiration of the period of limitations on assessment of the Federal estate tax, notifies the District Director having jurisdiction over the return of the extent to which the bequest was funded with the qualified payment interest (or the extent to which the qualified payment interest has been permanently set aside for that purpose).

(C) *Purchase by the surviving spouse.* For purposes of this section, the purchase (before the date prescribed for filing the decedent's estate tax return, including extensions actually granted) by the surviving spouse (or a trust described in section 2056(b)(7)) of a qualified payment interest held (directly or indirectly) by the decedent immediately before death is considered a transfer with respect to which a deduction is allowable under section 2056 or section 2106(a)(3), but only to the extent that the deduction is allowed to the estate. For example, assume that A bequeaths $50,000 to A's surviving spouse, B, in a manner that qualifies for deduction under section 2056, and that subsequent to A's death B purchases a qualified payment interest from A's estate for $200,000, its fair market value. The economic effect of the transaction is the equivalent of a bequest by A to B of the qualified payment interest, one-fourth of which qualifies for the marital deduction. Therefore, for purposes of this section, one-fourth of the qualified payment interest purchased by B ($50,000 ÷ $200,000) is considered a transfer of an interest with respect to which a deduction is allowed under 2056. If the purchase by the surviving spouse is not made before the due date of the decedent's return, the purchase of the qualified payment interest will not be considered a bequest for which a marital deduction is allowed unless the executor—

(*1*) Files a statement with the return indicating the qualified payment interests to be purchased by the surviving spouse (or a trust described in section 2056(b)(7)), and

(*2*) Before the date that is one year prior to the expiration of the period of limitations on assessment of the Federal estate tax, notifies the District Director having jurisdiction over the return that the purchase of the qualified payment interest has been made (or that the funds necessary to purchase the qualified payment interest have been permanently set aside for that purpose).

(c) *Amount of increase*—(1) *In general.* Except as limited by paragraph (c)(6) of this section, the amount of the increase to an individual's taxable estate or taxable gifts is the excess, if any, of—

(i) The sum of—

(A) The amount of qualified payments payable during the period beginning on the date of the transfer to which section 2701 applied (or, in the case of an individual treated as the interest holder, on the date the interest of the prior interest holder terminated) and ending on the date of the taxable event; and

(B) The earnings on those payments, determined hypothetically as if each payment were paid on its due date and reinvested as of that date at a yield equal to the appropriate discount rate (as defined below); over

(ii) The sum of—

(A) The amount of the qualified payments actually paid during the same period;

(B) The earnings on those payments, determined hypothetically as if each payment were reinvested as of the date actually paid at a yield equal to the appropriate discount rate; and

(C) To the extent required to prevent double inclusion, by an amount equal to the sum of—

(*1*) The portion of the fair market value of the qualified payment interest solely attributable to any right to receive unpaid qualified payments determined as of the date of the taxable event;

(*2*) The fair market value of any equity interest in the entity received by the individual in lieu of qualified payments and held by the individual at the taxable event, and

(*3*) The amount by which the individual's aggregate taxable gifts were increased by reason of the failure of the individual to enforce the right to receive qualified payments.

(2) *Due date of qualified payments.* With respect to any qualified payment, the "due date" is that date specified in the governing instrument as the date on which payment is to be made. If no date is specified in the governing instrument, the due date is the last day of each calendar year.

(3) *Appropriate discount rate.* The appropriate discount rate is the discount rate that was applied in determining the value of the qualified payment right at the time of the transfer to which section 2701 applied.

(4) *Application of payments.* For purposes of this section, any payment of an unpaid qualified payment is applied in satisfaction of unpaid qualified payments beginning with the earliest unpaid qualified payment. Any payment in excess of the total of all unpaid qualified payments is treated as a prepayment of future qualified payments.

(5) *Payment.* For purposes of this paragraph (c), the transfer of a debt obligation bearing compound interest from the due date of the payment at a rate not less than the appropriate discount rate is a qualified payment if the term of the obligation (including extensions) does not exceed four years from the date issued. A payment in the form of an equity interest in the entity is not a qualified payment. Any payment of a qualified payment made (or treated as made) either before or during the four-year period beginning on the due date of the payment but before the date of the taxable event is treated as having been made on the due date.

(6) *Limitation*—(i) *In general.* The amount of the increase to an individual's taxable estate or taxable gifts is limited to the applicable percentage of the excess, if any, of—

(A) The sum of—

(*1*) The fair market value of all outstanding equity interests in the entity that are subordinate to the applicable retained interest, determined as of the date of the taxable event without regard to any accrued liability attributable to unpaid qualified payments; and

(*2*) Any amounts expended by the entity to redeem or otherwise acquire any such subordinate interest during the period beginning on the date of the transfer to which section 2701 applied (or, in the case of an individual treated as an interest holder, on the date the interest of the prior interest holder terminated) and ending on the date of the taxable event (reduced by any amounts received on the resale or issuance of any such subordinate interest during the same period); over

(B) The fair market value of all outstanding equity interests in the entity that are subordinate to the applicable retained interest, determined as of the date of the transfer to which section 2701 applied (or, in the case of an individual treated as an interest holder, on the date the interest of the prior interest holder terminated).

(ii) *Computation of limitation.* For purposes of computing the limitation applicable under this paragraph (c)(6), the aggregate fair market value of the subordinate interests in the entity are determined without regard to § 25.2701-3(c).

(iii) *Applicable percentage.* The applicable percentage is determined by dividing the number of shares or units of the applicable retained interest held by the interest holder (or an individual treated as the interest holder) on the date of the taxable event by the total number of such shares or units outstanding on the same date. If an individual holds applicable retained interests in two or more classes of interests, the applicable percentage is equal to the largest applicable percentage determined with respect to any class. For example, if T retains 40 percent of the class A preferred and 60 percent of the class B preferred in a corporation, the applicable percentage with respect to T's holdings is 60 percent.

(d) *Taxpayer election*—(1) *In general.* An interest holder (or individual treated as an interest holder) may elect to treat as a taxable event the payment of an unpaid qualified payment occurring more than four years after its due date. Under this election, the increase under paragraph (c) of this section is determined only with respect to that payment and all previous payments for which an election was available but not made. Payments for which an election applies are treated as having been paid on their due dates for purposes of subsequent taxable events. The election is revocable only with the consent of the Commissioner.

(2) *Limitation not applicable.* If a taxable event occurs by reason of an election described in paragraph (d)(1) of this section, the limitation described in paragraph (c)(6) of this section does not apply.

(3) *Time and manner of election*—(i) *Timely-filed returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the date the qualified payment is received.

(ii) *Election on late returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment other than on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the first day of the month immediately preceding the month in which the return is filed. If an election, other than an election on a timely return, is made after the death of the interest holder, the taxable event with respect to the decedent is deemed to occur on the later of—

(A) The date of the recipient's death, or

(B) The first day of the month immediately preceding the month in which the return is filed.

(iii) *Requirements of statement.* The statement must—

(A) Provide the name, address, and taxpayer identification number of the electing individual and the interest holder, if different;

(B) Indicate that a taxable event election is being made under paragraph (d) of this section;

(C) Disclose the nature of the qualified payment right to which the election applies, including the due dates of the payments, the dates the payments were made, and the amounts of the payments;

(D) State the name of the transferor, the date of the transfer to which section 2701 applied, and the discount rate used in valuing the qualified payment right; and

(E) State the resulting amount of increase in taxable gifts.

(4) *Example.* The following example illustrates the rules of this paragraph (d).

Example. A holds cumulative preferred stock that A retained in a transfer to which section 2701 applied. No dividends were paid in years 1 through 5 following the transfer. In year 6, A received a qualified payment that, pursuant to paragraph (c)(3) of this section, is considered to be in satisfaction of the unpaid qualified payment for year 1. No election was made to treat that payment as a taxable event. In year 7, A receives a qualified payment that, pursuant to paragraph (c)(4) of this section, is considered to be in satisfaction of the unpaid qualified payment for year 2. A elects to treat the payment in year 7 as a taxable event. The election increases A's taxable gifts in year 7 by the amount computed under paragraph (c) of this section with respect to the payments due in both year 1 and year 2. For purposes of any future taxable events, the payments with respect to years 1 and 2 are treated as having been made on their due dates.

§ 25.2701-5 Adjustments to mitigate double taxation. [Reserved]

§ 25.2701-6 Indirect holding of interests.

(a) *In general*—(1) *Attribution to individuals.* For purposes of section 2701, an individual is treated as holding an equity interest to the extent the interest is held indirectly through a corporation, partnership, estate, trust, or other entity. If an equity interest is treated as held by a particular individual in more than one capacity, the interest is treated as held by the individual in the manner that attributes the largest total ownership of the equity interest. An equity interest held by a lower-tier entity is attributed to higher-tier entities in accordance with the rules of this section. For example, if an individual is a 50-percent beneficiary of a trust that holds 50 percent of the preferred stock of a corporation, 25 percent of the preferred stock is considered held by the individual under these rules.

(2) *Corporations.* A person is considered to hold an equity interest held by or for a corporation in the proportion that the fair market value of the stock the person holds bears to the fair market value of all the stock in the corporation (determined as if each class of stock were held separately by one individual). This paragraph applies to any entity classified as a corporation or as an association taxable as a corporation for federal income tax purposes.

(3) *Partnerships.* A person is considered to hold an equity interest held by or for a partnership in the proportion that the fair market value of the larger of the person's profits interest or capital interest in the partnership bears to the total fair market value of the corresponding profits interests or capital interests in the partnership, as the case may be (determined as if each class were held by one individual). This paragraph applies to any entity classified as a partnership for federal income tax purposes.

(4) *Estates, trusts and other entities*—(i) *In general.* A person is considered to hold an equity interest held by or for an estate or trust to the extent the person's beneficial interest therein may be satisfied by the equity interest held by the estate or trust, or the income or proceeds thereof, assuming the maximum exercise of discretion in favor of the person. A beneficiary of an estate or trust who cannot receive any distribution with respect to an equity interest held by the estate or trust, including the income therefrom or the proceeds from the disposition thereof, is not considered the holder of the equity interest. Thus, if stock held by a decedent's estate has been specifically bequeathed to one beneficiary and the residue of the estate has been bequeathed to other beneficiaries, the stock is considered held only by the beneficiary to whom it was specifically bequeathed. However, any person who may receive distributions from a trust is considered to hold an equity interest held by the trust if the distributions may be made from current or accumulated

income from or the proceeds from the disposition of the equity interest, even though under the terms of the trust the interest can never be distributed to that person. This paragraph applies to any entity that is not classified as a corporation, an association taxable as a corporation, or a partnership for federal income tax purposes.

(ii) *Special rules*—(A) Property is held by a decedent's estate if the property is subject to claims against the estate and expenses of administration.

(B) A person holds a beneficial interest in a trust or an estate so long as the person may receive distributions from the trust or the estate other than payments for full and adequate consideration.

(C) An individual holds an equity interest held by or for a trust if the individual is considered an owner of the trust (a "grantor trust") under subpart E, part 1, subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners). However, if an individual is treated as the owner of only a fractional share of a grantor trust because there are multiple grantors, the individual holds each equity interest held by the trust, except to the extent that the fair market value of the interest exceeds the fair market value of the fractional share.

(5) *Multiple attribution*—(i) *Applicable retained interests.* If this section attributes an applicable retained interest to more than one individual in a class consisting of the transferor and one or more applicable family members, the interest is attributed within that class in the following order—

(A) If the interest is held in a grantor trust, to the individual treated as the holder thereof;

(B) To the transferor;

(C) To the transferor's spouse; or

(D) To each applicable family member on a pro rata basis.

(ii) *Subordinate equity interests.* If this section attributes a subordinate equity interest to more than one individual in a class consisting of the transferor, applicable family members, and members of the transferor's family, the interest is attributed within that class in the following order—

(A) To the transferee;

(B) To each member of the transferor's family on a pro rata basis;

(C) If the interest is held in a grantor trust, to the individual treated as the holder thereof;

(D) To the transferor;

(E) To the transferor's spouse; or

(F) To each applicable family member on a pro rata basis.

(b) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, an individual, holds 25 percent by value of each class of stock of Y Corporation. Persons unrelated to A hold the remaining stock. Y holds 50 percent of the stock of Corporation X. Under paragraph (a)(2) of this section, Y's interests in X are attributed proportionately to the shareholders of Y. Accordingly, A is considered to hold a 12.5 percent (25 percent × 50 percent) interest in X.

Example 2. Z Bank's authorized capital consists of 100 shares of common stock and 100 shares of preferred stock. A holds 60 shares of each (common and preferred) and A's child, B, holds 40 shares of common stock. Z holds the balance of its own preferred stock, 30 shares as part of a common trust fund it maintains and 10 shares permanently set aside to satisfy a deferred obligation. For purposes of section 2701, A holds 60 shares of common stock and 66 shares of preferred stock in Z, 60 shares of each class directly and 6 shares of preferred stock indirectly (60 percent of the 10 shares set aside to fund the deferred obligation).

Example 3. An irrevocable trust holds a 10-percent general partnership interest in Partnership Q. One-half of the trust income is required to be distributed to O Charity. The other one-half of the income is to be distributed to D during D's life and thereafter to E for such time as E survives D. D holds one-half of the trust's interest in Q by reason of D's present right to receive one-half of the trust's income, and E holds one-half of the trust's interest in Q by reason of E's future right to receive one-half of the trust's income. Nevertheless, no family member is treated as holding more than one-half of the trust's interest in Q because at no time will either D or E actually hold, in the aggregate, any right with respect to income or corpus greater than one-half.

Example 4. An irrevocable trust holds a 10-percent general partnership interest in partnership M. One-half of the trust income is to be paid to D for D's life. The remaining income may, in the trustee's discretion, be accumulated or paid to or for the benefit of a class that includes D's child F, in such amounts as the trustee determines. On the death of the survivor of D and F, the trust corpus is required to be distributed to O Charity. The trust's interest in M is held by the trust's beneficiaries to the extent that present and future income or corpus may be distributed to them. Accordingly, D holds one-half of the trust's interest in M because D is entitled to receive one-half of the trust income currently. F holds the entire value of the interest because F is a member of the class eligible to receive the entire trust income for such time as F survives D. See paragraph (a)(5) of this section for rules applicable in the case of multiple attribution.

Example 5. The facts are the same as in *Example 4*, except that all the income is required to be paid to O Charity for the trust's initial year. The result is the same as in *Example 4*.

§ 25.2701-7 Separate interests.

The Secretary may, by regulation, revenue ruling, notice, or other document of general application, prescribe rules under which an applicable retained interest is treated as two or more separate interests for purposes of section 2701. In addition, the Commissioner may, by ruling issued to a taxpayer upon request, treat any applicable retained interest as two or more separate interests as may be necessary and appropriate to carry out the purposes of section 2701.

§ 25.2701-8 Effective dates.

Sections 25.2701-1 through 25.2701-4 and §§ 25.2701-6 and 25.2701-7 are effective as of January 28, 1992. For transfers made prior to January 28, 1992, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

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§ 25.2702-1 Special valuation rules in the case of transfers of interests in trust.

(a) *Scope of section 2702.* Section 2702 provides special rules to determine the amount of the gift when an individual makes a transfer in trust to (or for the benefit of) a member of the individual's family and the individual or an applicable family member retains an interest in the trust. Section 25.2702-4 treats certain transfers of property as transfers in trust. Certain transfers, including transfers to a personal residence trust, are not subject to section 2702. See paragraph (c) of this section. Member of the family is defined in § 25.2702-2(a)(1). Applicable family member is defined in § 25.2701-1(d)(2).

(b) *Effect of section 2702.* If section 2702 applies to a transfer, the value of any interest in the trust retained by the transferor or any applicable family member is determined under § 25.2702-2(b). The amount of the gift, if any, is then determined by subtracting the value of the interests retained by the transferor or any applicable family member from the value of the transferred property. If the retained interest is not a qualified interest (as defined in § 25.2702-3), the retained interest is generally valued at zero, and the amount of the gift is the entire value of the property.

(c) *Exceptions to section 2702.* Section 2702 does not apply to the following transfers.

(1) *Incomplete gift.* A transfer no portion of which would be treated as a completed gift without regard to any consideration received by the transferor. If a transfer is wholly incomplete as to an undivided fractional share of the property transferred (without regard to any consideration received by the transferor), for purposes of this paragraph the transfer is treated as incomplete as to that share.

(2) *Personal residence trust.* A transfer in trust that meets the requirements of § 25.2702-5.

(3) *Charitable remainder trust.* A transfer in trust if the remainder interest in the trust qualifies for deduction under section 2522.

(4) *Pooled income fund.* A transfer of property to a pooled income fund (as defined in section 642(c)(5)).

(5) *Charitable lead trust.* A transfer in trust if the only interest in the trust, other than the remainder interest or a qualified annuity or unitrust interest, is an interest that qualifies for deduction under section 2522.

(6) *Certain assignments of remainder interests.* The assignment of a remainder interest if the only retained interest of the transferor or an applicable family member is as the permissible recipient of distributions of income in the sole discretion of an independent trustee (as defined in section 674(c)).

(7) *Certain property settlements.* A transfer in trust if the transfer of an interest to a spouse is deemed to be for full and adequate consideration by reason of section 2516 (relating to certain property settlements) and the remaining interests in the trust are retained by the other spouse.

§ 25.2702-2 Definitions and valuation rules.

(a) *Definitions.* The following definitions apply for purposes of section 2702 and the regulations thereunder.

(1) *Member of the family.* With respect to any individual, member of the family means the individual's spouse, any ancestor or lineal descendant of the individual or the individual's spouse, any brother or sister of the individual, and any spouse of the foregoing.

(2) *Transfer in trust.* A transfer in trust includes a transfer to a new or existing trust and an assignment of an interest in an existing trust. Transfer in trust does not include—

(i) The exercise, release or lapse of a power of appointment over trust property that is not a transfer under chapter 12; or

(ii) The execution of a qualified disclaimer (as defined in section 2518).

(3) *Retained.* Retained means held by the same individual both before and after the transfer in trust. In the case of the creation of a term interest, any interest in the property held by the transferor immediately after the transfer is treated as held both before and after the transfer.

(4) *Interest.* An interest in trust includes a power with respect to a trust if the existence of the power would cause any portion of a transfer to be treated as an incomplete gift under chapter 12.

(5) *Qualified interest.* Qualified interest means a qualified annuity interest, a qualified unitrust interest, or a qualified remainder interest. Retention of a power to revoke a qualified annuity interest (or unitrust interest) of the transferor's spouse is treated as the retention of a qualified annuity interest (or unitrust interest).

(6) *Qualified annuity interest.* Qualified annuity interest means an interest that meets all the requirements of § 25.2702-3(b) and (d).

(7) *Qualified unitrust interest.* Qualified unitrust interest means an interest that meets all the requirements of § 25.2702-3(c) and (d).

(8) *Qualified remainder interest.* Qualified remainder interest means an interest that meets all the requirements of § 25.2702-3(f).

(9) *Governing instrument.* Governing instrument means the instrument or instruments creating and governing the operation of the trust arrangement.

(b) *Valuation of retained interests*—(1) *In general.* Except as provided in paragraphs (b)(2) and (c) of this section, the value of any interest retained by the transferor or an applicable family member is zero.

(2) *Qualified interest.* The value of a qualified annuity interest and a qualified remainder interest following a qualified annuity interest are determined under section 7520. The value of a qualified unitrust interest and a qualified remainder interest following a qualified unitrust interest are determined as if they were interests described in section 664.

(c) *Valuation of a term interest in certain tangible property*—(1) *In general.* If section 2702 applies to a transfer in trust of tangible property described in paragraph (c)(2) of this section ("tangible property"), the value of a retained term interest (other than a qualified interest) is not determined under section 7520 but is the amount the transferor establishes as the amount a willing buyer would pay a willing seller for the interest, each having reasonable knowledge of the relevant facts and neither being under any compulsion to buy or sell. If the transferor cannot reasonably establish the value of the term interest pursuant to this paragraph (c)(1), the interest is valued at zero.

(2) *Tangible property subject to rule*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, paragraph (c)(1) of this section applies only to tangible property—

(A) For which no deduction for depreciation or depletion would be allowable if the property were used in a trade or business or held for the production of income; and

(B) As to which the failure to exercise any rights under the term interest would not increase the value of the property passing at the end of the term interest.

(ii) *Exception for de minimis amounts of depreciable property.* In determining whether property meets the requirements of this paragraph (c)(2) at the time of the transfer in trust, improvements that would otherwise cause the property not to qualify are ignored if the fair market value of the improvements, in the aggregate, do not exceed 5 percent of the fair market value of the entire property.

(3) *Evidence of value of property.* The best evidence of the value of any term interest to which this paragraph (c) applies is actual sales or rentals that are comparable both as to the nature and character of the property and the duration of the term interest. Little weight is accorded appraisals in the absence of such evidence. Amounts determined under section 7520 are not evidence of what a willing buyer would pay a willing seller for the interest.

(4) *Conversion of property*—(i) *In general.* Except as provided in paragraph (c)(4)(iii) of this section, if a term interest in property is valued under paragraph (c)(1) of this section, and during the term the property is converted into property a term interest in which would not qualify for valuation under paragraph (c)(1) of this section, the conversion is treated as a transfer for no consideration for purposes of chapter 12 of the value of the unexpired portion of the term interest.

(ii) *Value of unexpired portion of term interest.* For purposes of paragraph (c)(4)(i) of this section, the value of the unexpired portion of a term interest is the amount that bears the same relation to the value of the term interest as of the date of conversion (determined under section 7520 using the rate in effect under section 7520 on the date of the original transfer and the fair market value of the property as of the date of the original transfer) as the value of the term interest as of the date of the original transfer (determined under paragraph (c)(1) of this section) bears to the value of the term interest as of the date of the original transfer (determined under section 7520).

(iii) *Conversion to qualified annuity interest.* The conversion of tangible property previously valued under paragraph (c)(1) of this section into property a term interest in which would not qualify for valuation under paragraph (c)(1) of this section is not a transfer of the value of the unexpired portion of the term interest if the interest thereafter meets the requirements of a qualified annuity interest. The rules of § 25.2702–5(d)(8) (including governing instrument requirements) apply for purposes of determining the amount of the annuity payment required to be made and the determination of whether the interest meets the requirements of a qualified annuity interest.

(5) *Additions or improvements to property*—(i) *Additions or improvements substantially affecting nature of property.* If an addition or improvement is made to property a term interest in which was valued under paragraph (c)(1) of this section, and the addition or improvement affects the nature of the property to such an extent that the property would not be treated as property meeting the requirements of paragraph (c)(2) of this section if the property had included the addition or improvement at the time it was transferred, the entire property is deemed, for purposes of paragraph (c)(4) of this section, to convert (effective as of the date the addition or improvement is commenced) into property a term interest in which would not qualify for valuation under paragraph (c)(1) of this section.

(ii) *Other additions or improvements.* If an addition or improvement is made to property, a term interest in which was valued under paragraph (c)(1) of this section, and the addition or improvement does not affect the nature of the property to such an extent that the property would not be treated as property meeting the requirements of paragraph (c)(2) of this section if the property had included the addition or improvement at the time it was transferred, the addition or improvement is treated as an additional transfer (effective as of the date the addition or improvement is commenced) subject to § 25.2702–2(b)(1).

(d) *Examples.* (1) The following examples illustrate the rules of § 25.2702–1 and § 25.2702–2. Each example assumes that all applicable requirements of those sections not specifically described in the example are met.

Example 1. A transfers property to an irrevocable trust, retaining the right to receive the income of the trust for 10 years. On the expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child. However, if A dies during the 10-year term, the entire trust corpus is to be paid to A's estate. Each retained interest is valued at zero because it is not a qualified interest. Thus, the amount of A's gift is the fair market value of the property transferred to the trust.

Example 2. A transfers property to an irrevocable trust, retaining a 10-year annuity interest that meets the requirements set forth in § 25.2702–3 for a qualified annuity interest. Upon expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child. The amount of A's gift is the fair market value of the property transferred to the trust less the value of the retained qualified annuity interest determined under section 7520.

Example 3. D transfers property to an irrevocable trust under which the income is payable to D's spouse for life. Upon the death of D's spouse, the trust is to terminate and the trust corpus is to be paid to D's child. D retains no interest in the trust. Although the spouse is an applicable family member of D under section 2702, the spouse has not retained an interest in the trust because the spouse did not hold the interest both before and after the transfer. Section 2702 does not apply because neither the transferor nor an applicable family member has retained an interest in the trust. The result is the same whether or not D elects to treat the transfer as a transfer of qualified terminable interest property under section 2056(b)(7).

Example 4. A transfers property to an irrevocable trust, under which the income is to be paid to A for life. Upon termination of the trust, the trust corpus is to be distributed to A's child. A also retains certain powers over principal that cause the transfer to be wholly incomplete for federal gift tax purposes. Section 2702 does not apply because no portion of the transfer would be treated as a completed gift.

Example 5. The facts are the same as in *Example 4*, except that the trust is divided into separate fractional shares and A's retained powers apply to only one of the shares. Section 2702 applies except with respect to the share of the trust as to which A's retained powers cause the transfer to be an incomplete gift.

Example 6. A transfers property to an irrevocable trust, retaining the right to receive the income for 10 years. Upon expiration of 10 years, the income of the trust is payable to A's spouse for 10 years if living. Upon expiration of the spouse's interest, the trust terminates and the trust corpus is payable to A's child. A retains the right to revoke the spouse's interest. Because the transfer of property to the trust is not incomplete as to all interests in the property (*i.e.*, A has made a completed gift of the remainder interest), section 2702 applies. A's power to revoke the spouse's term interest is treated as a retained interest for purposes of section 2702. Because no interest retained by A is a qualified interest, the amount of the gift is the fair market value of the property transferred to the trust.

Example 7. The facts are the same as in Example 6, except that both the term interest retained by A and the interest transferred to A's spouse (subject to A's right of revocation) are qualified annuity or unitrust interests. The amount of the gift is the fair market value of the property transferred to the trust reduced by the value of both A's qualified interest and the value of the qualified interest transferred to A's spouse (subject to A's power to revoke).

(2) The following facts apply for Examples 8–10 (examples illustrating § 25.2702–2(c)—tangible property exception):

Facts. A transfers a painting having a fair market value of $2,000,000 to A's child, B, retaining the use of the painting for 10 years. The painting does not possess an ascertainable useful life. Assume that the painting would not be depreciable if it were used in a trade or business or held for the production of income. Assume that the value of A's term interest, determined under section 7520, is $1,220,000, and that A establishes that a willing buyer of A's interest would pay $500,000 for the interest.

Example 8. A's term interest is not a qualified interest under § 25.2702–3. However, because of the nature of the property, A's failure to exercise A's rights with regard to the painting would not be expected to cause the value of the painting to be higher than it would otherwise be at the time it passes to B. Accordingly, A's interest is valued under § 25.2702–2(c)(1) at $500,000. The amount of A's gift is $1,500,000, the difference between the fair market value of the painting and the amount determined under § 25.2702–2(c)(1).

Example 9. Assume that the only evidence produced by A to establish the value of A's 10-year term interest is the amount paid by a museum for the right to use a comparable painting for 1 year. A asserts that the value of the 10-year term is 10 times the value of the 1-year term. A has not established the value of the 10-year term interest because a series of short-term rentals the aggregate duration of which equals the duration of the actual term interest does not establish what a willing buyer would pay a willing seller for the 10-year term interest. However, the value of the 10-year term interest is not less than the value of the 1-year term because it can be assumed that a willing buyer would pay no less for a 10-year term interest than a 1-year term interest.

Example 10. Assume that after 24 months A and B sell the painting for $2,000,000 and invest the proceeds in a portfolio of securities. A continues to hold an income interest in the securities for the duration of the 10-year term. Under § 25.2702–2(c)(4) the conversion of the painting into a type of property a term interest in which would not qualify for valuation under § 25.2702–2(c)(1) is treated as a transfer by A of the value of the unexpired portion of A's original term interest, unless the property is thereafter held in a trust meeting the requirements of a qualified annuity interest. Assume that the value of A's remaining term interest in $2,000,000 (determined under section 7520 using the section 7520 rate in effect on the date of the original transfer) is $1,060,000. The value of the unexpired portion of A's interest is $434,426, the amount that bears the same relation to $1,060,000 as $500,000 (the value of A's interest as of the date of the original transfer determined under paragraph (c)(1) of this section) bears to $1,220,000 (the value of A's interest as of the date of the original transfer determined under section 7520).

§ 25.2702–3 Qualified interests.

(a) *In general.* This section provides rules for determining if an interest is a qualified annuity interest, a qualified unitrust interest, or a qualified remainder interest.

(b) *Special rules for qualified annuity interests.* An interest is a qualified annuity interest only if it meets the requirements of this paragraph and paragraph (d) of this section.

(1) *Payment of annuity amount*—(i) *In general.* A qualified annuity interest is an irrevocable right to receive a fixed amount. The annuity amount must be payable to (or for the benefit of) the holder of the annuity interest for each taxable year of the term. A right of withdrawal, whether or not cumulative, is not a qualified annuity interest. The annuity payment may be made after the close of the taxable year, provided the payment is made no later than the date by which the trustee is required to file the Federal income tax return of the trust for the taxable year (without regard to extensions).

(ii) *Fixed amount.* A fixed amount means—

(A) A stated dollar amount payable periodically, but not less frequently than annually, but only to the extent the amount does not exceed 120 percent of the stated dollar amount payable in the preceding year; or

(B) A fixed fraction or percentage of the initial fair market value of the property transferred to the trust, as finally determined for federal tax purposes, payable periodically but not less frequently than annually, but only to the extent the fraction or percentage does not exceed 120 percent of the fixed fraction or percentage payable in the preceding year.

(iii) *Income in excess of the annuity amount.* An annuity interest does not fail to be a qualified annuity interest merely because the trust permits income in excess of the amount required to pay the annuity amount to be paid to or for the benefit of the holder of the qualified annuity interest. Nevertheless, the right to receive the excess income is not a qualified interest and is not taken into account in valuing the qualified annuity interest.

(2) *Incorrect valuations of trust property.* If the annuity is stated in terms of a fraction or percentage of the initial fair market value of the trust property, the governing instrument must contain provisions meeting the requirements of § 1.664–2(a)(1)(iii) of this chapter (relating to adjustments for any incorrect determination of the fair market value of the property in the trust).

(3) *Computation of annuity amount in certain circumstances.* The governing instrument must contain provisions meeting the requirements of § 1.664–2(a)(1)(iv) of this chapter (relating to the computation of the annuity amount in the case of short taxable years and the last taxable year of the term).

(4) *Additional contributions prohibited.* The governing instrument must prohibit additional contributions to the trust.

(c) *Special rules for qualified unitrust interests.* An interest is a qualified unitrust interest only if it meets the requirements of this paragraph and paragraph (d) of this section.

(1) *Payment of unitrust amount*—(i) *In general.* A qualified unitrust interest is an irrevocable right to receive payment periodically, but not less frequently than annually, of a fixed percentage of the net fair market value of the trust assets, determined annually. For rules relating to computation of the net fair market value of the trust assets see § 25.2522(c)–3(c)(2)(vii). The unitrust amount must be payable to (or for the benefit of) the holder of the unitrust interest for each taxable year of the term. A right of withdrawal, whether or not cumulative, is not a qualified unitrust interest. The unitrust payment may be made after the close of the taxable year, provided that the payment

is made no later than the date by which the trustee is required to file the Federal income tax return of the trust for the year (without regard to extensions).

(ii) *Fixed percentage.* A fixed percentage is a fraction or percentage of the net fair market value of the trust assets, determined annually, payable periodically but not less frequently than annually, but only to the extent the fraction or percentage does not exceed 120 percent of the fixed fraction or percentage payable in the preceding year.

(iii) *Income in excess of unitrust amount.* A unitrust interest does not fail to be a qualified unitrust interest merely because the trust permits income in excess of the amount required to pay the unitrust amount to be paid to or for the benefit of the holder of the qualified unitrust interest. Nevertheless, the right to receive the excess income is not a qualified interest and is not taken into account in valuing the qualified unitrust interest.

(2) *Incorrect valuations of trust property.* The governing instrument must contain provisions meeting the requirements of § 1.664–3(a)(1)(iii) of this chapter (relating to the incorrect determination of the fair market value of the property in the trust).

(3) *Computation of unitrust amount in certain circumstances.* The governing instrument must contain provisions meeting the requirements of § 1.664–3(a)(1)(v) of this chapter (relating to the computation of the unitrust amount in the case of short taxable years and the last taxable year of the term).

(d) *Requirements applicable to qualified annuity interests and qualified unitrust interests*—(1) *In general.* To be a qualified annuity or unitrust interest, an interest must be a qualified annuity interest in every respect or a qualified unitrust interest in every respect. For example, if the interest consists of the right to receive each year a payment equal to the lesser of a fixed amount of the initial trust assets or a fixed percentage of the annual value of the trust assets, the interest is not a qualified interest. If, however, the interest consists of the right to receive each year a payment equal to the greater of a stated dollar amount or a fixed percentage of the initial trust assets or a fixed percentage of the annual value of the trust assets, the interest is a qualified interest that is valued at the greater of the two values. To be a qualified interest, the interest must meet the definition of and function exclusively as a qualified interest from the creation of the trust.

(2) *Amounts payable to other persons.* The governing instrument must prohibit distributions from the trust to or for the benefit of any person other than the holder of the qualified annuity or unitrust interest during the term of the qualified interest.

(3) *Term of the annuity or unitrust interest.* The governing instrument must fix the term of the annuity or unitrust interest. The term must be for the life of the term holder, for a specified term of years, or for the shorter (but not the longer) of those periods. Successive term interests for the benefit of the same individual are treated as the same term interest.

(4) *Commutation.* The governing instrument must prohibit commutation (prepayment) of the interest of the term holder.

(e) *Examples.* The following examples illustrate the rules of paragraphs (b), (c), and (d) of this section. Each example assumes that all applicable requirements for a qualified interest are met unless otherwise specifically stated.

Example 1. A transfers property to an irrevocable trust, retaining the right to receive the greater of $10,000 or the trust income in each year for a term of 10-years. Upon expiration of the 10-year term, the trust is to terminate and the entire trust corpus is to be paid to A's child, provided that if A dies within the 10-year term the trust corpus is to be paid to A's estate. A's annual payment right is a qualified annuity interest to the extent of the right to receive $10,000 per year for 10 years or until A's prior death, and is valued under section 7520 without regard to the right to receive any income in excess of $10,000 per year. The contingent reversion is valued at zero. The amount of A's gift is the fair market value of the property transferred to the trust less the value of the qualified annuity interest.

Example 2. U transfers property to an irrevocable trust, retaining the right to receive $10,000 in each of years 1 through 3, $12,000 in each of years 4 through 6, and $15,000 in each of years 7 through 10. The interest is a qualified annuity interest to the extent of U's right to receive $10,000 per year in years 1 through 3, $12,000 in years 4 through 6, $14,400 in year 7, and $15,000 in years 8 through 10, because those amounts represent the lower of the amount actually payable each year or an amount that does not exceed 120 percent of the stated dollar amount for the preceding year.

Example 3. S transfers property to an irrevocable trust, retaining the right to receive $50,000 in each of years 1 through 3 and $10,000 in each of years 4 through 10. S's entire retained interest is a qualified annuity interest.

Example 4. R transfers property to an irrevocable trust retaining the right to receive annually an amount equal to the lesser of 8 percent of the initial fair market value of the trust property or the trust income for the year. R's annual payment right is not a qualified annuity interest to any extent because R does not have the irrevocable right to receive a fixed amount for each year of the term.

Example 5. A transfers property to an irrevocable trust, retaining the right to receive 5 percent of the net fair market value of the trust property, valued annually, for 10 years. If A dies within the 10-year term, the unitrust amount is to be paid to A's estate for the balance of the term. A's interest is a qualified unitrust interest to the extent of the right to receive the unitrust payment for 10 years or until A's prior death.

Example 6. The facts are the same as in *Example 5,* except that if A dies within the 10-year term the unitrust amount will be paid to A's estate for an additional 35 years. The result is the same as in *Example 5,* because the 10-year term is the only term that is fixed and ascertainable at the creation of the interest.

Example 7. B transfers property to an irrevocable trust retaining the right to receive annually an amount equal to 8 percent of the initial fair market value of the trust property for 10 years. Upon expiration of the 10-year term, the trust is to terminate and the entire trust corpus is to be paid to B's child. The governing instrument provides that income in excess of the annuity amount may be paid to B's child in the trustee's discretion. B's interest is not a qualified annuity interest to any extent because a person other than the individual holding the term interest may receive distributions from the trust during the term.

(f) *Qualified remainder interest*—(1) *Requirements.* An interest is a qualified remainder interest only if it meets all of the following requirements:

(i) It is a qualified remainder interest in every respect.

(ii) It meets the definition of and functions exclusively as a qualified interest from the creation of the interest.

(iii) It is non-contingent. For this purpose, an interest is non-contingent only if it is payable to the beneficiary or the beneficiary's estate in all events.

(iv) All interests in the trust, other than non-contingent remainder interests, are qualified annuity interests or qualified unitrust interests. Thus, an interest is a qualified remainder interest only if the governing instrument does not permit payment of income in excess of the annuity or unitrust amount to the holder of the qualified annuity or unitrust interest.

(2) *Remainder interest.* Remainder interest is the right to receive all or a fractional share of the trust property on termination of all or a fractional share of the trust. Remainder interest includes a reversion. A transferor's right to receive an amount that is a stated or pecuniary amount is not a remainder interest. Thus, the right to receive the original value of the trust corpus (or a fractional share) is not a remainder interest.

(3) *Examples.* The following examples illustrate rules of this paragraph (f). Each example assumes that all applicable requirements of a qualified

interest are met unless otherwise specifically stated.

Example 1. A transfers property to an irrevocable trust. The income of the trust is payable to A's child for life. On the death of A's child, the trust is to terminate and the trust corpus is to be paid to A. A's remainder interest is not a qualified remainder interest because the interest of A's child is neither a qualified annuity interest nor a qualified unitrust interest.

Example 2. The facts are the same as in *Example 1*, except that A's child has the right to receive the greater of the income of the trust or $10,000 per year. A's remainder interest is not a qualified remainder interest because the right of A's child to receive income in excess of the annuity amount is not a qualified interest.

Example 3. A transfers property to an irrevocable trust. The trust provides a qualified annuity interest to A's child for 12 years. An amount equal to the initial value of the .rust corpus is to be paid to A at the end of that period and the balance is to be paid to A's grandchild. A's interest is not a qualified remainder interest because the amount A is to receive is not a fractional share of the trust property.

Example 4. U transfers property to an irrevocable trust. The trust provides a qualified unitrust interest to U's child for 15 years, at which time the trust terminates and the trust corpus is paid to U or, if U is not then living, to U's child. Because U's remainder interest is contingent, it is not a qualified remainder interest.

§ 25.2702-4 Certain property treated as held in trust.

(a) *In general.* For purposes of section 2702, a transfer of an interest in property with respect to which there are one or more term interests is treated as a transfer in trust. A term interest is one of a series of successive (as contrasted with concurrent) interests. Thus, a life interest in property or an interest in property for a term of years is a term interest. However, a term interest does not include a fee interest in property merely because it is held as a tenant in common, a tenant by the entireties, or a joint tenant with right of survivorship.

(b) *Leases.* A leasehold interest in property is not a term interest to the extent the lease is for full and adequate consideration (without regard to section 2702). A lease will be considered for full and adequate consideration if, under all the facts and circumstances as of the time the lease is entered into or extended, a good faith effort is made to determine the fair rental value of the property and the terms of the lease conform to the value so determined.

(c) *Joint purchases.* Solely for purposes of section 2702, if an individual acquires a term interest in property and, in the same transaction or series of transactions, one or more members of the individual's family acquire an interest in the same property, the individual acquiring the term interest is treated as acquiring the entire property so acquired, and transferring to each of those family members the interests acquired by that family member in exchange for any consideration paid by that family member. For purposes of this paragraph (c), the amount of the individual's gift will not exceed the amount of consideration furnished by that individual for all interests in the property.

(d) *Examples.* The following examples illustrate rules of this section:

Example 1. A purchases a 20-year term interest in an apartment building and A's child purchases the remainder interest in the property. A and A's child each provide the portion of the purchase price equal to the value of their respective interests in the property determined under section 7520. Solely for purposes of section 2702, A is treated as acquiring the entire property and transferring the remainder interest to A's child in exchange for the portion of the purchase price provided by A's child. In determining the amount of A's gift, A's retained interest is valued at zero because it is not a qualified interest.

Example 2. K holds rental real estate valued at $100,000. K sells a remainder interest in the property to K's child, retaining the right to receive the income from the property for 20 years. Assume the purchase price paid by K's child for the remainder interest is equal to the value of the interest determined under section 7520. K's retained interest is not a qualified interest and is therefore valued at zero. K has made a gift in the amount of $100,000 less the consideration received from K's child.

Example 3. G and G's child each acquire a 50 percent undivided interest as tenants in common in an office building. The interests of G and G's child are not term interests to which section 2702 applies.

Example 4. B purchases a life estate in property from R, B's grandparent, for $100 and B's child purchases the remainder interest for $50. Assume that the value of the property is $300, the value of the life estate determined under section 7520 is $250 and the value of the remainder interest is $50. B is treated as acquiring the entire property and transferring the remainder interest to B's child. However, the amount of B's gift is $100, the amount of consideration ($100) furnished by B for B's interest.

Example 5. H and W enter into a written agreement relative to their marital and property rights that requires W to transfer property to an irrevocable trust, the terms of which provide that the income of the trust will be paid to H for 10 years. On the expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to W. H and W divorce within two years after the agreement is entered into. Pursuant to section 2516, the transfer to H would otherwise be deemed to be for full and adequate consideration. Section 2702 does not apply to the acquisition of the term interest by H because no member of H's family acquired an interest in the property in the same transaction or series of transactions. The result would not be the same if, on the termination of H's interest in the trust, the trust corpus were distributable to the children of H and W rather than W.

§ 25.2702-5 Personal residence trusts.

(a) *In general.* Section 2702 does not apply to a transfer in trust meeting the requirements of this section. A transfer in trust meets the requirements of this section only if the trust is a personal residence trust (as defined in paragraph (b) of this section). A trust meeting the requirements of a qualified personal residence trust (as defined in paragraph (c) of this section) is treated as a personal residence trust. A trust of which the term holder is the grantor that otherwise meets the requirements of a personal residence trust (or a qualified personal residence trust) is not a personal residence trust (or a qualified personal residence trust) if, at the time of transfer, the term holder of the trust already holds term interests in two trusts that are personal residence trusts (or qualified personal residence trusts) of which the term holder was the grantor. For this purpose, trusts holding fractional interests in the same residence are treated as one trust.

(b) *Personal residence trust*—(1) *In general.* A personal residence trust is a trust the governing instrument of which prohibits the trust from holding, for the original duration of the term interest, any asset other than one residence to be used or held for use as a personal residence of the term holder and qualified proceeds (as defined in paragraph (b)(3) of this section). A residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence. A trust does not meet the requirements of this section if, during the original duration of the term interest, the residence may be sold or otherwise transferred by the trust or may be used for a purpose other than as a personal residence of the term holder. Expenses of the trust whether or not attributable to trust principal may be paid directly by the term holder of the trust.

(2) *Personal residence*—(i) *In general.* For purposes of this paragraph (b), a personal residence of a term holder is either—

(A) The principal residence of the term holder (within the meaning of section 1034);

(B) One other residence of the term holder (within the meaning of section

280A(d)(1) but without regard to section 280A(d)(2)); or

(C) An undivided fractional interest in either.

(ii) *Additional property.* A personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). The fact that a residence is subject to a mortgage does not affect its status as a personal residence. The term personal residence does not include any personal property (*e.g.*, household furnishings).

(iii) *Use of residence.* A residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. The principal residence of the term holder will not fail to meet the requirements of the preceding sentence merely because a portion of the residence is used in an activity meeting the requirements of section 280A(c) (1) or (4) (relating to deductibility of expenses related to certain uses), provided that such use is secondary to use of the residence as a residence. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging (*e.g.* a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

(iv) *Interests of spouses in the same residence.* If spouses hold interests in the same residence (including community property interests), the spouses may transfer their interests in the residence (or a fractional portion of their interests in the residence) to the same personal residence trust, provided that the governing instrument prohibits any person other than one of the spouses from holding a term interest in the trust concurrently with the other spouse.

(3) *Qualified proceeds.* Qualified proceeds means the proceeds payable as a result of damage to, or destruction or involuntary conversion (within the meaning of section 1033) of, the residence held by a personal residence trust, provided that the governing instrument requires that the proceeds (including any income thereon) be reinvested in a personal residence within two years from the date on which the proceeds are received.

(c) *Qualified personal residence trust*—(1) *In general.* A qualified personal residence trust is a trust meeting all the requirements of this paragraph (c). These requirements must be met by provisions in the governing instrument, and these governing instrument provisions must by their terms continue in effect during the existence of any term interest in the trust.

(2) *Personal residence*—(i) *In general.* For purposes of this paragraph (c), a personal residence of a term holder is either—

(A) The principal residence of the term holder (within the meaning of section 1034);

(B) One other residence of the term holder (within the meaning of section 280A(d)(1) but without regard to section 280A(d)(2)); or

(C) An undivided fractional interest in either.

(ii) *Additional property.* A personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). The fact that a residence is subject to a mortgage does not affect its status as a personal residence. The term personal residence does not include any personal property (*e.g.*, household furnishings).

(iii) *Use of residence.* A residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. The principal residence of the term holder will not fail to meet the requirements of the preceding sentence merely because a portion of the residence is used in an activity meeting the requirements of section 280A(c) (1) or (4) (relating to deductibility of expenses related to certain uses), provided that such use is secondary to use of the residence as a residence. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging (*e.g.*, a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence. A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

(iv) *Interests of spouses in the same residence.* If spouses hold interests in the same residence (including community property interests), the spouses may transfer their interests in the residence (or a fractional portion of their interests in the residence) to the same qualified personal residence trust, provided that the governing instrument prohibits any person other than one of the spouses from holding a term interest in the trust concurrently with the other spouse.

(3) *Income of the trust.* The governing instrument must require that any income of the trust be distributed to the term holder not less frequently than annually.

(4) *Distributions from the trust to other persons.* The governing instrument must prohibit distributions of corpus to any beneficiary other than the transferor prior to the expiration of the retained term interest.

(5) *Assets of the trust*—(i) *In general.* Except as otherwise provided in paragraphs (c)(5)(ii) and (c)(8) of this section, the governing instrument must prohibit the trust from holding, for the entire term of the trust, any asset other than one residence to be used or held for use (within the meaning of paragraph (c)(7)(i) of this section) as a personal residence of the term holder (the "residence").

(ii) *Assets other than personal residence.* Except as otherwise provided, the governing instrument may permit a qualified personal residence trust to hold the following assets (in addition to the residence) in the amounts and in the manner described in this paragraph (c)(5)(ii):

(A) *Additions of cash for payment of expenses, etc.*—(*1*) *Additions.* The governing instrument may permit additions of cash to the trust, and may permit the trust to hold additions of cash in a separate account, in an amount which, when added to the cash already held in the account for such purposes, does not exceed the amount required:

(*i*) For payment of trust expenses (including mortgage payments) already incurred or reasonably expected to be paid by the trust within six months from the date the addition is made;

(*ii*) For improvements to the residence to be paid by the trust within six months from the date the addition is made; and

(*iii*) For purchase by the trust of the initial residence, within three months of the date the trust is created, provided that no addition may be made for this purpose, and the trust may not hold any such addition, unless the trustee has previously entered into a contract to purchase that residence; and

(*iv*) For purchase by the trust of a residence to replace another residence, within three months of the date the addition is made, provided that no addition may be made for this purpose, and the trust may not hold any such addition, unless the trustee has previously entered into a contract to purchase that residence.

(*2*) *Distributions of excess cash.* If the governing instrument permits additions

of cash to the trust pursuant to paragraph (c)(5)(ii)(A)(*1*) of this section, the governing instrument must require that the trustee determine, not less frequently than quarterly, the amounts held by the trust for payment of expenses in excess of the amounts permitted by that paragraph and must require that those amounts be distributed immediately thereafter to the term holder. In addition, the governing instrument must require, upon termination of the term holder's interest in the trust, any amounts held by the trust for the purposes permitted by paragraph (c)(5)(ii)(A)(*1*) of this section that are not used to pay trust expenses due and payable on the date of termination (including expenses directly related to termination) be distributed outright to the term holder within 30 days of termination.

(B) *Improvements.* The governing instrument may permit improvements to the residence to be added to the trust and may permit the trust to hold such improvements, provided that the residence, as improved, meets the requirements of a personal residence.

(C) *Sale proceeds.* The governing instrument may permit the sale of the residence and may permit the trust to hold proceeds from the sale of the residence, in a separate account.

(D) *Insurance and insurance proceeds.* The governing instrument may permit the trust to hold one or more policies of insurance on the residence. In addition, the governing instrument may permit the trust to hold, in a separate account, proceeds of insurance payable to the trust as a result of damage to or destruction of the residence. For purposes of this paragraph, amounts (other than insurance proceeds payable to the trust as a result of damage to or destruction of the residence) received as a result of the involuntary conversion (within the meaning of section 1033) of the residence are treated as proceeds of insurance.

(6) *Commutation.* The governing instrument must prohibit commutation (prepayment) of the term holder's interest.

(7) *Cessation of use as a personal residence*—(i) *In general.* The governing instrument must provide that a trust ceases to be a qualified personal residence trust if the residence ceases to be used or held for use as a personal residence of the term holder. A residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence. See § 25.2702–5(c)(8) for rules governing disposition of assets of a trust as to which the trust has ceased to be a qualified personal residence trust.

(ii) *Sale of personal residence.* The governing instrument must provide that the trust ceases to be a qualified personal residence trust upon sale of the residence if the governing instrument does not permit the trust to hold proceeds of sale of the residence pursuant to paragraph (c)(5)(ii)(C) of this section. If the governing instrument permits the trust to hold proceeds of sale pursuant to that paragraph, the governing instrument must provide that the trust ceases to be a qualified personal residence trust with respect to all proceeds of sale held by the trust not later than the earlier of—

(A) The date that is two years after the date of sale;

(B) The termination of the term holder's interest in the trust; or

(C) The date on which a new residence is acquired by the trust.

(iii) *Damage to or destruction of personal residence*—(A) *In general.* The governing instrument must provide that, if damage or destruction renders the residence unusable as a residence, the trust ceases to be a qualified personal residence trust on the date that is two years after the date of damage or destruction (or the date of termination of the term holder's interest in the trust, if earlier) unless, prior to such date—

(*1*) Replacement of or repairs to the residence are completed; or

(*2*) A new residence is acquired by the trust.

(B) *Insurance proceeds.* For purposes of this paragraph (C)(7)(iii), if the governing instrument permits the trust to hold proceeds of insurance received as a result of damage to or destruction of the residence pursuant to paragraph (c)(5)(ii)(D) of this section, the governing instrument must contain provisions similar to those required by paragraph (c)(7)(ii) of this section.

(8) *Disposition of trust assets on cessation as personal residence trust*—(i) *In general.* The governing instrument must provide that, within 30 days after the date on which the trust has ceased to be a qualified personal residence trust with respect to certain assets, either—

(A) The assets be distributed outright to the term holder;

(B) The assets be converted to and held for the balance of the term holder's term in a separate share of the trust meeting the requirements of a qualified annuity interest; or

(C) In the trustee's sole discretion, the trustee may elect to comply with either paragraph (c)(8)(i) (A) or (B) of this section pursuant to their terms.

(ii) *Requirements for conversion to a qualified annuity interest*—(A) *Governing instrument requirements.* For assets subject to this paragraph (c)(8) to be converted to and held as a qualified annuity interest, the governing instrument must contain all provisions required by § 25.2702–3 with respect to a qualified annuity interest.

(B) *Effective date of annuity.* The governing instrument must provide that the right of the term holder to receive the annuity amount begins on the date of sale of the residence, the date of damage to or destruction of the residence, or the date on which the residence ceases to be used or held for use as a personal residence, as the case may be ("the cessation date"). Notwithstanding the preceding sentence, the governing instrument may provide that the trustee may defer payment of any annuity amount otherwise payable after the cessation date until the date that is 30 days after the assets are converted to a qualified annuity interest under paragraph (c)(8)(i)(B) of this section ("the conversion date"); provided that any deferred payment must bear interest from the cessation date at a rate not less than the section 7520 rate in effect on the cessation date. The governing instrument may permit the trustee to reduce aggregate deferred annuity payments by the amount of income actually distributed by the trust to the term holder during the deferral period.

(C) *Determination of annuity amount*—(*1*) *In general.* The governing instrument must require that the annuity amount be no less than the amount determined under this paragraph (C).

(*2*) *Entire trust ceases to be a qualified personal residence trust.* If, on the conversion date, the assets of the trust do not include a residence used or held for use as a personal residence, the annuity may not be less than an amount determined by dividing the lesser of the value of all interests retained by the term holder (as of the date of the original transfer or transfers) or the value of all the trust assets (as of the conversion date) by an annuity factor determined—

(*i*) For the original term of the term holder's interest;

(*ii*) Using the rate determined under section 7520 (as of the date of the original transfer); and

(*iii*) Assuming the annuity percentage equals the rate determined in (*ii*).

(*3*) *Portion of trust continues as qualified personal residence trust.* If, on the conversion date, the assets of the

trust include a residence used or held for use as a personal residence, the annuity must not be less than the amount determined under paragraph (c)(8)(ii)(C)(*2*) of this section multiplied by a fraction. The numerator of the fraction is the excess of the fair market value of the trust assets on the conversion date over the amount (including acquisition costs) reinvested in the new residence or expended for repairs of the existing residence, and the denominator of the fraction is the fair market value of the trust assets on the conversion date.

(d) *Examples.* The following examples illustrate rules of this section. Each example assumes that all applicable requirements of a personal residence trust (or qualified personal residence trust) are met unless otherwise stated.

Example 1. C maintains C's principal place of business in one room of C's principal residence. The room meets the requirements of section 280A(c)(1) for deductibility of expenses related to such use. The residence is a personal residence.

Example 2. L owns a vacation condominium that L rents out for six months of the year, but which is treated as L's residence under section 280A(d)(1) because L occupies it for at least 18 days per year. L provides no substantial services in connection with the rental of the condominium. L transfers the condominium to an irrevocable trust, the terms of which meet the requirements of a qualified personal residence trust. L retains the right to use the condominium during L's lifetime. The trust is a qualified personal residence trust.

Example 3. W owns a 200-acre farm. The farm includes a house, barns, equipment buildings, a silo, and enclosures for confinement of farm animals. W transfers the farm to an irrevocable trust, retaining the use of the farm for 20 years, with the remainder to W's child. The trust is not a personal residence trust because the farm includes assets not meeting the requirements of a personal residence.

Example 4. A transfers A's principal residence to an irrevocable trust, retaining the right to use the residence for a 20-year term. The governing instrument of the trust does not prohibit the trust from holding personal property. The trust is not a qualified personal residence trust.

Example 5. T transfers a personal residence to a trust that meets the requirements of a qualified personal residence trust, retaining a term interest in the trust for 10 years. During the period of T's retained term interest, T is forced for health reasons to move to a nursing home. T's spouse continues to occupy the residence. If the residence is available at all times for T's use as a residence during the term (without regard to T's ability to actually use the residence), the residence continues to be held for T's use and the trust does not cease to be a qualified personal residence trust. The residence would cease to be held for use as a personal residence of T if the trustee rented the residence to an unrelated party, because the residence would no longer be available for T's use at all times.

Example 6. T transfers T's personal residence to a trust that meets the requirements of a qualified personal residence trust, retaining the right to use the residence for 12 years. On the date the residence is transferred to the trust, the fair market value of the residence is $100,000. After 6 years, the trustee sells the residence, receiving net proceeds of $250,000, and invests the proceeds of sale in common stock. After an additional eighteen months, the common stock has paid $15,000 in dividends and has a fair market value of $260,000. On that date, the trustee purchases a new residence for $200,000. On the purchase of the new residence, the trust ceases to be a qualified personal residence trust with respect to any amount not reinvested in the new residence. The governing instrument of the trust provides that the trustee, in the trustee's sole discretion, may elect either to distribute the excess proceeds or to convert the proceeds into a qualified annuity interest. The trustee elects the latter option. The amount of the annuity is the amount of the annuity that would be payable if no portion of the sale proceeds had been reinvested in a personal residence multiplied by a fraction. The numerator of the fraction is $60,000 (the amount remaining after reinvestment) and the denominator of the fraction is $260,000 (the fair market value of the trust assets on the conversion date). The obligation to pay the annuity commences on the date of sale, but payment of the annuity that otherwise would have been payable during the period between the date of sale and the date on which the trust ceased to be a qualified personal residence trust with respect to the excess proceeds may be deferred until 30 days after the date on which the new residence is purchased. Any amount deferred must bear compound interest from the date the annuity is payable at the section 7520 rate in effect on the date of sale. The $15,000 of income distributed to the term holder during that period may be used to reduce the annuity amount payable with respect to that period if the governing instrument so provides and thus reduce the amount on which compound interest is computed.

§ 25.2702-6 Reduction in taxable gifts.

(a) *Transfers of retained interests in trust*—(1) *Inter vivos transfers.* If an individual subsequently transfers by gift an interest in trust previously valued (when held by that individual) under § 25.2702-2 (b)(1) or (c), the individual is entitled to a reduction in aggregate taxable gifts. The amount of the reduction is determined under paragraph (b) of this section. Thus, for example, if an individual transferred property to an irrevocable trust, retaining an interest in the trust that was valued at zero under § 25.2702-2(b)(1), and the individual later transfers the retained interest by gift, the individual is entitled to a reduction in aggregate taxable gifts on the subsequent transfer. For purposes of this section, aggregate taxable gifts means the aggregate sum of the individual's taxable gifts for the calendar year determined under section 2502(a)(1).

(2) *Testamentary transfers.* If either—

(i) A term interest in trust is included in an individual's gross estate solely by reason of section 2033, or

(ii) A remainder interest in trust is included in an individual's gross estate,

and the interest was previously valued (when held by that individual) under § 25.2702-2(b)(1) or (c), the individual's estate is entitled to a reduction in the individual's adjusted taxable gifts in computing the Federal estate tax payable under section 2001. The amount of the reduction is determined under paragraph (b) of this section.

(3) *Gift splitting on subsequent transfer.* If an individual who is entitled to a reduction in aggregate taxable gifts (or adjusted taxable gifts) subsequently transfers the interest in a transfer treated as made one-half by the individual's spouse under section 2513, the individual may assign one-half of the amount of the reduction to the consenting spouse. The assignment must be attached to the Form 709 on which the consenting spouse reports the split gift.

(b) *Amount of reduction*—(1) *In general.* The amount of the reduction in aggregate taxable gifts (or adjusted taxable gifts) is the lesser of—

(i) The increase in the individual's taxable gifts resulting from the interest being valued at the time of the initial transfer under § 25.2702-2(b)(1) or (c); or

(ii) The increase in the individual's taxable gifts (or gross estate) resulting from the subsequent transfer of the interest.

(2) *Treatment of annual exclusion.* For purposes of determining the amount under paragraph (b)(1)(ii) of this section, the exclusion under section 2503(b) applies first to transfers in that year other than the transfer of the interest previously valued under § 25.2702-2(b)(1) or (c).

(3) *Overlap with section 2001.* Notwithstanding paragraph (b)(1) of this section, the amount of the reduction is reduced to the extent section 2001 would apply to reduce the amount of an individual's adjusted taxable gifts with respect to the same interest to which paragraph (b)(1) of this section would otherwise apply.

(c) *Examples.* The rules of this section are illustrated by the following examples. The following facts apply for *Examples 1-4:*

Facts. In 1992, X transferred property to an irrevocable trust retaining the right to receive the trust income for life. On the death of X, the trust is to terminate and the trust corpus is to be paid to X's child, C. X's income interest had a value under section 7520 of $40,000 at the time of the transfer; however, because X's retained interest was not a qualified interest, it was valued at zero under § 25.2702-2(b)(1) for purposes of determining the amount of X's gift. X's taxable gifts in 1992 were therefore increased by $40,000. In 1993, X transfers the income interest to C for no consideration.

Example 1. Assume that the value under section 7520 of the income interest on the subsequent transfer to C is $30,000. If X makes no other gifts to C in 1993, X is entitled to a reduction in aggregate taxable gifts of $20,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($30,000 minus $10,000 annual exclusion).

Example 2. Assume that in 1993, 4 months after X transferred the income interest to C, X transferred $5,000 cash to C. In determining the increase in taxable gifts occurring on the subsequent transfer, the annual exclusion under section 2503(b) is first applied to the cash gift. X is entitled to a reduction in aggregate taxable gifts of $25,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($25,000 (($30,000+$5,000)−$10,000 annual exclusion).

Example 3. Assume that the value under section 7520 of the income interest on the subsequent transfer to C is $55,000. X is entitled to reduce aggregate taxable gifts by $40,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($55,000 minus $10,000 annual exclusion = $45,000).

Example 4. Assume that X and X's spouse, S, split the subsequent gift to C. X is entitled to assign one-half the reduction to S. If the assignment is made, each is entitled to reduce aggregate taxable gifts by $17,500, the lesser of their portion of the increase in taxable gifts on the initial transfer by reason of the application of section 2702 ($20,000) and their portion of the increase in taxable gifts on the subsequent transfer of the retained interest ($27,500−$10,000 annual exclusion).

Example 5. In 1992, A transfers property to an irrevocable trust, retaining the right to receive the trust income for 10 years. On the expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child, B. Assume that A's term interest has a value under section 7520 of $20,000 at the time of the transfer; however, because A's retained interest was not a qualified interest, it was valued at zero under § 25.2702-2(b)(1) for purposes of determining the amount of A's gift. Assume also that A and A's spouse, S, split the gift of the remainder interest under section 2513. In 1993, A transfers A's term interest to D, A's other child, for no consideration. A is entitled to reduce A's aggregate taxable gifts on the transfer. Assume that A and S also split the subsequent gift to D, and that A dies one month after making the subsequent transfer of the term interest and S dies six months later. The gift of the term interest is included in A's gross estate under section 2035(d)(2). To the extent S's taxable gifts are reduced pursuant to section 2001(e), S is entitled to no reduction in aggregate or adjusted taxable gifts under this section.

Example 6. T transfers property to an irrevocable trust retaining the power to direct the distribution of trust income for 10 years among T's descendants in whatever shares T deems appropriate. On the expiration of the 10-year period, the trust corpus is to be paid in equal shares to T's children. T's transfer of the remainder interest is a completed gift. Because T's retained interest is not a qualified interest, it is valued at zero under § 25.2702-2(b)(1) and the amount of T's gift is the fair market value of the property transferred to the trust. The distribution of income each year is not a transfer of a retained interest in trust. Therefore, T is not entitled to reduce aggregate taxable gifts as a result of the distributions of income from the trust.

Example 7. The facts are the same as in *Example 6*, except that after 3 years T exercises the right to direct the distribution of trust income by assigning the right to the income for the balance of the term to T's child, C. The exercise is a transfer of a retained interest in trust for purposes of this section. T is entitled to reduce aggregate taxable gifts by the lesser of the increase in taxable gifts resulting from the application of section 2702 to the initial transfer or the increase in taxable gifts resulting from the transfer of the retained interest in trust.

Example 8. In 1992, V purchases an income interest for 10 years in property in the same transaction or series of transactions in which G, V's child, purchases the remainder interest in the same property. V dies in 1997 still holding the term interest, the value of which is includible in V's gross estate under section 2033. V's estate would be entitled to a reduction in adjusted taxable gifts in the amount determined under paragraph (b) of this section.

§ 25.2702-7 Effective dates.

Sections 25.2702-1 through 25.2702-6 are effective as of January 28, 1992. With respect to transfers to which section 2702 applied made prior to January 28, 1992, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

§ 25.2703-1 Property subject to restrictive arrangements.

(a) *Disregard of rights or restrictions*—(1) *In general.* For purposes of subtitle B (relating to estate, gift, and generation-skipping transfer taxes), the value of any property is determined without regard to any right or restriction relating to the property.

(2) *Right or restriction.* For purposes of this section, right or restriction means—

(i) Any option, agreement, or other right to acquire or use the property at a price less than fair market value (determined without regard to the option, agreement, or right); or

(ii) Any restriction on the right to sell or use the property.

(3) *Agreements, etc. containing rights or restrictions.* A right or restriction may be contained in a partnership agreement, articles of incorporation, corporate bylaws, a shareholders' agreement, or any other agreement. A right or restriction may be implicit in the capital structure of an entity.

(4) *Qualified easements.* A perpetual restriction on the use of real property that qualified for a charitable deduction under either section 2522(d) or section 2055(f) of the Internal Revenue Code is not treated as a right or restriction.

(b) *Exceptions*—(1) *In general.* This section does not apply to any right or restriction satisfying the following three requirements—

(i) The right or restriction is a bona fide business arrangement;

(ii) The right or restriction is not a device to transfer property to the natural objects of the transferor's bounty for less than full and adequate consideration in money or money's worth; and

(iii) At the time the right or restriction is created, the terms of the right or restriction are comparable to similar arrangements entered into by persons in an arm's length transaction.

(2) *Separate requirements.* Each of the three requirements described in paragraph (b)(1) of this section must be independently satisfied for a right or restriction to meet this exception. Thus, for example, the mere showing that a right or restriction is a bona fide business arrangement is not sufficient to establish that the right or restriction is not a device to transfer property for less than full and adequate consideration.

(3) *Exception for certain rights or restrictions.* A right or restriction is considered to meet each of the three requirements described in paragraph (b)(1) of this section if more than 50 percent by value of the property subject to the right or restriction is owned

directly or indirectly (within the meaning of § 25.2701-6) by individuals who are not members of the transferor's family. In order to meet this exception, the property owned by those individuals must be subject to the right or restriction to the same extent as the property owned by the transferor. For purposes of this section, members of the transferor's family include the persons described in § 25.2701-2(b)(5) and any other individual who is a natural object of the transferor's bounty. Any property held by a member of the transferor's family under the rules of § 25.2701-6 (without regard to § 25.2701-6(a)(5)) is treated as held only by a member of the transferor's family.

(4) *Similar arrangement*—(i) *In general.* A right or restriction is treated as comparable to similar arrangements entered into by persons in an arm's length transaction if the right or restriction is one that could have been obtained in a fair bargain among unrelated parties in the same business dealing with each other at arm's length. A right or restriction is considered a fair bargain among unrelated parties in the same business if it conforms with the general practice of unrelated parties under negotiated agreements in the same business. This determination generally will entail consideration of such factors as the expected term of the agreement, the current fair market value of the property, anticipated changes in value during the term of the arrangement, and the adequacy of any consideration given in exchange for the rights granted.

(ii) *Evidence of general business practice.* Evidence of general business practice is not met by showing isolated comparables. If more than one valuation method is commonly used in a business, a right or restriction does not fail to evidence general business practice merely because it uses only one of the recognized methods. It is not necessary that the terms of a right or restriction parallel the terms of any particular agreement. If comparables are difficult to find because the business is unique, comparables from similar businesses may be used.

(5) *Multiple rights or restrictions.* If property is subject to more than one right or restriction described in paragraph (a)(2) of this section, the failure of a right or restriction to satisfy the requirements of paragraph (b)(1) of this section does not cause any other right or restriction to fail to satisfy those requirements if the right or restriction otherwise meets those requirements. Whether separate provisions are separate rights or restrictions, or are integral parts of a single right or restriction, depends on all the facts and circumstances.

(c) *Substantial modification of a right or restriction*—(1) *In general.* A right or restriction that is substantially modified is treated as a right or restriction created on the date of the modification. Any discretionary modification of a right or restriction, whether or not authorized by the terms of the agreement, that results in other than a *de minimis* change to the quality, value, or timing of the rights of any party with respect to property that is subject to the right or restriction is a substantial modification. If the terms of the right or restriction require periodic updating, the failure to update is presumed to substantially modify the right or restriction unless it can be shown that updating would not have resulted in a substantial modification. The addition of any family member as a party to a right or restriction (including by reason of a transfer of property that subjects the transferee family member to a right or restriction with respect to the transferred property) is considered a substantial modification unless the addition is mandatory under the terms of the right or restriction or the added family member is assigned to a generation (determined under the rules of section 2651 of the Internal Revenue Code) no lower than the lowest generation occupied by individuals already party to the right or restriction).

(2) *Exceptions.* A substantial modification does not include—

(i) A modification required by the terms of a right or restriction;

(ii) A discretionary modification of an agreement conferring a right or restriction if the modification does not change the right or restriction;

(iii) A modification of a capitalization rate used with respect to a right or restriction if the rate is modified in a manner that bears a fixed relationship to a specified market interest rate; and

(iv) A modification that results in an option price that more closely approximates fair market value.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. T dies in 1992 owning title to Blackacre. In 1991, T and T's child entered into a lease with respect to Blackacre. At the time the lease was entered into, the terms of the lease were not comparable to leases of similar property entered into among unrelated parties. The lease is a restriction on the use of the property that is disregarded in valuing the property for Federal estate tax purposes.

Example 2. T and T's child, C, each own 50 percent of the outstanding stock of X corporation. T and C enter into an agreement in 1987 providing for the disposition of stock held by the first to die at the time of death. The agreement also provides certain restrictions with respect to lifetime transfers. In 1992, as permitted (but not required) under the agreement, T transfers one-half of T's stock to T's spouse, S. S becomes a party to the agreement between T and C by reason of the transfer. The transfer is the addition of a family member to the right or restriction. However, it is not a substantial modification of the right or restriction because the added family member would be assigned to a generation under section 2651 of the Internal Revenue Code no lower than the generation occupied by C.

Example 3. The facts are the same as in *Example 2.* In 1993, the agreement is amended to reflect a change in the company's name and a change of address for the company's registered agent. These changes are not a substantial modification of the agreement conferring the right or restriction because the right or restriction has not changed.

§ 25.2703-2 Effective date.

Section 25.2703-1 applies to any right or restriction created or substantially modified after October 8, 1990, and is effective as of January 28, 1992. With respect to transfers occurring prior to January 28, 1992, and for purposes of determining whether an event occurring prior to January 28, 1992 constitutes a substantial modification, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

§ 25.2704-1 Lapse of certain rights.

(a) *Lapse treated as transfer*—(1) *In general.* The lapse of a voting right or a liquidation right in a corporation or partnership (an "entity") is a transfer by the individual directly or indirectly holding the right immediately prior to its lapse (the "holder") to the extent provided in paragraphs (b) and (c) of this section. This section applies only if the entity is controlled by the holder and members of the holder's family immediately before and after the lapse. The amount of the transfer is determined under paragraph (d) of this section. If the lapse of a voting right or a liquidation right occurs during the holder's lifetime, the lapse is a transfer by gift. If the lapse occurs at the holder's death, the lapse is a transfer includible in the holder's gross estate.

(2) *Definitions.* The following definitions apply for purposes of this section.

(i) *Control.* Control has the meaning given it in § 25.2701-2(b)(5).

(ii) *Member of the family.* Member of the family has the meaning given it in § 25.2702-2(a)(1).

(iii) *Directly or indirectly held.* An interest is directly or indirectly held only to the extent the value of the interest would have been includible in the gross estate of the individual if the individual had died immediately prior to the lapse.

(iv) *Voting right.* Voting right means a right to vote with respect to any matter of the entity. In the case of a partnership, the right of a general partner to participate in partnership management is a voting right. The right to compel the entity to acquire all or a portion of the holder's equity interest in the entity by reason of aggregate voting power is treated as a liquidation right and is not treated as a voting right.

(v) *Liquidation right.* Liquidation right means a right or ability to compel the entity to acquire all or a portion of the holder's equity interest in the entity, including by reason of aggregate voting power, whether or not its exercise would result in the complete liquidation of the entity.

(vi) *Subordinate.* Subordinate has the meaning given it in § 25.2701-3(a)(2)(iii).

(3) *Certain temporary lapses.* If a lapsed right may be restored only upon the occurrence of a future event not within the control of the holder or members of the holder's family, the lapse is deemed to occur at the time the lapse becomes permanent with respect to the holder, *i.e.* either by a transfer of the interest or otherwise.

(4) *Source of right or lapse.* A voting right or a liquidation right may be conferred by and may lapse by reason of a State law, the corporate charter or bylaws, an agreement, or other means.

(b) *Lapse of voting right.* A lapse of a voting right occurs at the time a presently exercisable voting right is restricted or eliminated.

(c) *Lapse of liquidation right*—(1) *In general.* A lapse of a liquidation right occurs at the time a presently exercisable liquidation right is restricted or eliminated. Except as otherwise provided, a transfer of an interest that results in the lapse of a liquidation right is not subject to this section if the rights with respect to the transferred interest are not restricted or eliminated. However, a transfer that results in the elimination of the transferor's right or ability to compel the entity to acquire an interest retained by the transferor that is subordinate to the transferred interest is a lapse of a liquidation right with respect to the subordinate interest.

(2) *Exceptions.* Section 2704(a) does not apply to the lapse of a liquidation right under the following circumstances.

(i) *Family cannot obtain liquidation value*—(A) *In general.* Section 2704(a) does not apply to the lapse of a liquidation right to the extent the holder (or the holder's estate) and members of the holder's family cannot immediately after the lapse liquidate an interest that the holder held directly or indirectly and could have liquidated prior to the lapse.

(B) *Ability to liquidate.* Whether an interest can be liquidated immediately after the lapse is determined under the State law generally applicable to the entity, as modified by the governing instruments of the entity, but without regard to any restriction described in section 2704(b). Thus, if, after any restriction described in section 2704(b) is disregarded, the remaining requirements for liquidation under the governing instruments are less restrictive than the State law that would apply in the absence of the governing instruments, the ability to liquidate is determined by reference to the governing instruments.

(ii) *Rights valued under section 2701.* Section 2704(a) does not apply to the lapse of a liquidation right previously valued under section 2701 to the extent necessary to prevent double taxation (taking into account any adjustment available under § 25.2701-5).

(iii) *Certain changes in State law.* Section 2704(a) does not apply to the lapse of a liquidation right that occurs solely by reason of a change in State law. For purposes of this paragraph, a change in the governing instrument of an entity is not a change in State law.

(d) *Amount of transfer.* The amount of the transfer is the excess, if any, of—

(1) The value of all interests in the entity owned by the holder immediately before the lapse (determined immediately after the lapse as if the lapsed right was nonlapsing); over

(2) The value of the interests described in the preceding paragraph immediately after the lapse (determined as if all such interests were held by one individual).

(e) *Application to similar rights.* [Reserved]

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Prior to D's death, D owned all the preferred stock of Corporation Y and D's children owned all the common stock. At that time, the preferred stock had 60 percent of the total voting power and the common stock had 40 percent. Under the corporate by-laws, the voting rights of the preferred stock terminated on D's death. The value of D's interest immediately prior to D's death (determined as if the voting rights were nonlapsing) was $100X. The value of that interest immediately after death would have been $90X if the voting rights had been nonlapsing. The decrease in value reflects the loss in value resulting from the death of D (whose involvement in Y was a key factor in Y's profitability). Section 2704(a) applies to the lapse of voting rights on D's death. D's gross estate includes an amount equal to the excess, if any, of $90X over the fair market value of the preferred stock determined after the lapse of the voting rights.

Example 2. Prior to D's death, D owned all the preferred stock of Corporation Y. The preferred stock and the common stock each carried 50 percent of the total voting power of Y. D's children owned 40 percent of the common stock and unrelated parties own the remaining 60 percent. Under the corporate by-laws, the voting rights of the preferred stock terminate on D's death. Section 2704(a) does not apply to the lapse of D's voting rights because members of D's family do not control Y after the lapse.

Example 3. The by-laws of Corporation Y provide that the voting rights of any transferred shares of the single outstanding class of stock are reduced to ½ vote per share after the transfer but are fully restored to the transferred shares after 5 years. D owned 60 percent of the shares prior to death and members of D's family owned the balance. On D's death, D's shares pass to D's children and the voting rights are reduced pursuant to the by-laws. Section 2704(a) applies to the lapse of D's voting rights. D's gross estate includes an amount equal to the excess, if any, of the fair market value of D's stock (determined immediately after D's death as though the voting rights had not been reduced and would not be reduced) over the stock's fair market value immediately after D's death.

Example 4. D owns 84 percent of the single outstanding class of stock of Corporation Y. The by-laws require at least 70 percent of the vote to liquidate Y. D gives one-half of D's stock in equal shares to D's three children (14 percent to each). Section 2704(a) does not apply to the loss of D's ability to liquidate Y, because the voting rights with respect to the corporation are not restricted or eliminated by reason of the transfer.

Example 5. D and D's two children, A and B, are partners in Partnership X. Each has a 3⅓ percent general partnership interest and a 30 percent limited partnership interest. Under State law, a general partner has the right to participate in partnership management. The partnership agreement provides that when a general partner withdraws or dies, X must redeem the general partnership interest for its liquidation value. Also, under the agreement any general partner can liquidate the partnership. A limited partner cannot liquidate the partnership and a limited partner's capital interest will be returned only when the partnership is liquidated. A deceased limited partner's interest continues as a limited partnership interest. D dies, leaving his limited partnership interest to D's spouse. Because of a general partner's right to dissolve the partnership, a limited partnership interest has a greater fair market value when held in conjunction with a general partnership interest than when held alone. Section 2704(a) applies to the lapse of D's liquidation right because after the lapse, members of D's family could liquidate D's

limited partnership interest. D's gross estate includes an amount equal to the excess of the value of all D's interests in X immediately before D's death (determined immediately after D's death but as though the liquidation right had not lapsed and would not lapse) over the fair market value of all D's interests in X immediately after D's death.

Example 6. The facts are the same as in *Example 5,* except that under the partnership agreement D is the only general partner who holds a unilateral liquidation right. Assume further that the partnership agreement contains a restriction described in section 2704(b) that prevents D's family members from liquidating D's limited partnership interest immediately after D's death. Under State law, in the absence of the restriction in the partnership agreement, D's family members could liquidate the partnership. The restriction on the family's ability to liquidate is disregarded and the amount of D's gross estate is increased by reason of the lapse of D's liquidation right.

Example 7. D owns all the stock of Corporation X, consisting of 100 shares of non-voting preferred stock and 100 shares of voting common stock. Under the by-laws, X can only be liquidated with the consent of at least 80 percent of the voting shares. D transfers 30 shares of common stock to D's child. The transfer is not a lapse of a liquidation right with respect to the common stock because the voting rights that enabled D to liquidate prior to the transfer are not restricted or eliminated. The transfer is not a lapse of a liquidation right with respect to the retained preferred stock because the preferred stock is not subordinate to the transferred common stock.

Example 8. D owns all of the single class of stock of Corporation Y. D recapitalizes Y, exchanging D's common stock for voting common stock and non-voting, non-cumulative preferred stock. The preferred stock carries a right to put the stock for its par value at any time during the next 10 years. D transfers the common stock to D's grandchild in a transfer subject to section 2701. In determining the amount of D's gift under section 2701, D's retained put right is valued at zero. D's child, C, owns the preferred stock when the put right lapses. Section 2704(a) applies to the lapse, without regard to the application of section 2701, because the put right was not valued under section 2701 in the hands of C.

Example 9. A and A's two children are equal general and limited partners in Partnership Y. Under the partnership agreement, each general partner has a right to liquidate the partnership at any time. Under State law that would apply in the absence of contrary provisions in the partnership agreement, the death or incompetency of a general partner terminates the partnership. However, the partnership agreement provides that the partnership does not terminate on the incompetence or death of a general partner, but that an incompetent partner cannot exercise rights as a general partner during any period of incompetency. A partner's full rights as general partner are restored if the partner regains competency. A becomes incompetent. The lapse of A's voting right on becoming incompetent is not subject to section 2704(a) because it may be restored to A in the future. However, if A dies while incompetent, a lapse subject to section 2704(a) is deemed to occur at that time because the lapsed right cannot thereafter be restored to A.

§ 25.2704–2 Transfers subject to applicable restrictions.

(a) *In general.* If an interest in a corporation or partnership (an "entity") is transferred to or for the benefit of a member of the transferor's family, any applicable restriction is disregarded in valuing the transferred interest. This section applies only if the transferor and members of the transferor's family control the entity immediately before the transfer. For the definition of control, see § 25.2701–2(b)(5). For the definition of member of the family, see § 25.2702–2(a)(1).

(b) *Applicable restriction defined.* An applicable restriction is a limitation on the ability to liquidate the entity (in whole or in part) that is more restrictive than the limitations that would apply under the State law generally applicable to the entity in the absence of the restriction. A restriction is an applicable restriction only to the extent that either the restriction by its terms will lapse at any time after the transfer, or the transferor (or the transferor's estate) and any members of the transferor's family can remove the restriction immediately after the transfer. Ability to remove the restriction is determined by reference to the State law that would apply but for a more restrictive rule in the governing instruments of the entity. See § 25.2704–1(e)(1)(B) for a discussion of the term "State law." An applicable restriction does not include a commercially reasonable restriction on liquidation imposed by an unrelated person providing capital to the entity for the entity's trade or business operations whether in the form of debt or equity. An unrelated person is any person whose relationship to the transferor, the transferee, or any member of the family of either is not described in section 267(b) of the Internal Revenue Code, provided that for purposes of this section the term "fiduciary of a trust" as used in section 267(b) does not include a bank as defined in section 581 of the Internal Revenue Code. A restriction imposed or required to be imposed by Federal or State law is not an applicable restriction. An option, right to use property, or agreement that is subject to section 2703 is not an applicable restriction.

(c) *Effect of disregarding an applicable restriction.* If an applicable restriction is disregarded under this section, the transferred interest is valued as if the restriction does not exist and as if the rights of the transferor are determined under the State law that would apply but for the restriction. For example, an applicable restriction with respect to preferred stock will be disregarded in determining the amount of a transfer of common stock under section 2701.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. D owns a 76 percent interest and each of D's children, A and B, owns a 12 percent interest in General Partnership X. The partnership agreement requires the consent of all the partners to liquidate the partnership. Under the State law that would apply in the absence of the restriction in the partnership agreement, the consent of partners owning 70 percent of the total partnership interests would be required to liquidate X. On D's death, D's partnership interest passes to D's child, C. The requirement that all the partners consent to liquidation is an applicable restriction. Because A, B and C (all members of D's family), acting together after the transfer, can remove the restriction on liquidation, D's interest is valued without regard to the restriction; *i.e.,* as though D's interest is sufficient to liquidate the partnership.

Example 2. D owns all the preferred stock in Corporation X. The preferred stock carries a right to liquidate X that cannot be exercised until 1999. D's children, A and B, own all the common stock of X. The common stock is the only voting stock. In 1994, D transfers the preferred stock to D's child, A. The restriction on D's right to liquidate is an applicable restriction that is disregarded. Therefore, the preferred stock is valued as though the right to liquidate were presently exercisable.

Example 3. D owns 60 percent of the stock of Corporation X. The corporate by-laws provide that the corporation cannot be liquidated for 10 years after which time liquidation requires approval by 60 percent of the voting interests. In the absence of the provision in the by-laws, State law would require approval by 80 percent of the voting interests to liquidate X. D transfers the stock to a trust for the benefit of D's child, A, during the 10-year period. The 10-year restriction is an applicable restriction and is disregarded. Therefore, the value of the stock is determined as if the transferred block could currently liquidate X.

Example 4. D and D's children, A and B, are partners in Limited Partnership Y. Each has a 3.33 percent general partnership interest and a 30 percent limited partnership interest. Any general partner has the right to liquidate the partnership at any time. As part of a loan agreement with a lender who is related to D, each of the partners agree that the partnership may not be liquidated without the lender's consent while any portion of the loan remains outstanding. During the term of the loan agreement, D transfers one-half of both D's partnership interests to each of A and B. Because the lender is a related party, the requirement that the lender consent to liquidation is an applicable restriction and the transfers of D's

interests are valued as if such consent were not required.

Example 5. D owns 60 percent of the preferred and 70 percent of the common stock in Corporation X. The remaining stock is owned by individuals unrelated to D. The preferred stock carries a put right that cannot be exercised until 1999. In 1995, D transfers the common stock to D's child in a transfer that is subject to section 2701. The restriction on D's right to liquidate is an applicable restriction that is disregarded in determining the amount of the gift under section 2701.

§ 25.2704-3 Effective date.

Section 25.2704-1 applies to lapses occurring after January 28, 1992 of rights created after October 8, 1990. Section 25.2704-2 applies to transfers occurring after January 28, 1992 of property subject to applicable restrictions created after October 8, 1990. In determining whether a voting right or a liquidation right has lapsed prior to that date, and for purposes of determining whether the lapse is subject to section 2704(a), taxpayers may rely on any reasonable interpretation of the statutory provisions. For transfers of interests occurring before January 28, 1992, taxpayers may rely on any reasonable interpretation of the statutory provisions in detemining whether a restriction is an applicable restriction that must be disregarded in determining the value of the transferred interest. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 12. The authority for part 301 continues to read, in part:

Authority: Sec 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 13. In § 301.6501(c)-1, new paragraph (e) is added in the appropriate place to read as follows:

§ 301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(e) *Certain gifts not shown on return*—(1) *In general.* If any transfer of property subject to the special valuation rules of section 2701 or section 2702, or if the occurrence of any taxable event described in section § 25.2701-4 of this chapter, is not adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code (without regard to section 2503(b)), any tax imposed by chapter 12 of subtitle B of the Code on the transfer or resulting from the taxable event may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2) *Adequately shown.* A transfer of property valued under the rules of section 2701 or section 2702 or any taxable event described in § 25.2701-4 of this chapter will be considered adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code only if, with respect to the entire transaction or series of transactions (including any transaction that affected the transferred interest) of which the transfer (or taxable event) was a part, the return provides:

(i) A description of the transactions, including a description of transferred and retained interests and the method (or methods) used to value each;

(ii) The identity of, and relationship between, the transferor, transferee, all other persons participating in the transactions, and all parties related to the transferor holding an equity interest in any entity involved in the transaction; and

(iii) A detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value. Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.

(3) *Effective date.* The provisions of this paragraph (e) are effective as of January 28, 1992. In determining whether a transfer or taxable event is adequately shown on a gift tax return filed prior to that date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: January 2, 1992.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2175 Filed 1-28-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[PS-30-91]

RIN 1545-AM86

Adjustments Under Special Valuation Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document amends proposed regulations providing for an adjustment in computing the Federal estate tax imposed on the transfer of interests to which the special valuation rules of section 2701 previously applied. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. The proposed regulations will provide guidance taxpayers need to comply with that Act.

DATES: Written comments and requests for a public hearing must be received by May 4, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (PS-30-91), room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman, (202) 535-9512 (not a toll-free telephone number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have 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 these requirements should be sent 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, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

Background

This document amends proposed additions to the Gift Tax Regulations (26 CFR part 25) under section 2701 of the Internal Revenue Code. The proposed regulations, originally published September 11, 1991, reflect changes made to the Code by section 11602 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, 104 Stat. 1383.

Explanation of Provisions

Overview

The proposed regulations amended in this notice were published on September 11, 1991 (56 FR 46245), in the second installment of regulatory guidance under chapter 14 of the Internal Revenue Code.

Section 2701 provides gift tax valuation rules that apply to transfers to certain family members of interests in corporations or partnerships.

Generally, section 2701 applies when an interest in a corporation or partnership is transferred to a member of the transferor's family and the transferor or an applicable family member retains a certain type of interest senior to the transferred interest (an "applicable retained interest").

If section 2701 applies, the amount of an individual's gift is determined using the subtraction method of valuation. Under this method, the value of any family-held interests senior to the transferred interest is subtracted from the value of all family-held interests in the entity to determine the aggregate value of the transferred interest and any other interests of the same class or classes junior to the transferred interest.

Section 2701 provides special rules for valuing any applicable retained interest held by the transferor or an applicable family member. In valuing an applicable retained interest, extraordinary payment rights and distribution rights in a controlled entity (other than qualified payment rights) are valued at zero. However, if an extraordinary payment right is held in conjunction with a qualified payment right, those rights are valued on the assumption that each right will be exercised in a manner that results in the lowest total value for the retained interest. Other rights are valued as if the rights valued at zero do not exist but otherwise without regard to section 2701.

Section 2701(e)(6) provides that the Secretary shall, by regulation, provide an appropriate adjustment where there is a subsequent transfer or inclusion in the gross estate of an applicable retained interest that was valued under the special valuation rules of section 2701.

September 11 Proposed Regulations

The September 11 proposed regulations implemented section 2701(e)(6) by providing that the estate of the individual who made the transfer to which section 2701 previously applied (and thus incurred the additional tax) would be entitled to a non-refundable credit against the estate tax. Under those proposed regulations, the amount of the credit would have equaled the amount of increase in gift tax payable (before application of the unified credit) that resulted from the application of section 2701 to the transfer (the "initial transfer"). Comments were requested on whether the adjustment should be a reduction in adjusted taxable gifts or a credit against estate tax as proposed.

Amended Proposed Adustment to Mitigate Double Taxation

In response to the comments received, proposed § 25.2701-5 is revised by this notice of proposed rulemaking. Rather than providing a credit against the Federal estate tax as initially proposed, the amended proposed regulations provide for a reduction to a decedent's adjusted taxable gifts. In general, the amount of the reduction is the lesser of: (1) The amount by which the transferor's taxable gifts were increased as a result of the application of section 2701, and (2) the increase in the decedent's gross estate (or adjusted taxable gifts) attributable to the portion of the value of the applicable retained interest that was subject to gift tax at the time of the initial transfer.

The second amount generally will apply if the fair market value of the decedent's applicable retained interest has declined between the date of the section 2701 transfer and the date of the subsequent transfer of the interest.

Under certain circumstances, the transferor's spouse is treated as the transferor. The reduction is otherwise not assignable or transferable.

Because the transferor will often acquire an applicable retained interest initially held by an applicable family member and because of the administrative complexity inherent in allowing assignability, a reduction in taxable gifts with respect to applicable family members is not proposed.

The amended proposed regulations do not adopt the suggestion of one commentator that the adjustment be made by "purging" the entire increase in the amount of the gift resulting from the application of section 2701 from the transferor's adjusted taxable gifts. The commentator recommended that the amount of the adjustment be the amount by which the transferor's taxable gifts were increased as a result of the application of section 2701. If adopted, this comment would transform section 2701 from a provision that measures the transferor's tax liability to one that merely accelerates payment of the transfer tax that would have been paid had section 2701 not been enacted.

Congress clearly intended, by enacting section 2701, to eliminate certain valuation abuses. Adoption of the "purge method" would perpetuate those abuses Congress sought to eliminate. After fully considering the merits of the "purge method," Treasury and the Service concluded that the method is inconsistent with the purpose of section 2701. Therefore, the amended proposed regulations do not incorporate that method.

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 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 initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Fred E. Grundeman, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 25 are as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 is amended by adding the following citation:

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

§ 25.2701-5 also issued under 26 U.S.C. 2701(e)(6).

Par. 2. A new § 25.2701-5 is added to read as follows:

§ 25.2701-5 Adjustments to mitigate double taxation.

(a) *Reduction in adjusted taxable gifts*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, in determining the Federal estate tax with respect to the estate of an individual (the "transferor") who previously made a transfer subject to section 2701 (the "initial transfer"), the transferor's executor may reduce the decedent's adjustable taxable gifts (under section 2001(b)) by the amount determined under paragraph (b) of this section ("the reduction"). The identity of the transferor is determined without regard to section 2513.

(2) *Special rule applicable to transferor's spouse.* If any portion of the transferor's section 2701 interest is transferred to the spouse by the transferor in a manner that would not be a taxable event (as defined in § 25.2701-4(b)(2)(ii)) if the interest were a qualified payment interest, a proportionate amount of the reduction in adjusted taxable gifts otherwise available in the estate of the transferor ceases to be available in the estate of the transferor, but instead is available in the estate of the transferor's spouse. For purposes of this section, a section 2701 interest held by the transferor's spouse at the time of the initial transfer or acquired by the transferor's spouse from an applicable family member subsequent to the initial transfer is treated as an interest transferred to the spouse by the transferor in a manner that would not be a taxable event.

(3) *Section 2701 interest.* Section 2701 interest means an applicable retained interest that was valued using the special valuation rules of section 2701 at the time of the initial transfer. If a modification under § 25.2701-3(b)(5) was made in computing the amount of the gift with respect to the initial transfer, the modification is treated as applying—

(i) First, to the interests held by applicable family members (other than the transferor's spouse) on a pro rata basis;

(ii) Second, to the interest held by the transferor's spouse; and

(iii) Finally, to the interest held by the transferor.

(b) *Amount of reduction*—(1) *In general.* The amount of the reduction is the lesser of—

(i) The amount by which the transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer; or

(ii) The amount (determined under paragraph (b)(2) of this section) of the transfer tax inclusion of the section 2701 interest.

(2) *Transfer tax inclusion*—(i) *In general.* The amount of the transfer tax inclusion is the excess estate tax value of the section 2701 interest multiplied by a fraction. The numerator of the fraction is the amount determined in § 25.2701-3(b)(3) and the denominator of the fraction is the amount determined after application of § 25.2701-3(b)(2).

(ii) *Excess estate tax value.* The excess estate tax value is the excess, if any, of—

(A) The estate tax value of the section 2701 interest as finally determined for Federal estate tax purposes; over

(B) The value of that interest determined under section 2701 at the time of the initial transfer.

(iii) *Estate tax value.* For purposes of this paragraph (b)(2), the estate tax value of a section 2701 interest included in the gross estate of the transferor is the value, as finally determined for Federal estate tax purposes, of the section 2701 interest (including the right to receive any distributions thereon (other than qualified payments)) reduced by the amount of any deduction allowed with respect to the interest to the extent that the deduction would not have been allowed if the interest were not included in the transferor's gross estate. In the case of a section 2701 interest transferred during life, the estate tax value of the section 2701 interest means the sum of—

(A) The increase in taxable gifts resulting from the transfer of the section 2701 interest; and

(B) The amount of any consideration in money or money's worth received in exchange for the transfer.

(iv) *Non-recognition transactions.* To the extent the transferor exchanged a section 2701 interest in a transaction in which gain or loss was not recognized, the exchange is not treated as a transfer during life and the estate tax value of the section 2701 interest is determined as if the new interest were the section 2701 interest.

(c) *Double taxation otherwise avoided.* Notwithstanding any other rule of this section, no reduction is available under this section to the extent—

(1) Double taxation is otherwise avoided in the computation of the estate tax under section 2001; or

(2) A reduction was previously taken under the provisions of this section with respect to the same section 2701 interest and the same initial transfer.

(d) *Examples.* The following examples illustrate the provisions of this section. All of the examples assume the following facts:

Facts. X corporation has both preferred and common stock outstanding. On January 1, 1992, A, owner of all of the outstanding stock, transfers all of the common stock to A's child (the initial transfer). A makes no other transfers during 1992. As a result of the application of section 2701 to A's transfer, A's taxable gifts for 1992 are increased by $1,500,000, from $1,000,000 (the amount of A's gifts for 1992 determined without regard to section 2701) to $2,500,000. For purposes of these examples it may be assumed that:

(1) The value of the preferred stock determined under section 2701 was $200,000; and

(2) The amount determined in § 25.2701-3(b)(2) was $2,500,000, all of which was allocated to the transferred property in § 25.2701-3(b)(3).

Example 1. A dies in 1996, having retained all of the preferred stock of X. Assuming that the limitation of paragraph (b)(2) of this section does not apply, the executor of A's estate is entitled to reduce adjusted taxable gifts in A's estate under section 2001(b) by $1,500,000 (the amount of the increase in taxable gifts resulting from application of section 2701).

Example 2. A dies in 1996, having retained all of the preferred stock of X. Assume that the fair market value of the preferred stock includible in A's gross estate is $1,200,000. The reduction in adjusted taxable gifts available in computing A's estate tax is the lesser of $1,500,000 (the amount determined in *Example 1* and $1,000,000, the excess of $1,200,000 (the increase in A's gross estate tax attributable to the inclusion of the preferred stock in A's gross estate) over $200,000 (the section 2701 value of the preferred stock at the time of the initial transfer) multiplied a fraction, the numerator of which is $2,500,000 (the amount determined in § 25.2701-3(b)(3)) and the denominator of which is $2,500,000 (the amount determined under § 25.2701-3(b)(2)).

Example 3. In 1994, two years prior to A's death in 1996, A sold the preferred stock to A's child for $600,000, its fair market value at the date of sale. A's executor may reduce A's adjusted taxable gifts by $400,000, the excess of $600,000 (the estate tax value of the preferred stock transferred during life) over $200,000 (the value of the preferred stock determined under section 2701 at the time of the initial transfer) multiplied by a fraction the numerator of which is $2,500,000 (the amount determined in § 25.2701-3(b)(3)) and the denominator of which is $2,500,000 (the amount determined in § 25.2701-3(b)(2)). The result would be the same if A had transferred the stock to A's child for less than adequate consideration.

Example 4. In 1996, A dies, bequeathing the preferred stock to A's spouse, S. Because S received the preferred stock in a transfer that would not be a taxable event under § 25.2701-4, no reduction is available in A's estate. The reduction is instead available in S's estate. The amount of the reduction in S's estate is the lesser of the reduction that would have been available in A's estate (determined without regard to paragraph (b)(1)(ii) of this section) and the reduction determined after application of paragraph (b)(1)(ii) with respect to S's estate.

(e) *Effective date.* Section 25.2701-5 is effective February 4, 1992. If the subsequent transfer or inclusion occurred prior to January 28, 1992, the taxpayer may rely on § 25.2701-5 as initially proposed or the provisions of this amended § 25.2701-5.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92-2176 Filed 1-28-92; 8:45 am]

BILLING CODE 4830-01-M

federal register

Tuesday
February 4, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 905 and 990

Performance Funding System; Formal Review Process; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R-92-1453; FR-3024-F-01]

RIN 2577-AB01

Performance Funding System: Formal Review Process

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 118 of the Housing and Community Development Act of 1987 that require modification of the Performance Funding System (PFS) of calculating operating subsidy eligibility of Public Housing Agencies and Indian Housing Authorities (hereafter, called PHAs/IHAs) operating public housing and Indian housing rental projects. This final rule adopts a revised formula for calculation of the Formula Expense Level. PHAs/IHAs that choose to do so may request an adjustment to their allowable expense level based on the use of the revised formula. The revised formula will also be substituted for the current formula when calculating the impact on the allowable expense level of a significant change in the characteristics of a PHA/IHA's units.

A proposed rule was published on this subject on December 19, 1989 (54 FR 52000), which also covered other changes to the PFS required by the statute: sharing of energy rate reductions; non-HUD financing of energy conservation measures; combining of units; and funding of audit costs. Those changes were the subject of a separate final rule, published on September 11, 1991 (56 FR 46356).

DATES: *Effective Date:* April 1, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Office of Public Housing, room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-1872, or (202) 245-0850 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 905.730(e) and 990.110(e) of this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. When they have been approved, a notice to that effect will be published in the Federal Register.

II. Background

The 1987 Act (section 118 (a)(2)) required HUD to correct inequities in the base year expense level, to reflect changes in operating circumstances, and to reflect the relative costs of operating in economically distressed and prosperous units of local government. The proposed formula works to correct inequities and to reflect changes by choosing plausible, standardized, and PHA/IHA-specific (or area-specific) indicators of operating costs and applying the cost relations of these indicators uniformly to all PHAs/IHAs based on their most current data. HUD's analysis shows that the indicators in this equation are statistically more reliable than those of the earlier AEL formula. (A copy of this analysis is available from the contact person listed above.) The new formula also addresses the relative condition of the local government by including an excellent proxy of city economic condition—the proportion of the population who are renter households with below poverty income and reside in old units. Two PHA/IHA-specific indicators in the formula—the size of the PHA/IHA and the extent of family high rises in the PHA/IHA—also are associated, on average, with economic distress in the larger community.

III. Revised Formula

The Formula is used to determine the Formula Expense Level (FEL), which, in turn, is used to determine the Allowable Expense Level (AEL). The FEL is calculated by adding various factors, which have been multiplied by their weights, and subtracting a calibration constant. The indicators chosen for the formula met certain tests. They had to follow the intent of the statute and the framework of the proposed rule, to be available and easily computable in a standardized format, to have a common sense rationale for explaining variations in PHA/IHA operating expenses, to be significantly correlated with PHA/IHA expenses, to add significantly to the statistical fit of a system of indicators, and to have a formula coefficient in the expected direction.

A. Indicators and Weights

The indicators in the revised formula, and the weights to be given them (stated in parentheses) are as follows:

1. Pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community (7.954). This Census-based statistic will apply to the county of the PHA/IHA, except if the PHA/IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons (in which case city-specific data are used). County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

2. Local Government Wage Rate (116.496)—The average of 1987 and 1988 local government wages, as determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA/IHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

3. The lesser of the current number of the PHA/IHA's two or more bedroom units available for occupancy, or 15,000 units (.002896).

4. The current ratio of the number of the PHA/IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA/IHA's units available for occupancy (37.294). For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

5. The current ratio of the number of the PHA/IHA's three or more bedroom units available for occupancy to the number of all the PHA/IHA's units available for occupancy (22.303).

6. An equation calibration constant of −.2344.

B. Use of Revised Formula in AEL Appeals Process

A PHA/IHA will calculate a revised Formula Expense Level (FEL) under the new equation by using the county (or city) based measures provided by HUD in a Notice to PHAs/IHAs and using the characteristics of its dwelling units available for occupancy in the fiscal year immediately preceding the effective

date of this rule (hereafter called "current year"). Because the formula was developed based on PHA/IHA actual FY 1988 expenditure levels, it will be necessary to inflate the resulting FEL to reflect current year expenditures. HUD will provide a form and tables to be used to apply the PFS inflation factors, standard delta, and insurance increase for the PHA/IHA's locality for that period of time. The result will be a revised FEL for the PHA/IHA.

For the formal review process, a PHA/IHA will compare its AEL for the year before this rule's effective date (PHA/IHA fiscal years ending in calendar year 1992) with the revised FEL. If .85 times the revised FEL for the current year is greater than the existing AEL for the current year, the PHA/IHA is eligible to request an upward revision to its AEL. The PHA/IHA would request the revision by using .85 times the FEL instead of the existing AEL as the basis for calculating its AEL for the PHA's/IHA's next fiscal year. (For purposes of this rule, the next fiscal year is the PHA/IHA fiscal year starting on or after the April 1, 1992 effective date of this rule, which would thus end in calendar year 1993). On the other hand, if 1.15 times the revised FEL is less than the existing AEL, the PHA/IHA is eligible to request a downward revision to its AEL (but it would not benefit from such a request). If the PHA/IHA were to request such a revision, it would use 1.15 times the FEL instead of the existing AEL as the basis for calculating its AEL for the next fiscal year. (Normally the previous AEL is increased by the delta and inflation factor to develop the subsequent AEL. In these cases, .85 times the FEL (or 1.15 times the FEL) will be increased by the delta and inflation factor to develop the subsequent AEL.) This system treats all PHAs/IHAs in accordance with an objective standard, and it is administratively feasible for both the Department and the PHAs/IHAs.

If a PHA/IHA is requesting a change in its AEL based on the revised formula, it will use the revised AEL in developing its operating budget for the next fiscal year, or any revision to that operating budget. It will submit its operating budget for the next fiscal year, including the PFS forms containing the calculation, to its HUD Field Office, and the Field Office will review the calculations and approve an operating subsidy based on the revised AEL for the PHA/IHA's next fiscal year operating budget. If a PHA/IHA has submitted its original operating budget before the publication of a change to the Performance Funding System Handbook, 7475.13, which will provide instructions and revised forms to be used in implementing this regulatory change, the PHA/IHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the PFS handbook change, which will follow publication of this rule.

The Department estimates that about 843 PHAs and 25 IHAs might be entitled to increases in their Allowable Expense Levels as a result of this appeals process, at an estimated annual cost to the government of $30 million. PHAs/IHAs with fewer than 1250 units would be the group most affected. About 20 to 25 percent of PHAs/IHAs in the 1–99, 100–249, 250–499, and 500–1249 unit size groups will be potential gainers under the range test and the revised formula. Since this rule does not require PHAs/IHAs to have their AELs adjusted in accordance with the revised formula for the next fiscal year (but they have the option to request the adjustment), the many PHAs/IHAs that had AELs at least 15 percent above the revised formula are very unlikely to request an adjustment. However, if they do so, a downward adjustment would result. (See the paragraphs in the Findings and Certifications section below, VI C, that discuss the Regulatory Flexibility Act.)

Example

As an illustration of the calculation of the formula expense level using the new formula, suppose that a PHA had the following characteristics:

—2.00 for the number of households in poverty living in pre-1940 rental units in 1980 as a percentage of the population in 1980 for the area served by the PHA;
—1.05 for the local government wage index for 1987–88 for the areas served by the PHA;
—5,000 for the number of the PHA's two or more bedroom units available for occupancy;
—.1 for the ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy;
—and .25 for the ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of its total number of units available for occupancy.

Furthermore, suppose that the local inflation factor for the PHA area was 1.0495 for FY 1989, 1.0628 for FY 1990, and 1.051 for FY 1991. (These hypothetical figures are, in fact, the unit-weighted national averages for those periods.)

Finally, suppose the AEL of the PHA was $165 in FY 1991. Its range test and FEL computation for FY 1992 would proceed as follows:

1. Compute its base-year estimated FEL for FY 1988 as the sum of:

7.954 times 2.00, plus
116.496 times 1.05, plus
.002896 times 5,000, plus
37.294 times .10, plus
22.303 times .25, plus
−.2344 (the formula calibration constant).

This sum is $161.79 for the revised estimate of predicted FEL for FY 1988.

2. The sum in step 1 is raised to a revised estimate of predicted FEL for FY 1991 in the same manner that the FY 1988 AEL was raised to a FY 1991 AEL, as follows:

FY 1989: Multiply by the inflation factor (1.0495) and the standard delta aging coefficient (1.005), and add the one-time insurance adjustment of $8.45 per unit month. These steps raise the $161.79 to $179.10 for FY 1989.

FY 1990: Multiply by the inflation factor (1.0625) and the standard delta aging coefficient (1.005). These steps raise $179.10 to $191.24 for FY 1990.

FY 1991: Multiply by the inflation factor (1.051) and the standard delta aging coefficient (1.005). These steps raise $191.24 to $201.99 as the revised FEL for FY 1991.

3. Eighty-five percent of the revised FEL for FY 1991 is computed as .85 times $201.99, which is $171.69. Under the fifteen percent range test, the revised allowable expense level of the PHA can be appealed to be based on the higher of its current AEL or 85 percent of its current revised FEL. In the illustrative case, the PHA can thereby request that it base its calculation of its FY 1992 AEL on $171.69 (which is $6.69 higher than its FY 1991 AEL).

C. Use of Revised Formula in Delta Calculation

As explained in the proposed rule, after the effective date of the final rule, the usual methods of adjusting the AEL to reflect changes in housing stock would be followed, substituting the revised formula for the current formula. Currently, when there has been no significant change in housing stock, a PHA/IHA uses an increase of .5 percent to reflect the aging of the PHA/IHA's projects in lieu of the formula calculation. Because project age no longer would be a factor in the new formula, all PHAs/IHAs would perform the simplified calculation of increasing the AEL by .5 percent (Simplified Delta). Only PHAs/IHAs that meet the threshold of 5 percent or 1,000 net change in number of units would perform the additional calculation to reflect changes in average number of

bedrooms per unit and building height (Long Calculation of the Delta).

If a PHA/IHA is required to perform the Long Calculation of the Delta for the next fiscal year and submits its budget based on the old formula before a date which is 60 days after the publication of the PFS handbook change implementing this rule, the PHA/IHA would be given the option of recomputing its adjusted AEL based on the revised formula if it submits a revision to HUD within 60 days after the publication of the PFS handbook change containing the revised formula. Any PHA/IHA submitting a budget to HUD more than 60 days after the publication of the PFS handbook change containing the revised formula would be required to use the new formula in the Long Calculation of the Delta—if it exceeded the threshold of unit change and was required to perform the Long Calculation of the Delta described above.

Example. FY 1992. Assume that: (1) The PHA has experienced no change in the number of its units, (2) the AEL for the PHA's FY 1991 was $176.00, and (3) the applicable Local Inflation Factor is 6 percent (expressed as 1.06). The AEL for FY 1992 is $187.49, computed as follows:

1. Allowable Expense Level for FY 1991	$176.00
2. Delta: (Simplified Calculation) ($176.00×.5 percent)	.88
3. Sum (line 1 plus line 2)	176.88
4. Local Inflation Factor	1.06
5. Allowable Expense Level for FY 1992 (line 3 multiplied by line 4)	187.49

FY 1993. Assume that the PHA has deprogrammed (e.g., demolished or sold) a project that represents seven percent of its units and that the last time an adjustment to the AEL was made based on the Long Calculation of the Delta was in its FY 1986. At that time, the PHA had the following characteristics for its Requested Budget Year: 1500 two or more bedroom units were available for occupancy; five percent of all the PHA's units available for occupancy were two or more bedroom units in high-rise family buildings; and half of all the PHA's units were three bedrooms or more. Each of these FY 1986 characteristics is multiplied by the corresponding equation weights and totaled: (1500×.002896)+(.05×37.294)+(.50×22.303). The weighted total for the FY 1986 characteristics is 17.36.

Also assume that the PHA average characteristics for the Requested Budget Year are now 1200 two or more bedroom units available for occupancy, none of the PHA's units available for occupancy were two or more bedroom units in high-rise family buildings, and 47 percent of all the PHA's units were three bedrooms or more. Each of these FY 1993 characteristics are multiplied by the corresponding equation weights and totaled: (1200×.002896)+(.00×37.294)+(.47×22.303). The weighted total for the FY 1993 characteristics is 13.96.

The change in the prediction due to the change in characteristics is a decrease of $3.40 (17.36 minus 13.96). This result is then multiplied by the Local Inflation Factors for FY 1989 through 1992. The inflated delta is ($4.15). (This step is taken because the formula for FY 1992 was developed using FY 1988 expenses and the prediction must be increased for inflation since 1988.) The AEL for FY 1992 is $192.57 computed as follows:

1. Allowable Expense Level for FY 1992	$187.49
2. Delta: Increase (or Decrease) in Formula Expense Level:	
a. (Simplified Calculation) ($187.49×.5 percent)	.94
b. (Long Calculation of the Delta)	(4.15)
3. Sum (line 1 plus line 2a & b)	184.28
4. Local Inflation Factor	1.045
5. Allowable Expense Level for FY 1993 (line 3 multiplied by line 4)	192.57

D. Use of Revised Formula for Troubled PHAs and IHAs

The Department intends to publish a proposed rule by April 1, 1992, that when implemented, would apply the revised formula administratively in FY 1993 to PHAs operating 250 units or more that are identified as troubled by the end of FY 1992.

IV. Response to Public Comments

A. General Comments

We received comments on the formal review process from the National Association of Housing and Redevelopment Officials, the Council of Large Public Housing Authorities, and 58 PHAs/IHAs, 38 of which are located in North Carolina.

The proposed rule elicited several comments with respect to the impact of the PFS formula on the Indian Housing programs. One comment rejected the proposed revised formula because no IHAs had been included in the sample on which it was based, and no PHA with fewer than 100 units had been included. The revised formula is based on a sample that did include a large number of IHAs and PHAs with fewer than 100 units. Another commenter advocated having an entirely separate formula for IHAs. The primary distinction between IHAs and PHAs is the extent to which scattered site housing is used. That subject is dealt with at more length later in this discussion. We have concluded that about 25 IHAs are likely to do better under the revised formula than under the current formula, so this rule will provide them with a benefit. Consequently, the provisions of part 905, applicable to Indian Housing Authorities, are revised in this rulemaking to correspond with the changes being made to Part 990, applicable to non-Indian public housing agencies.

There were no public comments on the technical amendment to § 990.101 of the rule that removes an outdated provision that a PHA/IHA's eligibility for operating subsidy be conditioned on charging aggregate rentals in any year of at least 20 percent of the sum of the monthly incomes of all the families. That amendment remains in this final rule without change.

1. Overall Approach

Four PHAs advocated an AEL review system developed outside the constraints of the current system. As discussed in detail in the preamble to the proposed rule, in order to depart from the historical expense level approach of the current system one would have to determine the adequacy of the level of historical PHA/IHA expenditures. This would entail the use of a "standards" approach, which would require consensus on the type and level of maintenance, administrative, and tenant services that should be eligible for reimbursement. Information on how much it costs to achieve these standards would then need to be obtained, preferably based on the experience of well-managed projects that are not part of the public housing system. (Otherwise the cost structure is self-perpetuating, whether too high or too low.) This approach was not adopted, because it would be a significant departure from the approach specifically endorsed by Congress in the 1987 Act and because of difficulties in reaching a consensus as to what standards to use and what types of non-PHA/IHA projects to select for comparison.

Some commenters wanted to step away from a formula approach and allow PHAs/IHAs to provide historic and other information on their projects and community and have their AELs revised under a more informal structure. A formula approach has been adopted because it has the advantages of treating all PHAs/IHAs in accordance with an objective standard, and is administratively feasible for both the Department and the PHAs/IHAs.

As directed by sections 524 and 525 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (hereafter NAHA), HUD is conducting a

study assessing revised methods of providing sufficient Federal funds to public housing agencies for the operation, maintenance, and modernization of public housing.

2. Rulemaking Process

One commenter observed that the proposed rule was hard to understand and asked us to build some reviews into the process to ensure that the regulations are understandable to readers. The rulemaking process provides this opportunity for review by all interested parties, and, in response to public comments, we have attempted to clear up any ambiguity in this final preamble and regulation.

Some comments complained that we have not developed the rule in consultation with PHAs/IHAs. By giving everyone a chance to comment on the proposed rule we have given all PHAs/IHAs a chance to be consulted.

3. Implementation

One comment received was that PHAs/IHAs should be able to appeal in the future, that appeals should not be a one-time opportunity. A one-time systematic adjustment to the current Allowable Expense Level makes sense. The factors which have proved to have the most predictive value for PHA/IHA expenses in the new formula are PHA/IHA inventory and community characteristics. PHA/IHA expenditure patterns are closely tied to past Allowable Expense Levels, and the other factors used to derive an equation change little in the short term. HUD intends to study the impacts of changes that would result from introduction of 1990 Census data, but these data will not be available for some time and are not likely to alter the predicted values for most PHAs/IHAs. Once the new formula has been used by PHAs/IHAs that want to appeal their current AELs, the Department believes that no additional significant improvement in accuracy of PHA/IHA expense levels is feasible using a comparative approach that relies on cost data driven by allowed historic costs.

Some commenters observed that the Department should make every effort to fund the PFS at 100 percent, otherwise the same pot will just be redistributed after the AEL adjustments are made, with some getting less than they did in the past. The Department has made every effort to request funding sufficient to cover 100 percent of PFS eligibility. Our requests are based on the Administration's latest economic and program change assumptions at the time the budget request is forwarded to the Congress so that funds are not merely redistributed when a new rule takes effect. The Department included the cost of these AEL adjustments in the FY 1992 Budget Request.

Two comments suggested that a deadline of 60 days after publication of the final rule would not provide enough time to allow for implementation including forms changes, instructions, and budget revisions. The regulation has been revised to allow PHAs/IHAs 60 days after the publication of a change to the Performance Funding System Handbook, 7475.13, which will provide instructions and revised forms to be used in implementing this regulatory change.

Three comments asked that the adjustment to AELs be made retroactive. Budgetary constraints and requirements that changes in the rule governing the PFS be made by notice and comment rulemaking preclude us from making this adjustment retroactive.

Although a specific effective date is stated in this rule, the PFS revisions of the rule will affect a particular PHA/IHA at the beginning of its new budget year following that effective date.

B. Formula Indicators

The proposed rule put forward the following indicators to estimate the comparative expenses of PHAs/IHAs:

—Measures of community distress (and need), such as the community's per capita value of the Community Development Block Grant program's Formula B (multiplied by the proportion of the PHA/IHA's units containing two or more bedrooms);

—Measures of area costs, such as the community's index of local government wage rates and the median rent in the community; and

—Measures of the PHA/IHA's operating characteristics, such as, the weighted average height of the PHA/IHA's buildings (multiplied by the proportion of its units containing two or more bedrooms), and the total number of the PHA/IHA's units containing two or more bedrooms.

This final rule preserves these general categories of indicators but modifies the specific indicators in response to the public comments.

One commenter supported use of the Community Development Block Grant (CDBG) formula as the measure of distress required by statute, but several commenters objected to its use. They questioned its availability for non-entitlement CDBG areas, or thought the population lag and age of housing components of the CDBG formula to be biased against areas with population growth and housing built after 1940, or considered the formula components to be out of date. In choosing an indicator of community distress for the revised formula, HUD addressed some of the commenter concerns about the CDBG formula.

The chosen indicator is the proportion of pre-1940 rental housing occupied by poor households. This indicator does not explicitly include population lag, but it improves age of housing as a proxy of community fiscal and social need by pairing older housing units with poor rental households. It might be noted that the same rent-poverty-age of housing indicator is used in the Rental Rehabilitation and Fair Share formulas as a proxy of substandard and abandoned housing, the type of housing in a community which can increase social and physical demands on the upkeep of public housing. This indicator uses 1980 Census information, because 1990 Census information for this indicator will not be available until FY 1993. Even so, it is unlikely that the 1990 Census information will greatly alter patterns of relative city distress. The underlying economic condition of most cities does not alter much even over a ten-year period.

The choice of an indicator of area costs received a good deal of comment. Several commenters questioned the use of median rents and of Fair Market Rents (FMRs) as a proxy for area public housing costs, because these distributional indicators of area rent did not seem timely or place-specific or meaningfully related to public housing costs. As part of an extensive analysis of costs for this formula and for other HUD formulas, HUD also judged that measures of rent distribution such as the FMR require further study before they could proxy inter-area costs for the maintenance or modernization of lower income housing. An FMR measure, in fact, is mandated for study in NAHA.

Some commenters supported the formula use of local government wage rates, which currently play an important role in updating Allowable Expense Levels, but one commenter questioned the validity of local government wages rates in areas that service many low income persons. Several commenters questioned these rates as a valid indicator for rural areas where many governmental workers are part-time or voluntary. The response to the first concern is that local governments that serve many low income persons average quite high wage levels—in part, perhaps, because of their more stressful working environment. As for rural areas, their index of local government wage rates averaged almost the same as their index

of private sector wages. For both rural and urban areas, the indicator of local government wages was not allowed to be more than 15 percent lower or higher than the averages of comparable areas in the State to smooth out statistical oddities.

With respect to the operating characteristics indicators, one broad comment of approval was made on linking the average height of a PHA/IHA's building to its bedroom characteristics. The high-rise family indicator used in this final rule simplifies the computation and targets the indicator even more closely to need, by counting only two or more bedroom units in projects that are both family and high-rise.

An indicator of scattered-site housing was recommended by several commenters, but measures of scattered-site or low density housing were not significantly related to actual PHA/IHA expenses. One reason might be that scattered-site housing is usually only present in some of the projects of a PHA/IHA, and its costs are not great enough to significantly raise the total cost level of the PHA/IHA. Another reason is that scattered-site housing does not necessarily lead to higher operating costs. Although scattered-site housing imposes transportation costs and diseconomies of scale, scattered site housing typically is newer or is located in a better neighborhood or is kept up better by its tenants.

One indicator chosen in the revised formula, the proportion of 3 or more bedroom units, indirectly reflects scattered-site housing, because scattered-site housing in many PHAs/IHAs disproportionately houses large families. The indicator of the proportion of 3 or more bedroom units is simply a more intensive version of the 2 or more bedroom ratio in the proposed rule, and the 3 bedroom version stands by itself in the revised formula instead of being multiplied against other indicators as in the proposed rule.

Some commenters questioned the overall ability of the formula to recognize the needs of large (urban) PHAs. In fact, the formula estimate follows the pattern of actual expenses and averages a much higher level of estimated expenses for large PHAs. Most of the formula indicators respond to large PHA concerns. The indicator of the number of two bedroom units directly reflects large PHA characteristics, and the indicator of high-rise family units directly benefits some large PHAs. The community indicators of the local area wage rate and poor rental households in pre-1940 units also tend to be much higher for large PHAs.

From a different perspective, some commenters questioned the ability of the formula to reflect the special circumstances of smaller or rural PHAs with dispersed or remote sites. Indian Housing Authorities were cited as having these circumstances. Unlike the current formula, the revised formula in this rule has been tested against an extremely large "sample" of PHAs for which HUD had data available—more than 2500 PHAs with full coverage of PHAs and IHAs of all sizes. As a result, the formula estimates could be tested against their actual expenses and AELs. The revised formula enables a considerable proportion of small, rural PHAs and Indian Housing Authorities to benefit from an increase to their AEL.

While small, rural PHAs and Indian Housing Authorities are more likely to be adjusted, the revised formula provides an adjustment for PHAs/IHAs in any category which have AELs lower than other PHAs/IHAs with the same characteristics. Whether the formula goes far enough in meeting the relative needs of all categories of PHAs/IHAs cannot be answered at this time, because any formula fitted to actual PHA/IHA expenses has the limitations noted earlier. This question is being considered for further study.

Several commenters expressed a broader unease that they could not judge the validity of the formula without more detailed statistical information. Anticipating such concern, HUD in the proposed rule gave a detailed account of what a formula could and could not do, of the advantages of the indicators in the proposed formula, and of the impact of the formula and range test on different PHA/IHA size categories. It seems more valid to judge a formula by its methodology, intended use, and average impacts, than by a case-by-case listing of winners and losers.

However, in analyzing the revised formula as well as the proposed formula, HUD studied written and informal comments by PHA/IHA representatives on alleged inequities of the current formula toward individual PHAs/IHAs. These comments provided a useful reality check on the results of the revised formula and helped to confirm its ability to improve the current formula by specifying more valid indicators of need and by representing different types of PHAs/IHAs with greater statistical precision.

In addition, as stated earlier, the indicators chosen for the formula met certain tests. They had to follow the intent of the statute and the framework of the proposed rule, to be available and easily computable in a standardized format, to have a common sense rationale for explaining variations in PHA/IHA operating expenses, to be significantly correlated with PHA/IHA expenses, to add significantly to the statistical fit of a system of indicators, and to have a formula coefficient in the expected direction.

C. Formula Range

Some comments reflected confusion caused by the regulatory references to downward adjustments when PHAs/IHAs are free to decide whether or not to appeal. Other comments wanted the regulation to call for a reduction of the AELs found to be above the range. The regulation has been designed to reflect two provisions of the 1987 Act. First, the 1987 Act provided for "A formal review process for the purpose of providing revisions (either increases or reductions) * * *". Second, the legislative history makes clear that the formal review would be made at the request of a PHA/IHA. Since HUD is making available all the necessary information for a PHA/IHA to calculate the new FEL and the AEL that would be based on it, each PHA/IHA will be able to calculate the outcome under an appeal before deciding whether to seek approval of an AEL based on the new FEL. Therefore, even though the Act provides for a downward adjustment, it is not expected that, having calculated the outcome, a PHA/IHA that stands to have its AEL reduced will request a formal review of its AEL.

Some PHAs/IHAs requested a range test of 5–8 percent or no range test at all. As noted previously, the equation developed is limited by its heavy reliance on historical expenditure patterns, which in turn were largely determined by the subsidy funding system used rather than by an objective standard of funding needs. The Formula Expense Level cost estimate produced by the equation is not an exact indicator of how much a PHA/IHA should be permitted to spend. In addition, the formula itself has a range of error. Consequently, for this formula revision, HUD has determined that a 15 percent range test is appropriate.

D. Delta

One comment was that the use of the new formula in the calculation of the annual adjustment to the AEL when a PHA/IHA has had a significant change in the number of its units goes beyond Congressional intent. The new formula is a major improvement over the one currently in use in terms of the

statistical reliability of its predictions. It would be inconsistent for the Department to adopt an improved formula to adjust AELs and then revert to the use of the old formula to calculate the amount of change to the AEL when a PHA/IHA changes its characteristics.

E. Funding for Nonroutine Expenses

Two large PHAs wanted adjustments made to AELs to reflect nonroutine expenditures so that there would be predictability in the amounts available to meet these needs. Starting in 1992, all medium and large PHAs/IHAs will have their modernization funded and managed under a new Comprehensive Grant Program (CGP). These funds will be available through a non-competitive formula distribution and will be subject to HUD approval of the Modernization Comprehensive Plan for each PHA/IHA. The CGP will provide modernization assistance on a more predictable basis and permit PHAs/IHAs to have considerable discretion and control in planning and expending the funds available.

F. Rental Income

Several comments addressed the problems faced by PHAs/IHAs that are unable to achieve the level of rental income estimated under the PFS. Under 24 CFR 990.110(d) for PHAs and 905.730(d) for IHAs, a PHA/IHA is eligible for additional subsidy if actual rental income falls short of the amount used in the subsidy calculation for a reason which is beyond the control of the PHA/IHA. A decline in rental income should not have an impact on a PHA/IHA's financial condition unless, of course, the drop reflects their failure to achieve the PFS occupancy percentage, effectively implement tenant selection criteria and broad range of income policy, conduct timely recertifications, or charge correct rents.

One comment suggested that the PFS occupancy rate be changed from 97 percent to 95 percent to reflect higher turnover. The treatment of vacancies under the PFS is outside the scope of this regulation.

One comment stated that the PFS should be revised to incorporate only a fraction of actual revenue increases above a certain minimum in the prior year into the projection of rental income in the operating subsidy calculation. Under the current system, these increases accrue to the PHA/IHA only in the first year. This suggestion is outside the scope of this formula revision.

One housing authority suggested that the costs it incurs operating a Congregate Housing program should be included in its AEL. Congress has addressed this issue in Section 507 of NAHA by authorizing appropriations to cover some of the costs of providing services to the frail elderly. The implementation of this and other provisions of NAHA will be dealt with separately and are not addressed in this regulation.

V. Miscellaneous

The proposed rule included changes to provisions concerning energy conservation and insurance, which are not included in this final rule. The energy conservation provisions have already been the subject of a final rule, and a separate rulemaking is now underway on insurance. However, this rule does include amendments to part 905 (Indian Housing), which were not found in the proposed rule, since part 905 now replicates for IHAs the PFS provisions that were formerly found only in one part (990).

VI. Findings and Certifications

A. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. At its estimated cost of $30 million, it will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule, as distinguished from the statute, would not have a significant economic impact on a substantial number of small entities. The formal appeals process might affect favorably nearly 400 of the PHAs/IHAs that operate fewer than 100 dwelling units, as a result of the revision of the formula. That result is attributable to the statutorily required modifications to correct inequities and abnormalities that existed in the base year, to accurately reflect changes in operating circumstances since the determination of the base year expense level, and to reflect the relative cost of operating in an economically distressed area or an economically prosperous area. Small PHAs/IHAs have been more likely than large PHAs/IHAs to deviate more from the allowable expense level predicted under the current formula. Since the formal review process will affect only PHAs/IHAs that request a review and they will be able to calculate in advance the impact of the revised formula, the effect on small PHAs/IHAs of the formal review process is likely to be entirely favorable.

The computational burden of the revised formula will also be considerably less than that of the current formula, because the PHA/IHA indicators of the revised formula are PHA/IHA-wide or affect only a small number of projects (the family high-rise indicator), and the community-wide indicators are established by independent sources and will be arrayed by HUD in convenient form for PHAs/IHAs to use.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance or retained savings to HUD-assisted housing owned and operated by PHAs/IHAs but will not interfere with State or local government functions.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves the amount of funding that a PHA/IHA should receive under a formula revised to satisfy statutory requirements.

F. Regulatory Agenda

This rule is listed as sequence number 1517 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on October 21, 1991 (56 FR 53380, 53431), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.145, 14.146, and 14.147.

List of Subjects

24 CFR Part 905

Grant programs: Indians, Low and moderate income housing; Homeownership; Public housing.

24 CFR Part 990

Grant programs: housing and community development; Low and moderate income housing; Public housing.

Accordingly, 24 CFR chapter IX is amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 905.710, the following paragraphs are revised: (c), (d)(1), (d)(2) introductory text, (d)(2)(ii), and (d)(5). A new paragraph (d)(6) is added. Paragraph (d) introductory text is republished. They now read as follows:

§ 905.710 Computation of allowable expense level.

* * * * *

(c) *Computation of Formula Expense Level.* The IHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights, and a Local Inflation Factor assigned each year, to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 905.730):

(i) Any increase approved by HUD in accordance with § 905.730;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level exceeds the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided above, the IHA may be eligible for transition funding under § 905.735.)

* * * * *

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 905.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) shall be added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of § 905.710(b) or § 905.720(c).

3. In § 905.730, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added, to read as follows:

§ 905.730 Adjustments.

* * * * *

(f) *Formal review process (1992)*—(1) *Eligibility for consideration.* Any IHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If an IHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the IHA and its community, then the IHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the IHA's request. The revised formula expense level for the fiscal year ending during calendar year 1992 is the IHA's value of the following formula, after updating by the local inflation factors

from FY 1989 to the requested budget year.

(ii) The revised formula is the sum of the following six numbers:

(A) *The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954.* This Census-based statistic applies to the county of the IHA, except that, if the IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) *The Local Government Wage Rate multiplied by a weight of 116.496.* The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted IHA standard of 1.0. For multicounty IHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) *The lesser of the current number of the IHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.*

(D) *The current ratio of the number of the IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the IHA's units available for occupancy multiplied by a weight of 37.294.* For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(E) *The current ratio of the number of the IHA's three or more bedroom units available for occupancy to the number of all the IHA's units available for occupancy multiplied by a weight of 22.303.*

(F) *An equation calibration constant of −.2344.*

(3) *Procedure.* If an IHA wants to request a revision to its AEL, it should determine whether its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the IHA's AEL and operating budget for the fiscal year ending in calendar year 1993, the IHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If an IHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the IHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the handbook change. If an IHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If an IHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the IHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

* * * * *

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

4. The authority citation for part 990 continues to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 990.102 [Amended]

5. Section 990.102 is amended by removing the definition of "Range".

6. In § 990.105, paragraph (d) is removed; paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively; newly redesignated paragraph (f) is amended by removing the words "paragraphs (a) through (f)" and substituting the words "paragraphs (a) through (e)"; and the newly redesignated paragraph (d)(6) is redesignated as paragraph (d)(7). In addition, paragraph (c) and the following newly redesignated paragraphs are revised: (d)(1); the introductory paragraph of (d)(2); (d)(2)(ii); (d)(4)(iii); the heading of (d)(5) introductory text; (d)(5)(ii)(A) and (B); and (d)(5)(iii). A new paragraph (d)(6) is added. Newly redesignated paragraph (d) introductory text is republished. They now read as follows:

§ 990.105 Computation of allowable expense level.

* * * * *

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. The formula takes into account such data as number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights and a Local Inflation Factor assigned each year, to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The PHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every PHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to

its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the Allowable Expense Level, computed as provided above, the PHA may be eligible for Transition Funding under § 990.106.)

* * * * *

(4) * * *

(iii) The sum of the AEL for the Current Budget Year and the increase (decrease) described in paragraphs (d)(4)(i) and (ii) of this section, multiplied by the Local Inflation Factor.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after April 1, 1986 and before April 1, 1992.* * * *

* * * * *

(ii) * * *

(A) If the PHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or paragraph (d)(5)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) of this section or this paragraph (d)(5)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The PHA characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that were used for the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(5) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 990.108(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or (d)(5)(ii)(B) of this section or this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B) or this paragraph (d)(6)(ii)(B) and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(6) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

* * * * *

7. In § 990.110, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added, to read as follows:

§ 990.110 Adjustments.

* * * * *

(f) *Formal review process (1992)*—(1) *Eligibility for consideration.* Any PHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If a PHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the PHA and its community, then the PHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the PHA's request. The revised formula expense level for the fiscal year ending in calendar year 1992 is the PHA's value of the following formula, after updating by the local inflation factors from FY 1989 to the Requested Budget Year.

(ii) The revised formula is the sum of the following six numbers:

(A) *The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954.* This Census-based statistic applies to the county of the PHA, except that, if the PHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) *The Local Government Wage Rate multiplied by a weight of 116.496.* The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multicounty PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) *The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.*

(D) *The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294.* For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(E) *The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.*

(F) *An equation calibration constant of −.2344.*

(3) *Procedure.* If a PHA wants to request a revision to its AEL, it should determine that its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the PHA's AEL and operating budget for the fiscal year

ending in calendar year 1993, the PHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If a PHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the PHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the handbook change. If a PHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If a PHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the PHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

* * * * *

Dated: January 22, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-2188 Filed 2-3-92; 8:45 am]

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federal register

Tuesday
February 4, 1992

Part IV

Department of Commerce

Economic Development Administration

Economic Development Administration Programs for Fiscal Year 1992; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 911216-1316]

Economic Development Assistance Programs as Described in Public Law 102-140, Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations, 1992; Availability of Funds

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures for funds available in fiscal year 1992 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions of the Nation and to address economic dislocations resulting from sudden, major job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during fiscal year 1992.

I. General Policies

Because of the existing statutory criteria, areas containing approximately 90 percent of the U.S. population are eligible for EDA assistance, which in fiscal year 1992 is approximately $227 million. Priority consideration for funding will be given only to those projects having the best potential to benefit areas experiencing or threatened with substantial economic distress. EDA is particularly interested in projects located in authorized and designated enterprise zones. Distress may exist in a variety of forms, including exceptionally high levels of unemployment, extremely low income levels, large concentrations of low income families, low labor force participation rates, significant decline in per capita employment, substantial loss of population due to the lack of employment opportunities, unusually large numbers (or high rates) of business failures or farm loan foreclosures, high farm credit delinquencies, sudden major layoffs or plant closures, and drastically reduced tax bases. Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of exceptionally high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed areas, EDA will give special consideration to those that address the needs of rural communities, particularly aid directed toward the economic diversification of such areas.

EDA recognizes that small communities experience impediments to economic development other than the traditional inadequacies of existing water, sewer and roadway systems; therefore, in FY 1992, EDA will give consideration to atypical EDA projects that would assist an area to overcome a special development or infrastructure problem that is preventing real employment growth and economic development from taking place. Such projects include, but are not limited to, activities designed to enhance the expansion of the service sector of the economy when that sector is deemed more growth oriented than the traditional industrial sector, or innovative projects designed for the development of solid waste disposal or recycling facilities. Such proposals must be appropriately scaled and provide substantial and direct benefit to the local economy or otherwise enhance the economic prosperity of the area. EDA will consider providing assistance to demonstration type projects that are especially creative from an economic development standpoint and that leverage a substantial amount of nonfederal resources. EDA expects substantial state and local support for proposed projects. Proposals that do not provide evidence of strong state and local leadership and financing are less likely to receive EDA aid.

In the case of projects involving construction, EDA expects construction to be initiated and completed in a timely manner. Applicants are expected to anticipate predictable delays such as those caused by normal weather conditions, permits and approvals, legal complications, community disputes, land acquisition, etc., and account for them in developing project schedules. Projects which are likely to encounter significant delays will normally not be given favorable consideration. Projects that experience unreasonable delays following EDA approval may be terminated and the funds deobligated. These policies are consistent with EDA's objective of supporting activities that can begin to benefit local economies as soon as possible, thereby meeting the pressing development needs identified by project applicants. EDA expects those responsible for developing and managing projects to maximize the impact of the public funds by preparing and implementing projects as thoroughly and expeditiously as possible.

EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. EDA nonrelocation requirements (13 CFR 309.3) apply to all loan guarantees and grants involving construction, rehabilitation or repair under titles I, II, IV, IX, and section 301(f) of the Public Works and Economic Development Act of 1965 (Pub. L. 89-136, 42 U.S.C. 3121-3246h), as amended, PWEDA, (including grants for Revolving Loan Funds, under title IX).

Applicants who have delinquent accounts receivable with the Federal Government may not be considered for future awards until these debts have been paid or arrangements to pay them have been approved by the agency to whom the debt is owed. Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General, and fund recipients may be subject to audits or other inspections by the same office.

Applicants eligible for assistance because of membership in an economic development district must be active participants in the district economic development planning process. EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Applications proposed for funding under these programs are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

An invitation to submit a formal application does not assure EDA funding. Factors that will be taken into account in considering projects include whether and to what extent the project meets the selection criteria. Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for the program to which they have applied have been awarded.

Processing time for proposals will depend on the completeness of the information provided in the application and supporting documents at the time of submission. Proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

EDA will avoid projects that involve actual or potential conflict-of-interest situations. If EDA identifies or suspects a possible conflict-of-interest situation, or an appearance of such, application processing and/or grant award may be suspended and the burden will be on the

applicant/grantee to take appropriate steps to eliminate the perception of a conflict of interest before application processing or the grant is resumed.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with the application.

Recipients must agree that no funds made available by EDA shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing awards made by the Government, such as, for example, preparing the application for this assistance. However, attorneys' and consultants' fees incurred for meeting Award requirements such as, conducting a title search or preparing plans and specifications, may be eligible project costs and may be paid out of funds made available, provided such costs are otherwise eligible.

Public Law 101–510, enacted November 5, 1990, section 1405, amending subchapter IV of chapter 15, title 31, United States Code, prescribes the rules for determining the availability of appropriations. Accordingly, grant funds obligated for a project will expire in five years from the fiscal year of the grant award.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Applicants should be mindful that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Awards under these programs shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The following material describes other policies and procedures associated with each of EDA's programs.

II. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP))

Summary

Funds available under the Public Works and Development Facilities Program are used to finance projects that contribute to the economic development of distressed areas. Grants are authorized by titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

Eligibility

Eligible applicants under this program include any state, or political subdivision thereof, Indian tribe, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, or private or public nonprofit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Redevelopment areas, other than those designated under the Public Works Impact Program, must have a current EDA-approved Overall Economic Development Program (OEDP).

Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization. Further information on areas eligible for this program is available from EDA's regional offices. Nonprofit applicants are urged to seek the cooperation and support of units of local government and, when deemed appropriate by EDA, to have the local government serve as co-applicant for EDA assistance. This serves the purpose of ensuring the financial stability and continuity of the project, in the event the nonprofit entity finds itself in a position of not having the financial resources to properly and efficiently administer, operate and maintain the EDA-assisted facility consistent with the provisions of 13 CFR 314-Property Management Standards.

Program Objective

The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies, and improving local living conditions and the economic development of the area. EDA emphasizes the alleviation of unemployment and underemployment among residents of the project area as a primary focus of this program. In view of the current rural distress, applications from rural communities will be reviewed with particular interest.

Funding Availability

Funds in the amount of $154.160 million are available for this program.

Funding Instrument

EDA may provide direct grants not to exceed 50 percent of the estimated cost of the project. Under certain circumstances, EDA participation may amount to 80 percent of the project costs. On an average, EDA grants cover approximately 50 percent of eligible project costs. Applicants will be required to provide the local share from acceptable sources including, but not limited to, cash, local government general obligation or revenue bonds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; Farmers Home Administration loans; and other public and private financing, including donations. The local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified sources, and the funds must be readily available.

The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant agreement. Priority will be given to applications which maximize the local share's percentage of the project cost. Supplementary grant assistance to finance more than 50 percent of the project costs will only be approved by EDA for projects in areas of high distress. Decisions on such supplementary grant assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate, and the relative needs of the area (see 13 CFR 305.5).

Selection Criteria

For both regular public works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project selection criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of severe economic distress.

A. Public Works Projects

Factors that will be taken into account in considering projects eligible under section 101(a)(1)(A)—(C) of PWEDA, 42 U.S.C. 3131(a)(1)(A)—(C), include whether and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial facilities in the area where such project will be located;

2. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost-per-job in relation to total EDA cost;

3. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project;

4. Fulfills a pressing need of the area, or part thereof, in which it will be located;

5. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support;

6. Is supported by significant private sector investment;

7. Has adequate local share of funds with evidence of firm commitment and availability;

8. Supports developments taking place in designated enterprise zones, particularly in rural areas;

9. Demonstrates that necessary permits, land acquisitions, or options on land and rights-of-way have been obtained and that all other legal requirements of the application process have been satisfied;

10. Maximizes the amount of local or State funding that is available; and

11. Gives evidence of the ability to begin and complete construction in a timely manner in accordance with a schedule to be agreed upon by EDA and the applicant and included in the grant award. EDA discourages the start of construction prior to grant award and cautions that financial hardship may be experienced by applicants whose projects are not ultimately approved because of compliance deficiencies or lack of competitiveness with other proposals. EDA will require all applicants that request approval to proceed with construction prior to grant award to acknowledge that they are proceeding at their own risk without recourse to EDA should the grant not be awarded or EDA requirements not be met. Furthermore, EDA may view the start of construction prior to grant award as an indication that the grant funds are not essential for the successful implementation of the project.

B. Public Works Impact Program

Factors that will be taken into account in considering projects under the Public Works Impact Program (PWIP) authorized by section 101(a)(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include whether and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;

2. Improves the economic or community environment in areas of severe economic distress;

3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons from the project area to work on the construction of the project; EDA will evaluate all plans to ensure that they contain a logical explanation of how the employment objectives will be met;

4. Assists in providing long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

5. Primarily benefits low-income families by providing essential community services, or satisfying a pressing public need;

6. In addition to requirement for regular public works projects, as contained in paragraph A.11, can begin construction quickly (normally within 120 days after acceptance of the grant by the applicant); and

7. Has substantial labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization; occupancy rates for existing developed industrial parks currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the economic development representative (EDR) for the area or the appropriate EDA regional office for guidance.

2. Commitments in writing from identified tenants to expand existing operations or to locate in the industrial park or site. Commitments must include a description of the industry, the number of jobs created or saved, and an implementation schedule, and the relationship of the commitment to the requested grant assistance.

3. The existence of a concrete marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this requirement.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner and in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The recipient must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA's approval of changes in the schedule prior to proceeding with project implementation. EDA expects recipients to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, normal weather conditions in the area, acquisition of state permits and approvals, and known public objections to the project), and to take them into account in preparing the project schedule. Recipients who fail to comply with project schedules shall be subject to grant suspension or termination.

Under most circumstances, EDA will not provide additional funds to finance overruns that occur during project implementation.

Proposal Submission Procedures

To establish the merits of project proposals, interested parties should first contact the economic development representative for the area. The EDA regional office can provide the name, address and telephone number of the economic development representative for the area who will provide a preapplication form (ED-101P, OMB Control No. 0610-0011) and arrange for conferences to discuss the proposal. EDA will screen proposals before inviting the submission of a formal application. Proposals will be evaluated based upon:

1. Conformance with statutory and other legal requirements and with the selection criteria mentioned above;

2. The merits of the proposal in addressing the economic development needs of the eligible area; and

3. The availability of funds as allocated to the regional offices.

Processing time for project proposals will depend on the completeness of information provided in the

preapplication form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

Formal Application Procedures

Following a review of project proposals, EDA will invite entities whose projects are selected for consideration to submit formal applications. The formal application will include a form ED-101A, as approved by the Office of Management and Budget Control No. 0610-0011.

Previous Applications

Project applications invited, but not funded in fiscal year 1991, remain eligible for funding consideration. Those applications which were received prior to the date of this Notice, will be processed and evaluated in accordance with the project selection criteria published for fiscal year 1991 and current legal requirements. Those applications received on or after the date of this Notice, must be consistent with the project selection criteria and requirements published in this Notice. Applicants whose projects were invited but not submitted to EDA in fiscal year 1991 should contact the appropriate EDA regional office regarding forms to be used for fiscal year 1992.

Further Information

For further information contact the appropriate EDA regional office (see section XI of this notice).

III. Program: Guaranteed Loans

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance)

Summary

Authority is available to guarantee up to eighty percent (80%) of the principal and interest of loans made by eligible commercial lending institutions to private borrowers for the purchase of fixed assets or for working capital purposes for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses expand, establish, or maintain operations in both rural and urban eligible areas throughout the Nation. Guarantees offered under this program are made at the discretion of the Assistant Secretary for Economic Development based upon data from the borrower and lender current at the time the guarantee is offered, under the authority of Public Law 89-136, (42 U.S.C. 3142-3246(h)).

Preapplication Procedures

Applicants should contact the Credit and Debt Management Division to discuss their proposals. EDA staff will screen proposals before inviting a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in the Act;
2. Regulatory requirements contained in 13 CFR parts 306 and 309; and restated in this Notice; and
3. Provisions of Office of Management and Budget (OMB) Revised Circulars A-70 and A-129.

Revised OMB Circulars A-70 and A-129 Requirements

All loan guarantees must conform to the requirements of A-70 and A-129, without exception. The most significant requirements are as follows:

1. Loans must be secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan.
2. A guarantee fee will be charged.
3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.
4. The lender must bear a significant portion of the risk of loss on the loan. No other security, guarantees, or any other arrangement that would not inure ratably to EDA for that portion of the loan not guaranteed by EDA will be permitted.
5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

Supplementary Information

A. Amount of Funding Available

EDA is authorized to commit up to $5.0 million to guarantee contingent liability for loan principal in fiscal year 1992.

B. Type of Financial Assistance

EDA staff will consider proposals for the guarantee of loans made by private lending institutions to private borrowers to finance fixed assets or for working capital purposes. EDA staff will not accept applications for projects which involve real estate development for either investment or speculation, or for the refinancing of current debt.

C. Who May Apply

Formal applications will be invited by EDA staff only after review and acceptance of satisfactory project proposals. Applications will be accepted only from private lending institutions (the applicant) for the guarantee of loans to private business enterprises. EDA's relationship is essentially with the lender applicant, not the borrower.

D. Long-Term Employment

EDA staff will seek to assist in the creation or retention of permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

E. Repayment Ability

The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. EDA Guarantee Required

No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which, in the opinion of EDA, will permit accomplishing the project. In the event the borrower is a large corporation, which would normally have funds available to finance the project, such corporation must certify that it would not locate the proposed project within the EDA-designated area without the benefits of EDA's financial assistance.

G. Relocation

Nonrelocation requirements apply to guaranteed loans under section 202, title II of PWEDA. EDA's regulations at 13 CFR 309.3 prohibit transferring jobs from one commuting area to another. Certificates of nonrelocation will be required.

General Conditions of Assistance

A. Term of Loan

The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) to seven (7) years, and the loan should be fully amortized during its term. EDA will not ordinarily guarantee revolving-type or open-end working capital loans.

B. Guarantee Percentage and Interest Rate

Pursuant to OMB Circular A-70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantee a loan in excess of the following percentages and interest rates:

1. 80% guarantee—Lender prime rate plus 1.25%.
2. 75% guarantee—Lender prime rate plus 1.50%.
3. 70% guarantee—Lender prime rate plus 2.0%.
4. 65% guarantee—Lender prime rate plus 2.5%.

C. Guarantee Fee

Pursuant to OMB Circulars A-70 and A-129, EDA will charge the lender a guarantee fee.

D. Lender's Risk

That portion of the loan not guaranteed by EDA must be at risk to the recipient throughout the term of the loan. This precludes the recipient from obtaining any additional security, guarantee, or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA staff will be obligated to deal only with the recipient, and all participants must be eligible as recipients.

E. Other Lender-Borrower Relationships

When a recipient has other creditor/debtor relationships with the prospective borrower, EDA staff will seek assurances that these relationships will not create conflicts with EDA's interest in the recipient's servicing of the loan for which a guarantee is sought. Ordinarily, EDA staff will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

F. EDA Investment Per Job

EDA staff normally will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

G. Repayment Ability

Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

1. Applicant's normal detailed credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);
2. Three (3) years' financial statements, audited and certified by a public accountant, if available, or certified by a responsible officer of the prospective borrower; if in operation less than three years, financial statements since inception;
3. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application;
4. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-month basis for the first year after the loan is made and on a quarterly basis for the next two (2) years;
5. One copy of the proposed note and loan agreement between the applicant and the prospective borrower with attachments; and
6. For loans involving real estate collateral, a certification from the lender/borrower that it is satisfied that there are no hazardous substances problems (Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)).

H. Adequate Collateral

The lender must maintain perfected liens against and security interests in collateral adequate to permit full recovery of the loan in the case of default by the borrower. Collateral must be of such nature that repayment of the loan is reasonably assured when considered along with the integrity and ability of project management, soundness of the project and borrower's prospective earnings. The applicant must document why it is reasonably certain that adequate collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by an unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement. Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA. All real property appraisals shall include appropriate recognition of environmental risks.

I. Guarantees

Unconditional personal/corporate guarantees (of full and timely payment and performance by the borrower) will be required from all persons or entities which hold or control ten percent or more of the ownership interests in a borrower unless:

1. The borrower has a profitable historical performance of no less than three out of the most recent five years, abundant collateral, adequate cash flow, and meets key industry standards (i.e., Robert Morris Associates);
2. Borrower's stock is so widely held that no one individual/family/entity can exercise control;
3. Borrower's parent, subsidiary, or affiliate that is required to guarantee is legally restricted from guaranteeing, or such guarantee would conflict with other existing contractual obligations of the prospective guarantor.

Cross guarantees may also be required from related corporate entities.

EDA will require current (not over ninety days old at the time the application is filed) personal or corporate financial statements signed by the prospective guarantor, and, where appropriate and necessary to support the guarantee, by the guarantor's spouse, and disclosing community and individual assets and indebtedness when applicable.

J. Equity Requirements

All applications for EDA financial assistance shall be supported by adequate existing or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. The following minimum equity will be required:

1. For guaranteed working capital loans, the prospective borrower must have existing, or must provide, net working capital equal to not less than fifteen percent (15%) of its total working capital needs.
2. For guaranteed fixed asset loans, the prospective borrower must provide an equity investment in the loan project of at least fifteen percent (15%) of the aggregate loan project cost.

3. The prospective borrower must provide twenty-five percent (25%) of the aggregate loan project cost for:

a. New businesses with no operating history;

b. Loans without full personal or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to have above-average risk.

K. Feasibility Report

An independent technical, financial, and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

L. Tax-Exempt Obligations

The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds.

M. Other Requirements

1. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required in an amount at least equal to the lesser of the depreciated replacement value of the property being insured or the amount of the loan.

2. Keyman life insurance, which may be decreasing term insurance, normally will be required for principals and key employees of the borrower, pledged or assigned to the lender.

Applicant Servicing Responsibilities

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to, executing such care and diligence in the disbursement, servicing, collection, and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the liquidation less reasonable expenses directly attributable to the liquidation. Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA staff will examine the applicant's records before honoring any guarantee.

Application Requirements

A. The application shall include the following:

1. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one area to another or to close facilities involved in the EDA-guaranteed project;

2. Approval of the application by the appropriate agency or instrumentality of the state or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

3. Full disclosure of the amount and nature of all fees charged to the borrower by the lender, attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and lobbying expenses are not allowable project costs and no proceeds of the loan may be used directly or indirectly for attorney's or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval;

4. An agreement that neither the borrower nor the applicant will employ or retain for professional services any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of the assistance under the Act. This agreement shall remain in effect for two years after EDA grants assistance to the applicant;

5. An application for character/integrity investigation (Name Check Form CD-346, OMB No. 0605-0001) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower;

6. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of section 702 of the Act. Section 702 unfair competition results if the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite processing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to formal offering of a loan guarantee are made solely at the applicant's or borrower's expense;

7. A description of state or local government assistance to the project; and

8. A signed statement by the borrower assuring that (a) real estate provided as collateral is not under notice of environmental violations for local, state or Federal agencies, (b) the real property is not the subject of an environmental impact study, and (c) there are no known violations of Federal, state or local environmental laws or requirements, including, but not limited to, 42 U.S.C. 9601-9657.

B. Loan guarantees are also subject but not limited to the following statutes:

1. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1376;

2. Davis-Bacon Act, as amended, 40 U.S.C. 276a-276a-5; 13 CFR 309.6;

3. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151-4157; 13 CFR 309.14;

4. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4370; CFR 309.16;

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470-470W-6;

6. The Wild Scenic River Act, as amended, 16 U.S.C. 1271-1287;

7. The Clean Air Act, as amended, 42 U.S.C. 7401-7626;

8. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001-4128;

9. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9675; and

10. Resource Conservation and Recovery Act, 42 U.S.C. 6901-6991.

Application Submission

Proposals should be submitted to the Credit and Debt Management Division at the earliest possible date. Proposals received after June 26, 1992, may not be considered during fiscal year 1992. The formal application will include an ED-201, as approved by the Office of Management and Budget Control No. 0610-0024. Completed applications for

authorized projects should be submitted no later than July 31, 1992.

Incomplete applications or applications that do not conform to program requirements will be rejected by EDA. All guarantees require approval by the Assistant Secretary of Commerce for Economic Development.

Further Information

For further information contact the Director, Credit and Debt Management Division, Economic Development Administration, room 7830B, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4731.

IV. Program: Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds under the Technical Assistance Program are awarded to eligible applicants to provide assistance intended to assure the successful initiation and implementation of area, state, regional, and national development efforts designed to alleviate economic distress. This program is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for technical assistance grants or cooperative agreements include public or private nonprofit national, state, area, district, or local organizations; public and private colleges and universities; Indian tribes, local governments, and state agencies. In certain circumstances applications may be considered from other eligible applicants such as private individuals, partnerships, firms, and corporations.

Program Objective

The Technical Assistance Program is designed to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment and problems of economically distressed populations in rural and urban areas.

Funding Availability

Funds in the amount of $2.176 million are available for the Technical Assistance Program. It is expected that these funds will be made available for projects serving specific local or substate areas and also for projects whose impacts will cross EDA regional office boundaries.

Funding Instrument

EDA will provide grants and cooperative agreements not to exceed 75 percent of proposed project costs. Applicants are expected to provide the remaining share, preferably in cash. In cases when EDA issues a Solicitation of Applications, an applicant's share may not be required.

Project Duration

Assistance will be for the period of time required to complete the scope of the work. Generally, this will not exceed twelve months.

Selection Criteria

Preference will be given to those technical assistance proposals which:

1. Produce strong evidence that the proposed project will lead to the near-term (between one and five years) generation or retention of private sector jobs.
2. Do not depend upon further EDA or other Federal funding assistance to achieve results.
3. Strengthen the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas in distress.
4. Stimulate significant private and nonfederal public investment for economic development purposes, including funds from commercial lenders, public and private pension funds and other nontraditional sources.
5. Benefit severely distressed areas, particularly rural counties and communities.
6. Diversify distressed rural economies by means of enterprise zones and other strategies.
7. Demonstrate innovative approaches to stimulating economic development in depressed areas. EDA is particularly interested in receiving innovative proposals in the following areas:

a. Export development used as an economic development strategy; b. Assistance to business in uses of technology; c. Minority business developed in distressed areas; and d. Tourism.

8. Are consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the projects are located and have been recommended by the OEDP Committee (if appropriate to the nature of the project).
9. Present an appropriate and clear project design.
10. Are proposed by organizations or individuals with the capacity, qualifications and staff necessary to undertake the intended activities.
11. Present a reasonable, itemized budget for the proposed activities.
12. Involve a significant (preferably cash) contribution in excess of minimum required from applicant or other nonfederal sources.

Pre-Application Procedures

Parties seeking support for local technical assistance projects—those that will primarily benefit a substate or intra-regional area—must contact the economic development representative (EDR) for the area to obtain a proposal package. This package may contain additional information on procedures and selection criteria. The EDA regional office will provide the name, address and telephone number of the EDR for the applicant's area (see section XI of this Notice). EDA will evaluate all proposals as they are received and invite applications for those which best satisfy the selection criteria.

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages. Vita and capability information may be appended.

Proposal Submission Procedures

Potential applicants should submit proposals that include:

1. A cover page giving a short descriptive project title, the name and address of the performing organization, the name and telephone number of the project director, the project duration, the amount of EDA funds requested, and the program (Technical Assistance) that would provide the funds;
2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;
3. A more detailed description of the project and its methodology;
4. A work plan showing different phases of the project and their timing;
5. A detailed budget showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;
6. Resumes for the project director and principal staff; and
7. A corporate or institutional capability statement, where appropriate

Parties seeking support for local technical assistance should submit proposals to the EDR who supplied the proposal package.

Parties seeking support for projects whose impacts will cross EDA regional

boundaries should submit proposals to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7315, U.S. Department of Commerce, Washington, DC 20230. Individuals or organizations located outside the Washington, DC, metropolitan area should submit a copy of the letter transmitting their proposal to Washington to the EDR for the area in which they are located.

Formal Application Procedures

The appropriate EDA regional office will invite entities whose proposals for technical assistance projects are selected for further consideration to complete formal application packages. The formal application for applicants will include a Standard Form-424 (OMB Control No. 038-0043).

Eligibility for Specific Solicitations

EDA may, during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7315, U.S. Department of Commerce, Washington, DC 20230.

Further Information

For further information about local technical assistance projects—those that will benefit substate or intra-regional areas—contact the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA regional office) or the appropriate EDA regional office (see section XI of this Notice). For further information about submitting projects whose impact will cross EDA regional office boundaries, contact the National Technical Assistance Coordinator, telephone (202) 377-2127.

V. Program: University Center Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds for basic university center projects are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The efforts of university centers should focus on helping public bodies, nonprofit organizations and businesses plan and implement activities designed to generate jobs and income. In addition, funds may be used for projects which promote the goals of the University Center Program in other ways that demonstrate innovative economic development. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for university center grants and cooperative agreements are public and private colleges and universities, associations representing such institutions, and other organizations with expertise in University Center Program issues.

Program Objective

The objective of these projects is to enable colleges and universities to contribute to overall economic development by using their resources to provide technical assistance that will alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or substate areas.

Funding Availability

Funds in the amount of $7.724 million are available for university center projects. It is expected that continuation grants for existing centers will use all of this amount.

Funding Instrument

University center project funds will be awarded through grants and cooperative agreements to cover a portion of project costs. The amount covered will not exceed 75 percent of proposed project costs.

Project Duration

Grants and cooperative agreements will be for the period of time required to complete the scope of work. Generally, this will not exceed twelve months.

Selection Criteria

In judging proposals from existing and potential university centers for basic grants, EDA will consider whether the proposed center programs:

1. Serve areas of significant economic distress;
2. Address the development needs of the service area;
3. Complement the activities of other organizations in the proposed service area that are engaged in economic and business development. Where applicable, the proposal must identify how it differs from the services provided by a local Small Business Development Center (SBDC), Trade Adjustment Assistance Center (TAAC) or a Minority Business Development Center (MBDC);
4. Possess the commitment, as evidenced by financial support and other resources, of the university leadership at the highest levels to the mission and purpose of the university center;
5. Possess the capacity to provide the proposed technical and other types of assistance to jurisdictions and organizations within the service area; and
6. Complement and support the local, regional or state economic development strategies in the service area. EDA will also consider the following factors in evaluating proposals for basic grants from potential centers:

a. The extent to which the center proposes to serve the economic development needs of economically-distressed jurisdictions and community-based organizations.

b. The presence of other EDA-funded center(s) in the state.

c. The presence of an SBDC, MBDC or a TAAC in the service area.

Proposals will also be judged on the quality of the proposed work program and the qualifications of the applicant to carry out that work program.

Proposals for other projects that meet the goals of the University Center Program will be judged on similar factors. These include the potential impact of the project on distressed areas, the quality of the proposed work program, and the qualifications of the applicant to carry it out. Depending on the availability of funds, EDA may hold a competition for short-term (one to three year) incentive grants. This competition will be open to all currently and previously funded centers, except those whose funding was discontinued because of poor performance.

Funding Policy

Public Law 102-140, the Department of Commerce fiscal year 1992 Appropriations Act, requires that each individual university center receive funding at no less than its fiscal year 1991 level.

The Conference Report for the Appropriations Act includes $3,000,000 above the amount provided university centers for fiscal year 1991. This increase will be made available to restore funding of those centers whose funding had been reduced due to EDA's graduation policy. In addition, the increase will then be provided to all university centers on a pro-rata basis.

Funds will be available for new university centers only if existing university centers cannot provide the required nonfederal match for a grant or are dropped from the program for failure to meet the requirements of their fiscal year 1991 grant. The appropriate regional office will inform each existing university center of their status, the grant amount available for fiscal year 1992, and the nonfederal share required to meet the requirements of their fiscal year 1991 grant.

The appropriate regional office will inform each existing university center of the nonfederal share required for its fiscal year 1992 grant.

Proposal Submission Procedures

Basic Grants for Existing University Centers

Existing centers that have been selected to receive consideration for continued basic funding will be notified of all application procedures by the EDA regional offices. Any existing centers not selected to receive consideration for continued support will be so notified.

Basic Grants for New University Centers

Institutions seeking first time funding for a university center should submit a proposal describing the activities to be carried out with the grant funds to the appropriate EDA regional office and to the EDR. The proposal should also address each item under the Selection Criteria.

Further Information

For further information, contact the appropriate EDA regional office (see section XI of this Notice), the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA regional office), or the University Center Coordinator, Technical Assistance and Research Division, Economic Development Administration, room 7315, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 377-2127.

VI. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Summary

Funds under the District, Indian and Area Planning Program are awarded to defray administrative expenses in support of the economic development planning efforts of economic development districts (Districts), redevelopment areas (Areas) and Indian tribes. This program is authorized under section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

Eligibility

Eligible applicants are economic development districts, redevelopment areas, organizations representing redevelopment areas (or parts of such Areas), Indian tribes, organizations representing multiple Indian tribes, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Program Objective

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported with this aid must be part of a process involving significant leadership by public officials and private citizens.

Funding Availability

Funds in the amount of $20.668 million are available in two categories: Districts/Areas (Category A)—$17.708 million; and Indian tribes (Category B)—$2.960 million.

Funding Instrument

Grant assistance can be provided for up to 75 percent of project costs for Category A grants with the applicant required to provide the remaining share. Category B grant assistance may be provided for up to 100 percent of project costs.

Project Duration

Assistance will normally be for a period of twelve months.

Selection Criteria

EDA will consider the following factors, among other things, in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;
2. The economic distress of the area served by the applicant;
3. Provision of an institutional capability statement, defining management and staff capacity and qualifications in economic program/policy development and operations;
4. Past performance for any currently funded grantee (including information in scheduled progress reports);
5. The local leaders' involvement in applicants' economic development activities; and
6. The amount of local participation provided as matching dollars to the Federal funds.

Proposal Submission Procedures

Application procedures may be obtained from EDA's regional offices for the following:

a. Currently funded planning grantees;
b. Proposals from applicants not currently funded under Categories A or B, that would fit into either of those categories; and
c. Special economic development activities that benefit one or more 301(b) grantees and cannot be financed with other resources.

Eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the applicant stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.
2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.
3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents.

New applicants should submit one copy of the proposal to the appropriate economic development representative, and an original and one copy to the appropriate EDA regional office. The EDA regional office will provide the name, address, and telephone number of the economic development representative for the applicant's area (see Section XI of this Notice).

Formal Application Procedures

EDA regional offices will contact currently funded grantees to inform them of the procedures for submitting applications for continuation funding.

Following review of the proposals submitted, EDA will invite those selected for funding consideration to submit formal applications. Funding levels will be determined by the economic distress of the area served by

the applicants, and availability of program funds. The formal application will include a SF-424, as approved by the Office of Management and Budget Control No. 0348-0043.

Further Information

For further information contact the appropriate EDA regional office (see section XI of this Notice) or the Director, Planning Division, Economic Development Administration, room 7321, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 377-3027.

VII. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

Summary

Funds under the State and Urban Planning Program are awarded to defray administrative expenses in support of economic development planning efforts of eligible applicants to include states, substate planning units (including economic development districts and redevelopment areas), cities and counties. This program is authorized under section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

Eligibility

Eligible applicants under this program are the governors of states, substate planning and development organizations (including redevelopment areas and economic development districts), and the chief executive officer of cities and counties.

Program Objective

The primary objective of planning assistance under section 302(a) is to support significant economic development planning and implementation initiatives of states, substate planning units (including economic development districts and redevelopment areas), cities and counties, particularly those experiencing severe economic distress.

Assistance must be part of a continuous process involving significant local leadership from public officials and private citizens and should include efforts to reduce unemployment and increase incomes. These efforts should be systematic and coordinated, when applicable, with planning bodies, and should strengthen the planning capabilities of applicants.

Program funds will not be used to provide technical assistance associated with individual projects.

Activities eligible for support include economic analysis, definition of development goals, determination of project opportunities, and formulation and implementation of a development program.

EDA is interested in proposals for planning activities designed to address problems of economically distressed segments of the population. In the case of proposals from states, EDA is particularly interested in innovative approaches to planning and implementing economic development initiatives, as well as efforts that lend themselves to replication in other areas.

Funding Availability

Funds in the amount of $4.931 million are available for providing grant assistance under this program.

Funding Instrument

Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share, preferably in cash. Individual grant amounts under this program have not exceeded $200,000 in the past three years. EDA will consider proposals for smaller grants to support appropriate activities.

Project Duration

Assistance will be for the period of time required to complete the work. This period is normally 12 to 18 months. If Congress makes funds available for this program in subsequent years, renewals may be considered for appropriate projects for up to two additional awards.

Selection Criteria

The content of the proposal and the economic distress of the area will be the principal factors considered in evaluating proposals from eligible entities. In assessing the distress factor, priority consideration will be given to proposals from states and urban areas experiencing substantial economic distress. In the case of urban areas, high priority will be given to those with unemployment rates two or more percentage points higher than the U.S. average and per capita income levels 80 percent or less of the U.S. average. For states, high priority will be given to those that meet both of the above criteria, as well as those that meet one of the above criteria and have distress equal to or greater than the national level for the other criterion. The most recent per capita income and 24-month average unemployment data available will be used to measure economic distress.

Proposals from states or urban areas which do not exhibit significant distress on the basis of unemployment or income data will not be considered unless other acceptable evidence of substantial distress is provided by the applicant (e.g., large numbers of agricultural and business failures, large numbers of low income families, drastically reduced tax bases, etc.).

Proposals from states and urban areas which are both below the U.S. national unemployment rate and above the national per capita income are unlikely to be funded.

Proposals will be judged on the basis of:

1. Appropriateness of the work program to the section 302(a) program objectives;

2. The economic distress of the area served by the applicant;

3. Extent to which the proposed planning activities are expected to impact upon the service area's economic development needs, and the extent to which the proposal addresses the problems of the unemployed and underemployed of the area, including the farm families, minorities, workers displaced by plant closings, etc.;

4. Past performance of currently or formerly funded grantees, if applicable;

5. The amount of local participation provided as matching dollars to the Federal funds;

6. The proximity of the performing office to the chief executive (i.e., likelihood that the activities will have a significant influence on the policy and decisionmaking process); and

7. Other characteristics, such as involvement of the private sector in the proposed activities, and particularly for states, the innovativeness of the proposed approach and replicability of the process or results.

Proposal Submission Procedures

Potential applicants should submit proposals that include:

1. A letter, signed by the chief executive of the applicant organization, indicating a desire to receive funds to carry out the planning activities outlined in the proposal; where the funded planning program will be placed in the organization, including the name and title of the person to be responsible for program implementation; the amount and for what period funding is being requested; and the anticipated funding arrangement if the planning activity is to continue beyond the period of EDA support.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. Information indicating the applicant's commitment to the proposed work program as demonstrated by amount of local funding and the degree of interest displayed by the chief executive.

4. A time chart showing all major work program elements, projected element start and completion dates, and the related financial expenditures programmed for each work element.

5. A work program of no more than 10 pages which outlines the specific planning activities that will be carried out under the grant and specifies which activities will be handled by in-house staff, consultants, etc. The work program should also explain the need for the proposed activities, expected impacts and their timing, target population(s), and involvement of the private sector in the proposed activities.

Current grantees seeking additional funding under this announcement should comply with the instructions of this notice and include a 3–5 page progress report for the current grant.

One copy of the proposal should be sent to the appropriate economic development representative, and an original and one copy to the appropriate EDA regional office. The EDA regional office will provide the name, address and telephone number of the economic development representative for the applicant's area (see section XI of this Notice).

Formal Application Procedures

EDA will evaluate proposals using the selection criteria cited above. Once the merits of the proposal are established, EDA will initiate discussions with the prospective applicant to clarify and improve elements of the proposal, if necessary, and will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF–424 (OMB Control No. 0348–0043) and other application materials. Proposals and applications will be processed as they are received. Applications received after fiscal year 1992 funds are exhausted will be retained by EDA for consideration for funding the following fiscal year, if funds are made available by Congress.

Further Information

For further information contact the appropriate economic development representative, EDA regional office (see section XI of this Notice), or the Director, Planning Division, Economic Development Administration, room 7321, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3027.

VIII. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Summary

Funds under the Research and Evaluation Program are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligible Applicants

Eligible applicants for research and evaluation grants or cooperative grants include private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations with proper expertise relevant to economic development research.

Program Objective

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress; and (b) promote economic development.

Funding Availability

Funds in the amount of $500,000 are available for this program. Funds will be used for projects selected through the application procedures described below and for EDA-initiated solicitations.

Funding Instrument

EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

Project Duration

Assistance under this program will normally be for a period not exceeding 15 months.

Selection Criteria

EDA will use the following criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.
2. Potential usefulness of the research to state and local economic development specialists.
3. General quality and clarity of the proposal.
4. Soundness and completeness of the research methodology.
5. Qualifications of principal investigator(s) and, where appropriate, performing organization(s).
6. Previous performance of principal investigator or performing organization on EDA-funded projects.
7. Cost and value of product in relation to cost.

EDA is interested in receiving proposals dealing with:

1. Employment and unemployment;
2. Income and poverty;
3. Rural and other nonmetropolitan economic development;
4. Regional and local growth;
5. Industrial location;
6. Job creation methods;
7. State and local economic development efforts;
8. Private sector economic development efforts;
9. Developmental effects of public works and other infrastructure;
10. Capital markets and development finance, particularly nonfederal sources of economic development financing;
11. Industrial competitiveness;
12. Minority business and minority jobs; and
13. Productivity and technology.

Requested grants and awards should be for specific, well-defined, one-time research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.) or for non-research activities. Some research proposals deal with or involve samples drawn from only one part of the United States. EDA normally prefers research of broad geographic scope, that at least covers a large multistate region, as opposed to research covering (in declining order of preference) a small region, a state, a multicounty area, or a single city or county. EDA strongly prefers cause-and-effect research and descriptive analyses, and funding for such will receive much

higher priority and likelihood of approval as compared to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning and technical assistance for specific places will not be funded under the Research and Evaluation Program; the Planning and Technical Assistance Programs are for those purposes.

Proposal Submission Procedures

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages, not counting vita and capability information. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining methodology. Each proposal should include:

1. A cover page giving a short descriptive project title, the name and address of the performing organization, the names and telephone numbers of the project director and principal investigators, the project duration, the amount of EDA funds requested, and the program (Research and Evaluation) that would provide the funds;
2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;
3. A more detailed description of the project and its methodology;
4. A work plan showing different phases of the project and their timing;
5. A detailed budget showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;
6. Resumes for the project director and principal investigators; and
7. A corporate or institutional capability statement, where appropriate.

The cover letter accompanying the proposal should inform EDA of whether any other organization(s) or Federal agency(ies) is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be identified. Proposals should be submitted to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7315, U.S. Department of Commerce, Washington, DC 20230.

Formal Application Procedures

EDA will evaluate the proposals as they are received using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit additional materials required for formal application. The formal application will include an SF-424 (OMB) Control No. 038-0043).

Eligibility for Specific Solicitations

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, for funding consideration.

Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above. This information will be used to determine eligibility to compete for projects under specific SOAs.

Further Information

For further information, contact the Director, Technical Assistance and Research Division, at the above address; telephone, (202) 377-4085.

IX. Program: Economic Adjustment Assistance (Title IX)

(Catalog of Federal Domestic Assistance No: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED))

Summary

Funds under the Economic Adjustment Program are used to assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED). This program is authorized under title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241-3245.

Program Objective

The LTED Program assists eligible applicants to develop or implement strategies designed to halt and reverse the long-term decline of their economies. The most common type of activity funded under the LTED Program is Revolving Loan Funds (RLFs), although other types of eligible title IX activities may be funded.

The SSED Program assists eligible applicants to respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to help communities prevent a sudden, major job loss; to reestablish employment opportunities and facilitate community adjustment as quickly as possible after one occurs; or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to permanent rather than temporary job losses. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas, EDA is particularly interested in title IX projects designed to mitigate serious rural economic adjustment problems. EDA is also interested in proposals to help severely distressed areas with large minority populations.

Funding Availability

Funds in the amount of $23.0 million are available for the Economic Adjustment Program in fiscal year 1992. Of the amount, $11.5 million will be available for the SSED Program and $11.5 million will be available for the LTED Program.

Funding Instrument

Title IX funds are awarded through grants not to exceed 75 percent of the project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; and other public and private donations. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for the RLF Program must be in cash, and while the local share for the SSED Program may be cash or in-kind, priority consideration will be given to proposals with a cash local share.

Eligible Applicants

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under title IV of this Act, 42 U.S.C. 3161; an Indian tribe, a state; a city or other political subdivision of a state; or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; a nonprofit organization determined by EDA to be the representative of a redevelopment area; the Federated States of Micronesia, the

Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands.

Eligible Areas

A. LTED

In order to receive priority consideration for funding under the LTED/RLF Program, an area must be experiencing at least one of three economic problems: very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Priority will be given to those areas with two or more of these indicators. Eligibility is determined statistically. Further information is available from EPA's regional offices (see section XI of this Notice).

B. SSED

In order to receive priority consideration for funding under the SSED Program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss threshold must result from the action of a single employer, or eighty (80) percent of the job loss threshold must occur in a single standard industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Selection Criteria

Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicant's ability to manage the grant effectively.

A. LTED/RLF Selection Criteria

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. Economic and Financial Needs of the Project Area

a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants, deteriorating infrastructure, and declining farm economy, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the local capital market and the applicant's analysis of it, and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Applicant's need for grant funds to carry out the project will be based on an assessment of its financial resources.

2. Objectives and Benefits of Proposed Projects

Priority will be given to projects which:

a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole.

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area, particularly those identified in the OEDP, Title IX strategy, or other plans developed to deal with specific economic adjustment problems affecting the area. This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area.

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar. (Note: the local share or other funds provided by the RLF to finance loans cannot be counted as leveraged dollars.)

d. Direct new job opportunities to the long-term unemployed and underemployed.

e. Provide technical and management assistance for RLF borrowers, in addition to loan funds.

f. Use creative financing techniques to overcome specific gaps in the local capital market.

g. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within three years of grant approval with no less than 50 percent disbursed within eighteen months and 80 percent within two years.

h. Include a larger local share than the required 25 percent or secure commitments for future funding from other private or nonfederal public sources.

i. Coordinate activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

j. Are established to fill capital gaps as opposed to providing subsidized credit (i.e., below market interest rates).

3. Effective Management of the RLF

EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administration Board with broad community representation, including appropriate public and private sector representation.

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing.

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices.

d. A strategy for relending loan repayments which will ensure that the RLF revolves continuously and thus fulfills its purpose of creating jobs and stimulating economic activity on an ongoing basis.

e. Adequate resources to cover administrative costs of the RLF.

f. The potential applicant's experience and capacity for administering economic and business loan programs. If the potential applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that

organization, rather than the potential applicant.

Nongovernmental (excluding economic development districts) organizations seeking funds must be sponsored by the local or state government having jurisdiction over the project area, and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernmental entity no longer be able to administer the project.

B. SSED Evaluation Criteria

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limited to, the following factors;

a. The degree to which the number of dislocated workers exceeds the eligibility threshold.

b. The proportion of the total job less represented by a single employer.

c. The proportion of employment in a single standard industry classification represented by the firm(s) closing.

d. The applicant's need for grant funds to carry out the project based on an assessment of its financial resources.

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. For Implementation Grants

(1) Job creation or retention and restoration of the community's economic base in the near term are emphasized versus more long-term, general economic development. Projects likely to encounter delays, particularly in initiating or completing construction, will normally not be given favorable consideration.

(2) The jobs to be created or retained are permanent, will directly benefit the dislocated workers or will directly facilitate community adjustment, and are new employment opportunities and not transferred from one area of the United States to another.

(3) The response to the problem is timely.

(4) EDA assistance will be complemented by, or will complement, appropriate state and local efforts; for example, training and job placement services, other Federal investments, and private sector support.

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation.

(6) The cost per job created or retained is minimized.

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefits.

(8) The local share exceeds the required 25 percent.

b. For Strategy Grants

(1) The applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities.

(2) The proposed scope of work is responsive to the problem.

(3) The focus of the planning effort is on the generation of practical and implementable solutions.

(4) The local share exceeds the required 25 percent.

Project Implementation

As indicated in the first section of this Notice, EDA expects all grant-funded projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The grantee must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA approval of changes in the schedule prior to proceeding with project implementation.

EDA expects grantees to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, acquisition of state permits and approvals, normal weather conditions in area, and public objections to the project), and take them into account in preparing the project schedule. Grantees who fail to comply with project schedules may be subject to grant suspension or termination.

Proposal Submission Procedures

Interested parties should contact the Economic Development Representative for the area or the appropriate EDA regional office (see section XI of this Notice) for a proposal package. Project proposals, submitted by eligible entities, will be evaluated by EDA staff on the basis of:

1. Conformance with the evaluation criteria mentioned above and statutory, regulatory and policy requirements.

2. The availability of funds.

Formal Application Procedures

Following a review of project proposals, EDA will invite those projects selected for funding consideration to submit formal applications. The formal application will include an ED-540, as approved by the Office of Management and Budget Control No. 0610-0058.

Further Information

For further information about this program, contact the appropriate EDA regional office or the Director, Economic Adjustment Division, Economic Development Administration, room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 377-2659.

X. Program: Trade Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance)

Summary

Funds under the Trade Adjustment Assistance Program are awarded to a network of Trade Adjustment Assistance Centers, located around the Nation, which provide technical assistance to certified firms adversely affected by increased imports. Funds are also awarded under this program to organizations representing trade-injured industries. This program is authorized under the Trade Act of 1974, title II, Public Law 93-618, as amended, 88 Stat. 1978, 19 U.S.C. 2101-2487.

Funding Availability

Funds in the amount of $13.450 million are available for trade adjustment assistance to firms. These funds will be provided to the nationwide network of twelve (12) Trade Adjustment Assistance Centers (TAACs) through cooperative agreements which will utilize all of the available funds for trade adjustment assistance.

Therefore, no new centers will be funded in fiscal year 1992. The report accompanying the Senate version of the fiscal year 1992 Department of Commerce Appropriations Act advises that "TAAC's should not reserve any portion of these grants for closeout." Accordingly, full utilization of fiscal year 1992 funds will be a factor in determining eligibility. Funds in the amount of $550,000 are available for industry technical assistance.

Program Objective

The Trade Adjustment Assistance Program is designed to provide technical assistance to certified firms and industries hurt by the impact of increased imports. The TAACs help firms submit certification petitions to the Trade Adjustment Assistance Division (TAAD) of EDA, and if the firm is certified, provides technical assistance. A firm should work closely with the appropriate TAAC in petitioning for certification. Certified firms should also work closely with the appropriate

TAAC in diagnosing their problems and developing an adjustment proposal, and in applying for technical assistance.

An industry association or other organization interested in receiving an industry assistance cooperative agreement must meet with a TAAD representative to discuss the industry's problems, opportunities, and assistance needs.

Criteria for Selecting Industry Assistance Proposals

Industry associations and other organizations seeking trade adjustment industry assistance must demonstrate that the industry is injured by foreign trade and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority. It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

Application Procedures

Industry associations or other organizations seeking industry assistance must submit an application identified as Standard Form 424 (OMB Control No. 0348–0043), if encouraged to do so as a result of the meeting with a TAAD representative.

Acceptable industry applications will be processed as funds are available; normally one to three months is required for agency approval.

Formula and Matching Requirements

Generally, a minimum of 50 percent share is required for industry assistance cooperative agreements.

Length and Time Phasing of Assistance

Industry assistance cooperative agreements are generally 12 months, but may be longer for tasks requiring more time to complete.

Further Information

For further information, contact the Director, Trade Adjustment Assistance Division, Economic Development Administration, room 4015A, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 377–3373.

XI. EDA Regional Offices

The EDA regional offices and the states they cover are:

Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, First Floor, Philadelphia, Pennsylvania 19106, telephone: (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia.

Atlanta Regional Office, suite 1820, 401 West Peachtree Street, NW., Atlanta, Georgia 30308–3510, telephone: (404) 730–3002; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Denver Regional Office, 1244 Speer Boulevard, room 670, Denver, Colorado 80204, telephone: (303) 844–4714; serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Chicago Regional Office, suite 855, 111 North Canal Street, Chicago, Illinois 60606–7204, telephone: (312) 353–7706; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Seattle Regional Office, suite 1856, Jackson Federal Building, 915 Second Avenue, Seattle Washington 98174, telephone: (206) 553–0596; serving Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Austin Regional Office, suite 201, Grant Building, 611 East Sixth Street, Austin, Texas 78701, telephone: (512) 482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Dated: January 29, 1992.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 92–2606 Filed 2–3–92; 8:45 am]

BILLING CODE 3510–24–M

federal register

Tuesday
February 4, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Blackfeet Irrigation Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Irrigation Project

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Public notice.

SUMMARY: The Bureau of Indian Affairs is proposing a $1 increase to the Blackfeet Irrigation Project's current operation and maintenance assessment rate of $8 per assessable acre. The $1 increase would help offset the cost increases the project has had in personnel, supplies, materials and service.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

This notice will be published and posted at the following locations.

	Newspaper
U.S. Post Office:	
Browning, Mt. 59417.	Glacier Reporters, Browning, Mt. 59417.
Cut Bank, Mt. 59427.	
Valier, Mt. 59486	Pioneer Press, Cut Bank, Mt. 59427.
Bureau of Indian Affairs:	
Blackfeet Agency, Browning, Mt. 59417.	

DATES: Effective on February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Billings Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, MT 58101, telephone FTS 585–6315; commercial (406) 657–6315.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 209 DM8 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director IM 230 DM.

All comments concerning the proposed 1992 operation and maintenance assessment rate for the Blackfeet Irrigation Project must be in writing and addressed to the Superintendent of the Blackfeet Agency, Browning, Montana 59417 before the close of business on March 2, 1992.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior [Department Manual, chapter 3, part 230, (3.1 & 3.2)].

Richard Whitesell,

Billings Area Director.

[FR Doc. 92–2519 Filed 2–3–92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Tuesday
February 4, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Fort Peck Irrigation Project, MT; Notice

DEPARTMENT OF THE INTERIOR

Fort Peck Irrigation Project, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the operation and maintenance rate of the Fort Peck Irrigation Project from $13.30 to $14.30 per assessable acre. The cost to operate and maintain the irrigation project have increased since the last operation and maintenance rate increase and these cost are anticipated to increase again in Fiscal Year 1992.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

This notice will be published and posted at the following locations:

U.S. Post Offices
Popular, Mt. 59255
Wolf Point, Mt. 59201
Newspaper
Herald News, Wolf Point, Mt. 59201
Bureau of Indian Affairs
Fort Peck Agency, Popular, Mt. 59225

DATES: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Billings Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, MT 58101, telephone FTS 585–6315; commercial (406) 657–6315.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 209 DM8 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director IM 230 DM.

All comments concerning the proposed 1992 operation and maintenance assessment rate for the Fort Peck irrigation project must be in writing and addressed to the Superintendent of the Fort Peck Agency, Popular, Montana 59225 before the close of business on March 2, 1992.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Richard Whitesell,

Billings Area Director.

[FR Doc. 92–2520 Filed 2–3–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
February 4, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

The Rumsey Indian Rancheria Community Liquor Code; Notice

DEPARTMENT OF THE INTERIOR

The Rumsey Indian Rancheria Community Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. Ordinance No. 6-12-91, was duly adopted by the Rumsey Indian Rancheria Community Council on June 12, 1991, and provides that the tribe, as owner and operator of a convenience store on the rancheria, will sell wine and beer for off-premises consumption only. The Ordinance and the enacting resolution provide that said sale shall conform to all applicable laws of the State of California.

DATES: This Ordinance is effective as of February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2612-MIB, Washington, DC 20240-4001; telephone (202) 208-4400, (FTS) 268-4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Community Council of the Rumsey Indian Rancheria (hereinafter "Council"), governing body of the Rumsey Indian Rancheria (hereinafter "Tribe"), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Rancheria lands.

Preamble

1. Title 18, United States Code, section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with State law.

2. Rumsey Indian Rancheria is the owner and operator of a convenience store on the Rancheria known as the Brooks Mountain View Mini-Mart, which sells, among other products, certain snack and food items to members of the Tribe and the general public.

3. Said convenience store is an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

4. The Community Council has determined that it is now in its best interest to offer for sale at said convenience store, for off-premises consumption only, certain alcoholic beverages, namely wine and beer.

5. It is the purpose of this Ordinance to set out the terms and conditions under which the sale of said alcoholic beverages may take place.

General Terms

1. The sale of beer and wine by the Rumsey Rancheria convenience store, known as Brooks Mountain View Mini-Mart, for off-premises consumption only, is hereby authorized.

2. No alcoholic beverages, other than beer or wine, may be sold by the convenience store, and no alcoholic beverage of any kind may be consumed on the premises of the convenience store. For the purpose of this section, the term "premises" shall include the convenience store and an area of 50 yards around its perimeter.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to State sales tax, Federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms.

Posting

This Ordinance shall be conspicuously posted at the convenience store at all times it is open to the public.

Enforcement

This Ordinance may be enforced by the Chairman of the Rumsey Rancheria or the Yolo County Sheriff's Office at the request of the General Manager.

Dated: January 23, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92-2622 Filed 2-3-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Tuesday
February 4, 1992

Part VIII

Environmental Protection Agency

40 CFR Part 22

Rules of Practice Governing the Administrative Assessment of Civil Penalties; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-4099-8]

RIN 2060-AD20

Rules of Practice Governing the Administrative Assessment of Civil Penalties Under the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today is publishing a final rule to establish procedures for the administrative assessment of civil penalties under sections 113(d)(1) and 205(c) of the Clean Air Act (CAA), 42 U.S.C. 7413(d)(1) and 7524(c), as amended by the Clean Air Act Amendments of 1990, Public Law 101-549. The rule provides that EPA's administrative assessment of civil penalties pursuant to section 113(d)(1) and section 205(c) will be governed by EPA's Consolidated Rules of Practice for assessing administrative penalties, 40 CFR part 22, and by supplemental rules relating specifically to the section 113(d)(1) and section 205(c) administrative procedures. This final rule is identical to the proposed rule that EPA published in the **Federal Register** on July 22, 1991.

EPA is taking this action in response to the enactment of the Clean Air Act Amendments of 1990, which authorize the Administrator to assess administrative penalties for specified violations of the CAA. The section 113(d)(1) penalty assessments apply to non-Title II violations, whereas section 205(c) penalty assessments apply to Title II violations. The authority granted to the Administrator to assess the administrative penalties was immediately effective upon the enactment of the Clean Air Act Amendments of 1990, on November 15, 1990.

The few public comments received regarding the proposed rule were generally favorable, and contained only minor suggested amendments. After consideration, EPA has decided not to adopt any of these amendments, but to publish the final rule as it was proposed. A detailed discussion of the comments appears in the Supplemental Information section below.

DATES: *Effective Date:* March 5, 1992.

Judicial Review. Under CAA section 307(b)(1), judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under CAA section 307(b)(2), the procedures that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA using the procedures.

ADDRESSES: *Docket.* Public Docket No. A-91-37, containing materials relevant to this rulemaking, is available for public inspection and copying on weekdays between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m., at EPA's Air Docket, room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. As provided by 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Scott A. Throwe, Office of Air and Radiation, Stationary Source Compliance Division (EN-341W), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (703) 308-8699.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Amendments of 1990 (CAA Amendments), Public Law 101-549, was enacted. Section 113 of the CAA, 42 U.S.C. 7413, was amended to provide, among other things, authority for the Administrator to assess administrative penalties for a wide variety of violations of the CAA, excluding violations of title II of the Act. The Administrator may assess a penalty of up to $25,000 per day of violation, and may seek up to a maximum total penalty of $200,000, for violations where the first alleged date of violation occurred no more than 12 months prior to the initiation of the administration action. Both the amount of the maximum penalty sought and the length of the period of alleged violation may be increased by a joint determination of the Administrator and the Attorney General.

Section 205 of the CAA, 42 U.S.C. 7524, was amended to provide, among other things, authority for the Administrator to assess administrative penalties for certain violations of Title II of the CAA. The Administrator may assess an administrative penalty of up to $25,000 per day for violations of sections 203(a)(2) and 211(d) of the CAA, up to $25,000 per offense for violations of paragraphs (1), (3)(A), (4) and (5) of section 203(a) and for violations of section 213(d), and up to $2,500 per offense for violations of section 203(a)(3)(B) and for violations of section 203(a)(3)(A) by any person other than a manufacturer or dealer. As with section 113(d), the maximum amount that can be sought against each violator in an administrative assessment is $200,000. There is no corresponding limit relating to the first alleged date of the violation. The amount of maximum penalty sought may be increased by a joint determination of the Administrator and the Attorney General.

The CAA Amendments explicitly make section 113(d)(1) and section 205(c) penalty assessments subject to an opportunity for a hearing in accordance with sections 554 and 556 of the Administrative Procedure Act (APA), 5 U.S.C. 554, 556. EPA's Consolidated Rules of Practice ("Consolidated Rules" or "CROP"), 40 CFR part 22, govern the administrative assessment of civil penalties under other statutes administered by EPA that are subject to these requirements of the APA. By providing a common set of procedural rules for certain of EPA's administrative penalty programs, the Consolidated Rules reduce paperwork, inconsistency, and the burden on regulated entities. See 45 FR 24360 (Apr. 9, 1980).

As was proposed in July, EPA today adopts the Consolidated Rules as the procedural framework for administrative penalty assessments under section 113(d)(1) and section 205(c) of the CAA. Using the Consolidated Rules will allow EPA to implement the administrative penalty authority with uniform hearing procedures that satisfy the procedural and substantive requirements established by the CAA. The use of the Consolidated Rules, together with the Supplemental rules described below, satisfy the hearing procedures and discovery requirements of sections 113(d)(2)(a) and 205(c)(1), and meet the requirements of sections 554 and 556 of the APA.

In conjunction with the adoption of the general Consolidated Rules (CROP sections 22.01 through 22.32), EPA today is publishing final Supplemental rules that apply specifically to section 113(d)(1) and section 205(c) penalty assessments. In particular, EPA is publishing a new Supplemental rule, CROP section 22.43, which contains supplemental rules of practice for administrative penalty hearings under CAA section 113(d)(1). EPA also is amending CROP section 22.34, which contains the supplemental practice rules for administrative penalty hearings under CAA section 205(c). Thus, CROP section 22.42 provides supplemental practice rules for CAA administrative penalty hearings other than those under Title II, whereas CROP section 22.34 provides supplemental rules for Title II hearings.

The two Supplemental rules include a provision for a 30-day written notice of the proposed order, and provisions for administrative subpoenas based on the new administrative subpoena authority provided in CAA section 307(a), 42 U.S.C. 7607(a), as amended. In addition, several provisions of Supplemental rule 22.34 have been deleted in order to conform it more closely to new Supplemental rule 22.43.

Discussion of Public Comments

As stated above, the proposed rule was published in the **Federal Register** on July 22, 1991 with a 30-day public comment period. Three comment letters were received in response. The comments were generally favorable, and contained few specific suggested revisions.

Two of the suggested revisions constituted general amendments to the Consolidated Rules. Specifically, one commentator suggested an amendment to CROP section 22.18 to provide for the referral of disputes to a settlement referee. Another commentator suggested that CROP section 22.21(a) be amended to provide for the naming of the presiding officer no later than the time EPA files the administrative complaint. The goal of this rulemaking is to adapt the Consolidated Rules to provide procedures for CAA administrative penalty hearings, without otherwise altering the Consolidated Rules. This is particularly appropriate given that the Consolidated Rules provide the administrative hearing procedures for numerous environmental statutes other than the CAA. The commentators made no showing that proceedings under the CAA uniquely called for these revisions; instead, the comments were in the nature of general revisions to the Consolidated Rules. Therefore, the two suggested general amendments go beyond the scope of this rulemaking.

The remaining two suggested revisions were to proposed section 22.43, the Supplemental rule governing administrative penalty hearings pursuant to CAA section 113(d)(2) (that is, hearings for violations of the CAA other than violations of Title II). One commentator suggested that proposed section 22.43(b)(2) be amended to provide that "any answer to the complaint must be filed * * * within thirty (30) days after service of the complaint is complete." (Proposed section 22.43(b)(2) did not include the phrase "is complete".) It was unclear to the commentator whether EPA intended to follow the general CROP rule for determining when service of the complaint is complete, and the commentator suggested the amendment as a clarification.

The reference to the "service of the complaint" in proposed section 22.43(b)(2) is identical to the "service of the complaint" language used in CROP section 22.15(a), the general CROP provision dealing with answers to the complaint. Under both provisions, CROP section 22.07(c) governs when service of the complaint is complete. Section 22.07(c) provides, among other things, that "[s]ervice of the complaint is complete when the return receipt is signed." The proposed language in section 22.43(b)(2) does not, and is not intended, to carve out an exception to CROP section 22.07(c). EPA believes that the proposed language is clear, and that no additional amendment is necessary.

Finally, one commentator suggested that proposed section 22.43 be amended to require that EPA consult with the State in which the alleged violation occurred prior to the issuance of a final penalty order. The commentator offered the amendment as a method of providing for federal/State coordination on CAA enforcement actions, and referenced a similar "consultation with states" provision in Supplemental rule 22.38, which governs Class II administrative penalties under the Clean Water Act (CWA).

EPA is committed to close cooperation and coordination with the States on enforcing the Clean Air Act. Following long-standing EPA policy, EPA's Regional Offices have for years met with their respective States once every month to coordinate CAA enforcement. This level of voluntary coordination far exceeds the coordination which results from the mandatory requirement of the CWA Supplemental Rule. (The coordination requirement found in the CWA Supplemental rule results from a specific CWA statutory requirement set out in CWA section 309(g)(1), 33 U.S.C. 1319(g)(1); the CAA contains no such statutory requirement.)

Voluntary CAA enforcement coordination is particularly appropriate because in many contexts mandatory consultation with the States would be unnecessary, and would create additional work for EPA and State enforcement personnel. In many instances, a State will refer CAA violations to EPA for enforcement action—in these circumstances, further consultations between the State and EPA over whether to bring the action would be unnecessary and redundant. For certain CAA programs, such as cholorofluorocarbon imports and the servicing of motor vehicle air conditioners, the States have no enforcement authority. Also, EPA is the sole CAA enforcement authority whenever a State has not been delegated enforcement authority. Mandatory consultation with the States in these circumstances would only create unnecessary burdens on both EPA and the States.

In sum, the extensive level of voluntary coordination between EPA and the States makes it unnecessary to establish an additional mandatory coordination requirement for the CAA. In addition, a mandatory requirement would oftentimes force EPA and the States into needless consultations that would create unnecessary burdens on both EPA and State personnel.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

The expected impact of this final rule on small entities is negligible. The rule codifies already existing statutory provisions and is procedural. Thus, it does not impose additional regulatory requirements on small entities.

Accordingly, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Executive Order No. 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The rule published today is not major because the rule does not result in an effect on the economy of $100 million or more, does not result in increased costs or prices, does not have significant adverse effects on competition, employment, investment, productivity, and innovation, and does not significantly disrupt domestic or export markets. Therefore the Agency did not prepare a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

Paperwork Reduction Act

The rule published today does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

List of Subjects in 40 CFR Part 22

Administrative practice and procedures, Air pollution control, Environmental protection, Penalties.

Dated: January 28, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR part 22 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 15 U.S.C. 2615; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 7 U.S.C. 136(l) and (m); 33 U.S.C. 1319, 1415 and 1418; 42 U.S.C. 6912, 6928 and 6991(e); 42 U.S.C. 9609; 42 U.S.C. 11045.

2. Section 22.01 is amended by revising paragraph (a)(2) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(2) The assessment of any administrative penalty under sections 113(d)(1), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (CAA) (42 U.S.C. 7413(d)(1), 7524(c), 7545(d) and 7547(d)).

* * * * *

3. Section 22.34 is revised to read as follows:

§ 22.34 Supplemental rules of practice governing the administrative assessment of civil penalties under Title II of the Clean Air Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under sections 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Issuance of Notice.* (1) Prior to the issuance of an administrative penalty order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such notice shall be provided by the issuance of a complaint pursuant to § 22.13 of the Consolidated Rules of Practice.

(2) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the Hearing Clerk within thirty (30) days after service of the complaint.

(c) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of;

(i) The grounds and necessity therefor, and

(ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

4. A new § 22.43 is added to read as follows:

§ 22.43 Supplemental rules of practice governing the administrative assessment of civil penalties under Section 113(d)(1) of the Clean Air Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under section 113(d)(1) of the Clean Air Act (42 U.S.C. 7413(d)(1)). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Issuance of Notice.* (1) Prior to the issuance of an administrative penalty order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such notice shall be provided by the issuance of a complaint pursuant to § 22.13 of the Consolidated Rules of Practice.

(2) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the Regional Hearing Clerk within thirty (30) days after service of the complaint.

(c) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of;

(i) The grounds and necessity therefor, and

(ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

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Part IX

Department of Education

Reauthorization of Elementary and Secondary Education Programs; Request for Public Comment

DEPARTMENT OF EDUCATION

Office of Management and Budget/ Chief Financial Officer

Reauthorization of Elementary and Secondary Education Programs

AGENCY: Department of Education.

ACTION: Request for public comment on the reauthorization of elementary and secondary education programs.

SUMMARY: The Secretary of Education invites written comments from the public regarding the reauthorization of programs under the Elementary and Secondary Education Act of 1965; Public Law 81–874 (Impact Aid Maintenance and Operations); Public Law 81–815 (Impact Aid Construction); Section 372 of the Adult Education Act; the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (including the Indian Education Act of 1988); the Education and Training for a Competitive America Act (Title VI of the Omnibus Trade and Competitiveness Act of 1988); the Education for Economic Security Act; Title VII of the Stewart B. McKinney Homeless Assistance Act; and the Education Council Act of 1991 (Pub. L. 102–62).

DATES: Written comments must be submitted on or before March 20, 1992.

ADDRESS: Written comments should be addressed to: Dr. John T. MacDonald, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2189, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: William Wooten at 202–401–0988, Office of the Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2189, Washington, DC 20202. 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 Secretary is requesting public comments on the reauthorization of more than 50 programs funded at over $10 billion in fiscal year 1992. These programs include Chapters 1 and 2 of Title I of the Elementary and Secondary Education Act, Eisenhower Mathematics and Science Education, Magnet Schools Assistance, the Fund for Innovation in Education, Drug-Free Schools and Communities, Dropout Prevention Demonstrations, Bilingual Education, Impact Aid, the Fund for the Improvement and Reform of Schools and Teaching (FIRST), Indian Education, and Education for Homeless Children and Youth. A complete listing of these programs is provided at the end of this notice. The Secretary is also planning a series of public hearings on the reauthorization of these programs. Dates and locations for these hearings will be announced in a future **Federal Register** notice.

Need For Reauthorization

The authorization for these programs expires September 30, 1993. In order to contribute in a timely manner to congressional reauthorization discussions, the Secretary is beginning a review of the programs. The Secretary intends to submit the Department's proposal to reauthorize these programs in January 1993, in conjunction with the President's fiscal year 1994 budget. To ensure an opportunity for public participation, the Secretary invites public comments on this reauthorization effort.

Task Force

The Secretary has formed an Elementary and Secondary Education Reauthorization Task Force, the goals of which are to review current programs and authorities, evaluates suggested modifications and alternatives to these programs, and recommend options to the Secretary. The Task Force includes the following individuals: the Assistant Secretary for Elementary and Secondary Education; the Assistant Secretary for Education Research and Improvement; the Director of Bilingual Education and Minority Languages Affairs; the General Counsel; the Assistant Secretary for Civil Rights; the Inspector General; the Assistant Secretary for Policy and Planning; the Assistant Secretary for Legislation and Congressional Affairs; the Assistant Secretary for Intergovernmental and Interagency Affairs; and the Assistant Secretary for Management and Budget/Chief Financial Officer. Other senior officers of the Department who administer programs due for reauthorization will also be included in the Task Force's deliberations.

How the Information Will Be Used

The Department will seek to develop program initiatives that will be most efective in supporting progress toward attainment of the six National Education Goals, as enunciated through the AMERICA 2000 strategy. (The Goals are listed at the end of this notice.) In doing so, the Department will attempt to identify new, creative, and innovative program strategies whether or not they reflect the structure of current Federal elementary and secondary education programs. Throughout the process, the Department will be guided by five general principles, listed below, and particularly seeks comment on the issues listed under those principles.

The reauthorization process also provides an opportunity for resolution of issues affecting current programs that have arisen through evaluations, audits, program operations, budget deliberations, and previous legislative actions. Thus, the Department, while it will examine new program strategies, also seeks comment on the program-specific issues listed below.

Issues for Public Comment

The Secretary seeks comments and suggestions regarding reauthorization of these programs. Comments are especially invited on the following issues.

General Principles and Issues

1. Promoting World Class Standards for All Students

Federal programs should contribute to the development and use of world class standards for curriculum and instruction. The Federal Government also has an interest in ensuring that all children have the opportunity to benefit from high-quality curriculum and instruction, and it has a special role in supporting the education of children who are most at risk of school failure.

How can we ensure that all students are exposed to the type of enriching curriculm and high-caliber instruction needed to help them achieve world class standards?

How can Federal programs be revamped to support systemic reform in which world class standards are reflected in curriculum frameworks that then form the basis for improving instruction, classroom materials, teacher education, teacher certification, staff development, and student assessments?

How can assessments be developed that measure the progress, toward world class standards, of students in schools that participate in Federal programs?

2. Giving More Authority to States and Communities

Governors and communities must exercise the kinds of farsighted leadership needed to achieve the National Education Goals. Governors, as the States' chief executive officers, are powerful resources in the improvement of education, yet typically are bypassed by Federal programs. They should be given a greater opportunity to influence how their States move forward in education and to determine the

incentives needed to link State initiatives to the national effort. Reauthorization should also build upon the strategies of AMERICA 2000, including community-wide commitment to the goals, comprehensive planning, and report cards to the public to support local efforts in transforming schools.

How can Governors and communities be given greater authority and flexibility in implementing Federal education programs and tying Federal efforts to State initiatives?

How can Federal programs be used to support and leverage State and local actions so that spending at all levels is focused on the National Education Goals?

How can Federal programs encourage greater coordination of community services to address the multiple needs of at-risk children and their families, make services more client-centered, and increase efficiency?

How can Federal support be directed toward communities serving large concentrations of students who currently are least able to meet world class standards?

3. *Promoting Family Responsibility and Choice*

Federal programs should recognize parents as children's first teachers and provide the support parents need to become involved in their children's schooling.

How can Federal programs better support State and local efforts to enable all families to select an appropriate school for their children?

How can Federal progams help to engage parents in the education of their children?

4. More Accountable Schools and More Accountability in Federal Programs

Federal support should be conditioned on a demonstration that extra funds are indeed contributing to better outcomes in education. Recipients of Federal funds should be required to document the extent to which the investment of Federal funds yields measurable results.

How can Federal funding be structured to result in and reward educational improvement? Should States and localities be allowed more flexibility in the use of resources on the condition that they demonstrate progress toward achieving national priorities? How can flexibility be used as an incentive to encourage higher performance?

What common requirements for accountability should be included in Federal program authorities? How can enhanced accountability in Federal programs be a part of the broader movement for greater accountability in education? Should accountability provisions in discretionary grant programs differ from those in formula grant programs? If so, how?

5. Breaking the Mold

Federal programs should encourage the kind of innovations that can produce significant breakthroughs in learning and cost-effectiveness.

How can Federal programs encourage, and incorporate the benefits of, cutting-edge innovation?

What kinds of technical assistance and staff development activities are needed to encourage and assist the adoption of strategies that research has identified as promising or effective?

How can Federal programs build upon and incorporate the principles behind the movement toward the development of New American Schools and foster strategies to encourage greater competition of new ideas?

Issues That Cut Across Programs

Discretionary Grants

Current law authorizes a large number of discretionary grant programs. Most of these programs are small and fund a limited number of recipients. Although the purpose of the programs is generally the demonstration of effective strategies for addressing particular issues or problems, funds often support local projects that, while beneficial to the recipients, are not designed in a way to yield lessons for broader use. What role should discretionary programs play in helping the Nation achieve its education goals? Would these resources be more effectively utilized under broader authorities, such as the Department's formula grant programs? Do the current programs encourage a piecemeal, rather than comprehensive, approach to education reform, or do they focus attention where it is needed? If there is a need for Federal demonstration programs, what changes are needed to ensure that they are designed as true demonstrations and serve that purpose effectively? What types of evaluation and reporting ought to be required?

Funding Formulas

A recent, congressionally mandated report, The Distribution of Federal Elementary-Secondary Education Grants Among the States (Barro, 1991), calls into question some of the measures underlying the formulas used to allocate funds under the Department's elementary and secondary education programs. For example, the report found that the population counts used in certain formulas are inadequate indicators of relative State needs for program services; that State per-pupil expenditures for education are an unreliable indicator of differences in the cost of education; and that none of the current fomulas reward States that make a higher than average fiscal "effort" in support of education. In addition, the report contended that some of the constraints embedded in current formulas (particularly the minimum State allocations and certain "hold-harmless" provisions) are inconsistent with program purposes.

The Department intends to review the current allocation formulas for elementary and secondary programs and seeks comment on how those allocation formulas might be improved. For example, what bases, other than population and per-pupil expenditures, might be used to distribute Federal funds? What factors might be better proxies for the cost of education in the States? What other specific changes are desirable?

State Per-Pupil Expenditures

State per-pupil expenditure (SPPE) data are used in determining formula allocations under Chapter 1 LEA Grant and State agency programs, Impact Aid, and Indian Education and have an impact on the allocation of funds for other programs as well. This information is collected annually by the Department's National Center for Education Statistics (NCES) through its Common Core of Data (CCD) fiscal survey. In a report on the collection of SPPE data, the Department's Office of Inspector General recommended enactment of legislation to require States to report fall enrollment counts rather than average daily attendance (ADA) for purposes of caculating individual State per pupil expenditures for elementary and secondary education.

Under current law, States report ADA, as defined by State law, to determine elementary and secondary enrollment. That figure is then divided into a State's total expenditure for elementary and secondary education to determine its SPPE. For States that have no statutory definition of ADA, NCES requests that States use the definition contained in the CCD. The lack of uniformity among the States in how ADA is defined and reported produces variations in how SPPE data are calculated. Changing to fall enrollment counts (defined as all students enrolled on October 1 or the school day closest to that date) could provide a comparable basis for calculating SPPE across all States and eliminate the wide variation in how SPPE data are calculated. In addition,

fall enrollment is a common statistic that States already report to NCES through the CCD survey and should not add to the reporting burden of the States.

If Federal programs continue to use allocation formulas that rely on SPPE data, should States be required to report these data using fall enrollment counts rather than average daily attendance?

Transfers to the Bureau of Indian Affairs

Even though the Department of the Interior receives a direct appropriation for allocation to schools operated by, or under contract with, the Bureau of Indian Affairs, a number of Department of Education programs (including the Chapter 1, Drug-Free Schools, and Mathematics and Science Education programs, which are due for reauthorization) receive funds that are transferred to the BIA for specific purposes. Is it efficient and beneficial to the children in the BIA-funded schools to have these funds appropriated to the Department of Education and then transferred to the Department of the Interior, or would administration be simplified and program allocations speeded up if all these funds were simply added to the regular Department of the Interior appropriation?

Issues Related to Individual Programs

Compensatory Education

Chapter 1 Formula Issues

Unlike other programs administered by the Department, Chapter 1 funds are allocated at the Federal level to individual counties. Annual county allocations are based on the number of low-income children aged 5 to 17, as documented in the most recent decennial Census, as well as three other counts of children. The Census data, which currently account for more than 95 percent of the children, are frequently so out of date as to fail to reflect the distribution of poor children across counties. Should alternatives to the use of decennial Census data be considered? Should State agencies be given the authority to distribute Chapter 1 funds within the States on the basis of the best data on low-income children available at the State level?

While Chapter 1 Basic Grants are allocated to almost every county and over 90 percent of school districts in the U.S., Concentration Grants go only to counties and districts that have high numbers or concentrations of children living in poverty. However, the recent study of the allocation of Federal funding for elementary and secondary education programs (noted earlier) found that Chapter 1 Concentration Grants are now only moderately more concentrated than Chapter 1 Basic Grants. Are there better methods of targeting funds on communities with the highest concentrations of poor children? For example, should Concentration Grants be targeted on high-poverty schools within high-poverty districts?

Pupil Targeting and Testing

Historically, the Chapter 1 statute has left decisions about grade levels or age ranges to be served to the discretion of local officials, who base those decisions on assessments of local needs and priorities. Should local administrators continue to have complete authority to target funds in this manner, or should specific amounts be earmarked at the national level for preschool programs (in support of the national readiness goal) or secondary school programs (in support of the high school completion goal)?

At the local level, LEAs select schools to conduct Chapter 1 projects based on the number of students from low-income families who live in each school attendance area. At the school level, however, students are served based on educational need. Should current provisions for selection of schools and children be retained? Alternatively, should a common measure (of educational or economic deprivation) be used to select both schools and children? Have current provisions for assessing student needs worked effectively, or should the statute include uniform criteria for selection of children?

How should Chapter 1 assessment practices be aligned with the current movement to develop national standards for all children? Should States be required to specify standards of academic performance in core subjects that Chapter 1 students, along with others, are to achieve? Should assessment of Chapter 1 students be required annually and in each grade, or should the testing be aligned with national assessments that measure performance less frequently and at specific grade levels?

Program Services

Researchers and practitioners working with educationally disadvantaged children often contend that some Chapter 1 practices—such as standardized testing and "pullout" classes—can hamper both the academic progress of individual students and overall program improvement. Should the law incorporate incentives designed to stimulate experimentation with alternatives to these practices? Should the use of any particular service delivery or pupil testing practices be either mandated or prohibited?

How can provisions for coordination between Chapter 1 and the regular school program, and between Chapter 1 and other Federal programs, be strengthened?

Program Improvement

In the years since the 1988 amendments added Chapter 1 program improvement requirements, the process of implementing these requirements has moved slowly and has been accompanied by debates about whether SEAs or LEAs should be responsible for identifying schools in need of improvement, how improvement should be gauged, and which measures of program effectiveness should be used. Is the current school improvement process now working effectively? Should the statute mandate higher minimum standards or desired outcomes for student achievement? Should it require that the standards or desired outcomes be increased over time, in order to bring about sustained program improvement? Should the use of a particular measure (or measures) of program effectiveness be required? Should schools in need of program improvement be identified annually or on the basis of data collected over a longer period?

Should the statute incorporate more incentives for success—i.e., rewards to effective projects? Would program improvement be more likely to occur if funds were provided to schools that demonstrate improvement rather than to those that need to improve?

Should the program improvement planning year be eliminated? Should schools be required to show improvement for several years rather than being allowed to leave program improvement status after a single year?

Innovation Projects

The 1988 amendments included a new provision that allows a local educational agency to use up to 5 percent of its Chapter 1 Basic Grant for Innovation Projects that are approved by the State educational agency. However, few such projects have been funded. Do the provisions of current law provide sufficient incentives for true innovation in school districts? Should a different list of innovative practices be authorized? Would a national demonstration authority, under which the Department would test, evaluate, and report on a variety of educational opportunities, be more likely to further innovations in the teaching of children at risk of academic failure?

Schoolwide Projects

A school may use Chapter 1 LEA Grant money for schoolwide projects that affect the entire student enrollment if at least 75 percent of the school's students come from low-income families. At this level, an estimated 7,200 schools—about 9 percent of all public schools in the country—are eligible to carry out these projects. Should the 75 percent requirement be lowered in order to allow more schools to take advantage of this option?

As a result of 1988 amendments that removed a requirement for local matching of funds, the number of schoolwide projects in operation has increased. However, schools that implement schoolwide projects must abide by planning and accountability requirements that are separate from and in addition to the requirements that apply to all Chapter 1 projects. Have schools found that the additional requirements applicable to schoolwide projects are manageable? Can the required plan for schoolwide projects become a vehicle for ensuring that participating schools establish a "report card," tied to world class standards, for measuring the educational progress of their children?

Fiscal Requirements

Have current Chapter 1 requirements related to maintenance of effort, supplanting, and comparability of services operated effectively? Have they created serious administrative burdens for LEAs? Are current fiscal accountability requirements properly balanced with the need for local flexibility in designing programs responsive to the needs of educationally deprived children? Should the statute include a requirement that States or LEAs match all or a portion of Federal funds?

Chapter 1 and Choice

Does the current structure of Chapter 1 act as a disincentive to local adoption of educational choice programs or to the participation of educationally deprived children in those programs? If so, how can Chapter 1 statutory requirements support, rather than discourage, greater adoption of and participation in programs that enhance parental and student choices in education?

Capital Expenses

A number of States annually turn back to the Department all or a portion of their yearly Capital Expenses allocations, and this number has increased each year. A few States request additional funds. This phenomenon raises the question of whether there is truly a national need for a program to reimburse States for the extra expenses incurred in implementing alternative delivery systems to serve private school children in accordance with *Aguilar* v. *Felton* or, if there is, whether the current program is properly targeted. Should the formula be revised in order to factor in more recent data on private school enrollments or children served? (The current allocation level is based on 1984–85 State counts of private school children served under Chapter 1.) Should a different allocation mechanism be used? Would a Federal discretionary program be more effective than a formula program?

Even Start

Should the Even Start program continue to operate as a separate categorical authority, or should the activities provided under Even Start (provision of early childhood and adult education as an integrated program) be authorized under Chapter 1 LEA Grants and the two authorities merged? If Even Start continues as a separate authority, should the program emphasize demonstration and dissemination or on-going provision of services?

Even Start funds are now allocated to States on the basis of State shares of Chapter 1 Basic Grant funds. Is this the most appropriate formula for this program? As an alternative, should funds be distributed on the basis of children in poverty aged 0 through 7 (the age range of children eligible for program services)?

State Agency Programs

The Chapter 1 programs for migratory students and for the neglected and delinquent serve at-risk students in very different situations then those served by the LEA Grant program. By statute, however, many of the same program requirements apply, even when the circumstances may warrant a different approach. Although the Department, through its regulations, has attempted to adapt the LEA requirements adaptable to the particular conditions of the State agency programs, a number of these requirements (such as maintenance of effort, State rule-making, and parental participation) have been difficult to implement. Should changes made, through the reauthorization, for LEA Grants (including changes related to pupil targeting, evaluation, and fiscal accountability) apply to the State agency programs, or do at least some aspects of these programs require different statutory approaches?

Migrant Education

Under current law, States receive formula allocations on behalf of, and are authorized to serve, both currently and formerly migratory children. Children who are currently migratory are given a higher priority for services than the formerly migratory (those who did not move in the previous year but have changed residence within the last five years). However, because of the difficulties in recruiting currently migratory children, States may tend to focus on recruiting and serving those who are formerly migratory. Should the law provide greater incentives for States to recruit, identify, and serve currently migratory children? What form might these incentives take?

The Migrant Education Program is the only Chapter 1 program—and the only State formula program of six major Federal programs serving migratory farmworker populations—that obtains, by contract, population counts for use in making State allocations. Although the Migrant Student Record Transfer System (MSRTS) was designed for other purposes, issues related to the formula function continue to dominate Federal-State relations with regard to the program. Problems exist in the use of MSRTS as a vehicle for both tracking and identification of students. Findings from more than a dozen Federal audits between 1979 and 1987 have revealed inaccuracies and inadequacies in State date reporting, and, most recently, a year-long study of the system by the congressionally mandated National Commission on Migrant Education concluded that the system "had failed to adequately perform its intended mission of transferring student records." The Commission recommended that the system be revamped to serve more effectively the needs of local educators, migrant students, and their parents.

These problems raise questions about whether the MSRTS can, or should, continue to perform the function of generating population counts for allocating Migrant Education Program funds to States as well as transferring student data. What other sources of information might be used to estimate counts of migratory children in the formula? In the absence of actual counts of migratory children and youth, what proxy might be used?

In recent years, States that receive very small allocations of Migrant Education program funds have maintained that their allocations are barely enough to operate any program at all, and that without an increase in funding they may have to withdraw

from the program. Should the allocation formula be revised to establish a minimum State allocation?

Under current law, the Department is unable to alter basic definitions affecting eligibility that have been in Migrant Education Program regulations for nearly 15 years. While Congress froze these regulations in order to ensure that these definitions would not be made more restrictive, the effect has been to inhibit efforts to define more clearly and reasonably who is eligible to be counted and served as a migratory child. For example, under existing regulations, even if teenage children migrate to perform temporary or seasonal agriculture work, they do not qualify for the program unless their parents or guardians themselves are migratory workers. Moreover, the fact that Migrant Education Program regulations are frozen prevents the Department from working with other agencies to try to develop common definitions of who may be considered migratory. Given these problems, should the Department be able to revise existing definitions of terms such as "currently migratory child" and "migratory agricultural worker" that are in current program regulations?

Under current law, the Department must award Migrant Education coordination grants and contracts "in consultation with and with the approval of" the State educational agencies (SEAs), even though the SEAs are themselves the only eligible recipients of these awards. Should the law continue to require that the Department obtain the approval of the potential recipients of coordination grants and contracts?

State Agency Handicapped Program

There is a general consensus that the Chapter 1 Handicapped program, which provides Federal assistance for children with disabilities in State-operated and -supported programs, is obsolete and that all children with disabilities should be served under the Individuals with Disabilities Education Act (IDEA). The major issue is whether any changes need to be made in the IDEA Part B formula for allocating funds to States and within States if all children currently counted under the Chapter 1 Handicapped program are to be counted under the Part B program. For example, is a "hold harmless" provision (guaranteeing each State a certain minimum level of funding tied to previous allocations under the Chapter 1 Handicapped program) needed to facilitate the transition to a single program?

Under current Part B law, States must distribute at least 75 percent of their allocations to LEAs, each of which receives its proportionate share. Should programs formerly supported under the Chapter 1 Handicapped Program be considered LEAs for the purpose of distributing funds?

Should State-operated programs be treated differently from State-supported programs under IDEA Part B?

Current Part B law limits the number of children who may be counted for allocations under the Grants to States program to 12 percent of the 3 through 17 year olds or 5 through 17 year olds in the general population (depending upon whether States serve all 3 through 5 year olds with disabilities). Some States may exceed this cap when they include children who were previously counted under the Chapter 1 Handicapped program. Should the cap be increased to ensure that States continue to receive funds for children previously counted under the Chapter 1 Handicapped program?

Neglected and Delinquent

Historically, the Chapter 1 Neglected and Delinquent (N and D) program has operated on the assumption that children in institutions for the neglected and delinquent have the same types of needs for supplementary academic services as do other children. However, as an increasing number of children and youth are institutionalized for short periods of time, then returned to often unstable living arrangements where economic survival can take precedence over schooling, the program continues to face special challenges. Should the notion of what constitutes "supplementary" services for institutionalized neglected and delinquent children be reconsidered? Should the law be changed to provide more flexibility for addressing the special needs of Chapter 1 N and D children? Should traditional Chapter 1 academic remediation goals be downplayed in favor of employability aims? How might the two be combined?

States are allowed to use up to 10 percent of their State N and D allocation for projects that facilitate the transition of children from State-operated N and D institutions to locally operated programs. So far, only six States have elected to use funds for this purpose. Should this provision be modified in any way?

Technical Assistance and Staff Development

To fill a perceived gap in services to rural districts and schools, the 1988 amendments established 10 Chapter 1 Rural Technical Assistance Centers (RTACs) to supplement the work of the six Technical Assistance Centers (TACs). A recent Office of Inspector General audit of technical assistance centers and clearinghouses identified the RTAC and TAC mechanisms as unnecessarily duplicative and costly. Should the RTACs be eliminated as a free-standing technical assistance effort for rural schools, with their functions assumed by the regular TACs?

Current Federal technical assistance activities have not been particularly effective at bringing about major educational change. What changes to the Chapter 1 statute would help make technical assistance more effective at improving program performance? Should the TACs become more client-centered, and, if so, how? Should the statute require assessment as an integral part of Federal assistance to determine if improvements are being adopted and are effective?

How should the statute be changed to minimize or eliminate duplication among various Chapter 1 technical assistance activities, including those provided under Even Start and Migrant Education?

Should the statute add a staff development component to Chapter 1? If so, what should be the focus of that component? Should funds be used to improve the skills only of Chapter 1 teachers or also those of other teachers in Chapter schools?

Chapter 2

State Grants; Purpose of Program

The Chapter 2 State Grant program is intended to provide funding to enable State and local educational agencies to implement promising educational approaches. Is the program an effective vehicle for enabling school systems to undertake systemic and meaningful reforms? Are the reporting and other accountability-related provisions of the statute adequate for this purpose?

Targeted Assistance Areas

The Chapter 2 State Block Grant program was originally designed to provide States and districts with the flexibility needed to address local and State educational needs as they see fit. In 1988, Congress, in response to concerns that the program was too unfocused, restricted allowable activities to six targeted assistance areas. A recent amendment has expanded the list to seven. Are these targeted assistance areas appropriate, or should the program have a different focus?

Currently, 20 percent of a State's allocation can be retained at the State

level for activities in the seven targeted assistance areas. Is this an appropriate division of funds between State and local activities? Should the State Chapter 2 set-aside be targeted for particular State leadership activities, such as the establishment of State curriculum frameworks, that are part of systemic reform?

The most recent analysis of State annual reports shows that approximately 42 percent of local and 6 percent of State expenditures go for the purchase of instructional materials, including computers. Should purchase of instructional equipment and materials continue to be an allowable activity under the program?

Current law requires that States, in most cases, use at least 20 percent of their State set-aside funds for "effective schools" programs. An "effective school" is defined as an institution that has strong leadership, high expectations, and other attributes that may not lend themselves to institutionalization through a Federal categorical program. Has the "effective schools" set-aside been a beneficial component of the Chapter 2 program? Should the statutory emphasis on "effective schools" be increased? Should it be eliminated?

Allocations to Local Districts

The law requires that States provide a higher per-pupil allocation of block grant funds to districts with the greatest numbers or concentration of children who may be more expensive to educate. The precise method of making this adjustment in the formula is left to State discretion. Does the current statutory provision ensure an adequate focus on the needs of districts with concentrations of "high-cost" children?

Supplementation

Should the "supplement, not supplant" requirement be dropped or applied differently in Chapter 2? Should it be modified to allow the use of Federal funds to support State-mandated school reform efforts?

National Diffusion Network

The National Diffusion Network (NDN) consists of programs, projects, and practices that have been approved for inclusion on the basis of evidence that they are effective in achieving defined outcomes. Through competition, funds are provided to selected developers of these programs and projects for disseminating their projects and helping others adopt them. Funds are also provided to "State facilitators" to inform school districts throughout their respective States about what is available in the NDN. Is there a better way to disseminate effective practice than NDN? What might it be? Should the Federal Government concentrate its efforts at the State level, rather than attempt to facilitate dissemination from one local site to another? Should NDN, or a replacement, have an expanded role as a disseminator of educational research findings and statistical data?

Law-Related Education

Some projects have received assistance from the law-related education program for a number of years. Should the law set a limit on the length of time a project can be supported in order to make the program more of a vehicle for increasing the number of law-related education projects operating across the Nation? More basically, what should the basic criteria for judging the success of this program and the projects funded?

Recent amendments to the law-related education program require the Department to give priority to funding statewide projects. These projects are meant to make more systemic changes and improve the chances of institutionalization of a given project. Should this provision be retained?

Eisenhower Mathematics and Science Education

State Grants: Distribution of Funds

The recently completed national study of the Eisenhower State Grant program (The Eisenhower Mathematics and Science Education Program: An Enabling Resource for Reform, SRI International and Policy Studies Associates, 1991) recommended a redistribution of funds to allow a larger percentage of the elementary and secondary education component to remain at the State level, particularly for State leadership activities. Should the distribution of funds be revised and, if so, how should the percentages be set? In particular, would a larger State-level set-aside provide a vehicle for comprehensive Statewide reform of curriculum and teacher training in mathematics and science?

Intensity and Focus of Training

The national study found that teachers participating in training activities under the LEA portion of the Eisenhower program received, on average, six hours of training. The study noted that this is not sufficient, by itself, to ensure improvement and long-lasting change in a teacher's performance. How could the program be structured to provide more intensive teacher training?

Should the focus of inservice training under the Eisenhower program be on training of individual teachers or on training all appropriate teachers in a school or LEA? Which approach is most likely to result in real changes in mathematics and science education in the schools?

Preservice Training

The vast majority of Eisenhower funds are spent on inservice training, although the program was designed to increase the skills of all teachers, including those who are not yet teaching. Should the program contain a stronger emphasis on preservice training?

Under the higher education portion of the program, preservice training may support only programs that train new mathematics and science teachers for secondary schools. Should the law be changed to permit higher education funds to be used to train new mathematics and science teachers at the elementary school level as well?

Under current law, only elementary and secondary school teachers and other relevant school personnel are permitted to receive services. Some college faculty may need to be retrained in order to provide an effective preservice education for elementary and secondary teachers. Should the program be amended to permit the retraining of college faculty involved in the training of new elementary and secondary teachers?

Emphasis on Elementary and Middle Levels

In response to the perceived need for improvement in math and science instruction in the earlier grades, Congress amended the program, in 1990, to require that districts use all funds in excess of the amount received for fiscal year 1990 for training for elementary and middle school teachers. Should this emphasis be maintained? If not, should the law include any restrictions on the amount of funding used to train elementary, middle, or secondary school teachers?

Local Consortia

Because the small amounts of funds that many school districts receive may not be enough to accomplish significant improvements in math and science instruction, the 1990 amendments require that all districts receiving less than $6,000 participate in a consortium with at least one other district. Should this requirement be maintained?

Cooperative Projects

Under current law, all awards made by the State agency for higher education

for cooperative projects carried out by school districts, State agencies, private businesses, colleges and universities, museums, broadcasting services, and other entities must be made on a competitive basis. Some State officials have suggested that these projects were more successful, and State initiatives were more creative, when, under the previous statute, cooperative projects did not have to be awarded competitively. Should the program be amended to permit the State agency to set aside an amount of funds to be awarded for cooperative projects on a non-competitive basis?

Foreign Languages Assistance

Type of Program

The original appropriation level for this program, $4.9 million, will result in an average State award of $93,000, while the 1992 appropriation will result in an average State award of $190,000. The Department has argued that these appropriations are too small to provide for an effective formula grant program that distributes funds to every State. Is the current authority the most effective mechanism for encouraging development of model instructional programs in critical foreign languages? Would a national discretionary (i.e., competitive) grant program be more effective?

Pupil Targeting

Current law requires that all public and private school children aged 5 through 17 who reside in a recipient school district be eligible to participate in the school district's project. The Department has argued that the small grants provided under this program are unlikely to be adequate to serve all students in such a broad age range and has interpreted the provision, through regulation, to mean that a school district's project has to be open to all children of the same grade range as that served by the project. Should the statutory provision be modified?

Recent Congressional committee reports have recommended an emphasis on elementary schools, noting that the earlier a student starts studying a foreign language, particularly a difficult one, the easier it is to master it. Should the program emphasize projects at the elementary level?

Magnet Schools Assistance

Desegregation Requirements

In order to qualify for assistance under the current Magnet Schools Assistance program, a school district must be implementing a desegregation plan ordered by a court or appropriate agency, or approved by the Secretary. In recent years, some districts implementing voluntary desegregation plans have had difficulty qualifying for assistance because demographic changes in their communities have caused increased minority enrollments. Other districts, which have a mix of minority and nonminority students, have wanted to implement magnet school programs in order to prevent "white flight," but have had difficulty demonstrating the likelihood of their schools becoming minority group isolated without intervention. Should the current desegregation-related requirements of the program be revised?

Funding Priorities

Under current law, applicants that did not receive assistance in the previous funding cycle receive a funding priority for appropriations in excess of $75 million. Thus the law permits long-term support of the same districts but, to an extent, encourages a turn-over of districts from one funding cycle to the next. Should the purpose of the law be to provide long-term support to school districts or to provide "seed money" for the establishment of magnet schools in new districts? Similarly, if districts that have received past support are permitted to apply for new funding, should new funds be available only for new magnet school programs, or should indefinite support for the same schools and programs continue to be permitted?

The current statute requires the Secretary to give priority or special consideration to certain types of applicants. Some of these requirements might be reconsidered. For instance, applications receive priority based on the proportion of minority group children involved in an approved desegregation plan; this procedure gives a priority to a district that has not successfully desegregated any of its schools (and all of whose minority group children are involved in its plan) as opposed to, for instance, a district that has successfully desegregated its elementary schools (and has only its secondary-level minority group involved in the plan). Districts also receive a priority based on "the recentness of the implementation of the approved plan or modification thereof." This provision may provide an incentive for districts to modify their plans periodically in order to remain eligible for the maximum number of priority points. Should any of the current priorities be revised?

Maximum Award

Since the program's inception, Magnet Schools Assistance grants have been limited to $4 million. This constraint permits grants of significant size to be made but prevents program funds from being concentrated in a few districts. Is a cap of $4 million still appropriate?

Supplanting Provision

Under Magnet Schools Assistance, unlike many other Federal elementary and secondary education programs, schools districts may use funds to supplant State and local support for their activities. Should supplanting continue to be permitted, or should a "supplement, not supplant" provision be added to the statute?

Planning Funds

Currently, there is a limitation on the amount that a local educational agency may spend for planning under the program. Should the 10 percent cap on planning funds be raised to allow for the design of new and innovative curricula and schools under this program?

Javits Gifted and Talented Students Education

This program supports projects designed to help meet the educational needs of gifted and talented students in elementary and secondary schools. Some persons argue that providing high-level learning opportunities in early childhood would most benefit economically disadvantaged children, who are a priority of the Javits program. Depending on how State law defines "elementary school students," some States have been able to use these funds for preschool activities. Should the law be amended to allow all States the option of using funds for preschool activities?

Javits funds may be used for training teachers, to support exemplary programs for students, for dissemination and technical assistance programs, and to strengthen State leadership in the education of gifted and talented students. The nature of programs for the education of gifted and talented students varies significantly among the States. Should the program focus exclusively on State-level capacity-building? Is this Federal program needed?

The Office of Education Research and Improvement has broad authority to support research and development centers. Is there a need for the separate research authority in the Javits program?

Territorial Teacher Training

This program provides funds for teacher training in American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Virgin Islands, the Republic of the Marshall Islands,

and the Federated States of Micronesia. Despite years of support for the program, many of the teachers in the territories are still without certification or a college degree. Should the program be continued? What other strategies might be more effective?

Drug-Free Schools and Communities

Purpose of Program

In 1986, a strong argument could be made that local school districts were not making enough of an effort in the area of drug education, that few comprehensive drug programs were in place, and that Federal assistance was needed to get appropriate programs established. Five years later, drug programs are operating in virtually all communities across the country. During the next five years, should the Federal Government continue to provide significant resources dedicated exclusively to drug prevention, or should States and localities be given flexibility to use these funds for other related needs or for broader health or educational improvement purposes? More specifically, should the Drug-Free Schools and Communities Act (DFSCA) program be broadened to authorize activities to prevent school violence, consistent with and in support of National Education Goal number 6? How would LEAs, SEAs, and Governors change their activities if the State program were so amended?

Allocation Formulas and Eligibility Criteria

Under current law, DFSCA State grant funds are allocated to States on the basis of school-aged population and shares of Chapter 1 funds. Within States, these funds are allocated to LEAs based on school enrollment and Chapter 1 shares. DFSCA Emergency Grants are awarded completely, but to qualify, LEAs must met the eligibility criteria for Chapter 1 concentration grants. Do these provisions result in the distribution of DFSCA to communities where they are most needed? In light of the fact that poor urban communities often seem to have the most intractable drug problems, should more funds be targeted on those communities?

A second allocation issue is that school districts with small enrollments and Chapter 1 shares receive State grant allocations so small that they may have difficulty mounting an effective drug prevention program. How should this issue be addressed in the reauthorization? For example, as under the Eisenhower program, should small LEAs be required to apply in consortia in order to receive grants?

Governors' Funds

Current law assigns administrative responsibilities to both the State educational agency and the Governor of each State. This is the only program in the Department that provides for direct administration by the Governor. Governors were given this responsibility because Congress believed they were in a better position to support community-based projects, coordinate educational programs with other drug prevention and treatment programs in the State, serve dropouts and other out-of-school youth, and undertake public education efforts through the media. Originally, Governors received 30 percent of State grants. Subsequent legislation, however, has capped funding for Governors' programs at $100 million and earmarked portions of that amount for various purposes. What should be the future role of Governors versus SEAs and LEAs in terms of funding, implementation, and coordination of comprehensive school-based and community-wide drug prevention education efforts under the DFSCA?

Drug Abuse Resistance Education

Under current law, Governors are required to spend at least 10 percent of their Drug-Free Schools State grant funds on grants to local educational agencies for "drug abuse resistance education" (DARE) that includes classroom instruction by uniformed law officers. Some States have complained to the Department that this requirement is too narrow and restricts their ability to use these funds in accordance with State and local needs. While DARE programs are very popular in many States and communities, there is no evaluation evidence to confirm that these programs are more effective than other approaches to drug prevention. Given these considerations, should the DARE set-aside be revised or eliminated?

Regional Centers

The DFSCA authorizes five regional centers for drug-free schools that provide training and technical assistance primarily to State and local educational agencies. Have these centers been useful to their clientele? Should any modifications be made in the regional centers program?

Institutions of Higher Education

The current statute authorizes a program of grants to institutions of higher education (IHEs) for programs of drug abuse education and prevention for students enrolled in IHEs. Is a grant program the best way to provide Federal support for IHE efforts? Would a program focused on training and technical assistance to IHEs be a better use of Federal funds?

School Personnel Training

The DFSCA currently authorizes and supports activities to train school personnel under Part B of the statute (State and local programs), Part C (Training of Teachers, Counselors, and School Personnel), and Part D, Section 5135 (Regional Centers). Is there still a significant, unmet need for inservice training in drug prevention? If so, how can the statute be rewritten to improve and coordinate the delivery of training to those who most need it?

Accountability

Although it is inherently difficult to measure the impact of DFSCA programs and services on actual drug use by students, it is important to ask whether these funds are being well spent. What are the most rigorous, yet realistic, accountability requirements that the statute could impose on schools and communities related to the effectiveness and proper implementation of these programs?

Are the current local application and reporting requirements of the Act overly burdensome? If so, which could be deleted without diminishing program accountability?

Dropout Prevention

The purpose of the ESEA dropout prevention program is to support demonstration projects to reduce the number of students who do not complete elementary and secondary education. Existing projects are undergoing rigorous testing and evaluation to assess the effect of promising strategies in dropout prevention and reentry. Once the program achieves its objective of validating effective dropout strategies that can be adopted by States and LEAs, should the Federal Government continue to provide funds specifically focused on dropout prevention, or should these funds be used for activities such as vocational education, compensatory education, and bilingual education that have been associated with enabling students to complete school?

Bilingual Education

Instructional Methods

In 1988, the Bilingual Education Act was amended to increase to 25 percent the amount of Bilingual Programs (Part A) funds that may be granted to school districts electing to use "special alternative instructional" (SAI) programs. These are programs such as

"English-as-a-second language" (ESL) and "immersion," or other approaches that differ from "transitional bilingual education" (TBE) or "developmental bilingual education" in that they generally do not use the students' native language in instruction. Alternative programs may be particularly appropriate when a school district enrolls students from many language groups and cannot hire teachers who speak all the languages represented.

Since 1989, the Department has funded applications for new transitional bilingual education and special alternative instruction projects based on the quality of the application, without regard to the instructional method proposed. To date, the 25 percent cap on special alternative instructional programs has had no practical effect. However, it is likely that by 1993 the 25 percent cap will restrict local choice of instructional method. Should the 25 percent cap for special alternative instructional programs be raised? Alternatively, should all Part A funding limitations be removed so that Part A awards can be made solely on the basis of the quality of the proposed project, regardless of whether a transitional, developmental, or special alternative instructional method is to be used?

Time Limit on Student Participation

The Bilingual Education Act prohibits the participation of any student in a Part A transitional bilingual education or special alternative instructional program for more than three years, unless the school district can provide evaluation data that support extending a student's participation for a fourth or fifth year. Under no circumstances may a student participate in a TBE or SAI program for more than five years. The Congress added this provision to the law in 1988 to underscore its concern that the primary purpose of the bilingual education program is to help limited English proficient students become proficient in English and move into regular classrooms as quickly as possible. Should this provision of the law be retained, or is the provision too rigid, in light of research findings suggesting that monolingual speakers of a language other than English often require more than three years to become adequately proficient in English to function successfully in regular classrooms?

Parental Involvement

The Bilingual Education Act requires that a school district establish and make use of an advisory council to involve parents in the development of an application and the operation of its project. Other parental involvement provisions include requirements that school districts inform parents—in a language and form they understand—of the reasons their child has been identified as in need of bilingual services, the bilingual education and alternative programs available, the parents' right to decline enrollment of their child in the bilingual program, and their child's progress in the program. Although these requirements would appear to provide for the active participation of parents in local bilingual education programs, the Department has observed cases in which their actual participation is very minimal. Should any of the current provisions be modified? For example, should applicants for Part A programs be required to submit detailed parent participation plans? Should a portion of Part A grants be reserved for parent participation activities? Should greater emphasis be placed on parent training so that parents can participate more effectively in the education of their children?

Participation of Non-Limited English Proficient Students

In order to prevent the segregation of children on the basis of national origin, the Bilingual Education Act allows the participation of English proficient students in transitional bilingual education programs so long as they represent no more than 40 percent of the students in that program. Is this provision too restrictive? Should it be modified?

Participation of Private School Students

The Bilingual Education Act requires that an LEA operating a Part A project take into account the needs of private elementary and secondary schools in the district, provided that the educational needs, languages, and grade levels of LEP students in the private schools are similar to those of the children the project serves. The Department is aware of cases where private schools are eager to participate in a project, but the native languages spoken by their students, or those students' grade levels, are different than those of children served by the project. Is the law too rigid? Should the language of the law be modified?

Training and Technical Assistance

The law currently requires that 25 percent of the appropriation be set aside for training and technical assistance under Part C. Should there continue to be a specific earmark of funds for training programs, or should the amount used for training be either left to the discretion of the Secretary or established through the annual appropriations process?

Within Part C, should greater priority be placed on preservice training or inservice training? Should there be a priority for retraining currently employed teachers (certified in other areas) to enable them to provide services to limited English proficient students in ESL, bilingual, or regular classes? Should funding be provided to train staff other than classroom teachers? Should there be an emphasis on improving the subject area knowledge and skills of bilingual education teachers?

In order to ensure that teacher training activities supported under Part C reflect the actual staffing needs of LEAs, should institutions of higher education applying for educational personnel training grants be required to collaborate closely with nearby LEAs in project development and implementation?

Commitment and Capacity Building

Part A grants are intended to build the capacity of LEAs to operate bilingual education programs. Similarly, Part C grants are provided to strengthen the capacity of institutions of higher education to prepare teachers of bilingual education. What can be done to ensure a good faith commitment from applicants for bilingual education grants under Part A and Part C that services will be maintained after Federal funding is no longer available?

Impact Aid

General

Public Law 81–874 currently authorizes two basic categories of payments—payments for Federal property under section 2 and payments for federally connected students under section 3. Should these two basic categories of payments be combined into one authority that equitably compensates all school districts affected by Federal activities?

Impact Aid, more than any other Federal education program, has come to be perceived as a "pork-barrel" program because many special amendments have been enacted to provide special payments or relief for particular school districts. Continuing attempts to provide special "fixes" for particular districts may compromise the integrity and equity of the program. How could the program be restructured to eliminate the incentives for special amendments of this kind?

Section 2

The current authorization for Federal property payments requires a calculation of maximum entitlement, based on an estimated current assessed value of the Federal property and the district's tax rate, as well as a cumbersome calculation of a "needbased" entitlement. The lesser of these two amounts then becomes the entitlement used to calculate payments. This process of determining the entitlement generally cannot be completed until well after the year for which the section 2 payments are made, thus delaying final payments. Further, because appropriations have been insufficient in recent years to pay full section 2 entitlement for all eligible school districts, payments have had to be ratably reduced from full entitlement. Is there a more efficient approach to compensating school districts for the loss of tax base due to the acquisition of Federal property?

Section 2 includes a cut-off date for the acquisition of Federal property that allows compensation for school districts in which the Federal property was acquired after 1938, but generally disallows compensation for property acquired in or before that year. In some cases, school districts that qualify for section 2 payments may have developed substantial additional tax base over the years to overcome any loss suffered due to the original Federal property acquisition, yet these districts continue to qualify for payments. In other cases, school districts continue to be negatively affected by the local Federal activity and are still heavily dependent on Section 2 payments; however, other similarly situated school districts cannot receive compensation because the Federal property in their districts was acquired prior to 1939. Is there a way to compensate equitably all school districts with Federal property, no matter when the property was acquired?

Section 3

Past efforts to change or improve the Impact Aid payment formula for section 3, which provides payments for federally connected children, have been constrained by limited funding. In reauthorizing the program in 1988, Congress substantially revised the section 3 payment formula. However, a "hold-harmless" provision ties each school district's basic payment to its payment in 1987, and annual appropriations have not increased enough in the years since to allow the new payment provisions to take effect. Therefore, the distribution of available funds envisioned by Congress in the last reauthorization has never occurred. If the recent pattern of appropriations continues, formula changes that increase payments for some eligible school districts would result in decreased payments for others. If one assumes no major increases in funding during the next several years, can the existing distribution of payments across eligible districts be changed to promote equity? What changes should be made?

The current section 3 entitlement calculation and payment formula, including the hold-harmless provisions, are so complex that few people, including managers in school districts that receive section 3 payments, fully understand how those payments are calculated. How can the current formula be simplified?

Embedded within the current section 3 payment formula is an assumption that school districts with higher proportions of federally connected students should be paid more per student than other districts. Thus, if funds were sufficient to make payments according to the current formula, "super a" school districts (those whose federally connected students are 20 percent or more of total enrollment) would be paid a higher percentage of entitlement for each student than "sub-super a" and "regular a" school districts would be paid. Should this special treatment of more heavily affected districts be continued, or should all districts be paid at the same rate (which would have the virtue of simplifying the payment formula)?

The current authority under section 3 provides funds for elementary and secondary education only. However, many school districts are expanding services to preschool-age children. Should the authority be expanded to allow Impact Aid funds to be used for preschool education?

Section 3(d)(2)(B)

Section 3(d)(2)(B) currently ensures that school districts that have more than 50 percent federally connected students and that meet certain other requirements receive supplemental payments to allow them to provide the same level of education as comparable school districts in their States. The statute requires that these supplemental payments be made in full, even if funds are insufficient to pay full entitlement for sections 3(a) and 3(b). The amounts needed to make section 3(d)(2)(B) payments vary substantially from year to year, because of the changing circumstances and eligibility of school districts; however, in some years as much as $30 million has been diverted from regular section 3 payments to fund section 3(d)(2)(B). Should limitations be placed on section 3(d)(2)(B) payments? Should other changes be made?

Section 5(d)(2)

Section 5(d)(2) of P.L. 81-874 allows States to reduce assistance to local educational agencies by portions of the Federal Impact Aid payments to those LEAs if the State education funding formula is "designed to equalize expenditures for free public education" among LEAs. The Department of Education has implemented this provision through regulations, but has been challenged by some States that failed to meet the regulatory standards for a State funding program that is "designed to equalize." Should the statute more clearly define an acceptable standard for State funding equalization, or should that standard continue to be defined through regulations? What should the standard be? Should approval by the Department be conditioned on a showing that the presence of Impact Aid resources in the State is not in fact disequalizing? Should the program be redesigned to provide incentives to States to equalize expenditures among LEAs? If so, how?

Construction

The Impact Aid Construction program, as currently authorized in Public Law 81-815, is characterized by overlapping program authorities, confusing eligibility requirements, a cumbersome administrative process, and an authorized funding level that is far outstripped by applications for assistance. Current program priority lists include hundreds of unfunded construction applications totalling $200 million in originally estimated need. It is clearly time to review the basic principles and priorities for construction assistance. When should the Federal government become involved in providing funding for local school construction projects? What factors should be considered in determining eligibility for assistance? What limitations should be placed on Federal assistance? What local contributions should be required? What funding priorities should be applied?

Adult Education

English Literacy Grants

The English Literacy Grants program was enacted to provide literacy services to adults of limited English proficiency, who are also major beneficiaries under the Adult Education Basic State Grants program. Congress, in recent years, has apparently recognized this duplication of authorities and decreased the

appropriation for English Literacy Grants to $1 million. Is there any current need for a separate adult education program serving the limited English proficient? Should the national discretionary activities currently carried out under this authority be consolidated with the discretionary programs authorized elsewhere in the Adult Education Act?

Fund for the Improvement and Reform of Schools and Teaching (FIRST)

FIRST supports reforms to improve the performance of elementary and secondary students and teachers. Of the total amount appropriated in any year, at least 25 percent must be used for projects that operate at the school level. These projects must be administered by a full-time teacher or administrator, and individual grants must be at least $5,000, but no more than $125,000, per year. Are these restrictions still appropriate? What changes are needed? What other changes would improve the contribution of this program to the kind of reform necessary for achievement of the National Education Goals?

FIRST also supports projects to increase the involvement of parents in improving the educational achievement of their children. Only school districts eligible to receive Chapter 1 funds may apply for grants. Should eligibility be expanded to allow other entities, such as community nonprofit organizations, to apply for funds?

Indian Education

Accountability

The Indian Education Act Subpart 1 formula grant program contains few provisions to ensure accountability for results, and little is known about the educational effects of the program on the children it serves. What kinds of accountability measures would be appropriate for this program? For example, should there be a requirement that LEAs measure the results of their programs against world class standards, or that funds be spent only for programs that will foster improved achievement in the five core curriculum areas or for activities that support other National Education Goals (or the expanded list of goals developed by the Indian Nations at Risk Task Force)? Would a school improvement process, similar to the one contained in the Chapter 1 legislation, be appropriate for the Indian Education Subpart 1 program? Should continued funding be made contingent on performance? What role, if any, should parents or tribes have in ensuring accountability in Subpart 1 programs?

Subpart 1 Formula

Under the Subpart 1 formula grant program, a local educational agency may receive funds if, in most cases, the number of Indian children it enrolls equals at least 10 or constitutes at least 50 percent of total enrollment. Many LEAs receive very small grants. (In 1991, the average award was about $46,000, but some LEAs received grants as low as $1,000.) Of all the grant recipients, 78 (or 7 percent) received grants that were lower than $5,000. It could be argued that grants this low are too small to permit recipient LEAs to mount effective Indian education programs. How should this issue be addressed in the reauthorization? Should any changes be made in the factors used to determine LEA eligibility or allocations?

Funds for BIA Schools

Although schools operated by the Bureau of Indian Affairs are supported by Congressional appropriations to the Department of the Interior that are calculated according to the needs of each school, these schools are also eligible for Subpart 1 formula grants. Is it efficient for BIA schools to receive funds from ED, or should all funds for these schools be included in the direct appropriation to the Department of the Interior?

BIA Contract Schools

BIA contract schools are eligible to receive Subpart 1 formula grants and to compete under every other Indian Education Act program, some of which have overlapping purposes. One of these competitive programs (funded from a set-aside of Subpart 1 funds) supports only Indian-controlled schools (the great majority of which are also BIA-supported) and funds the same kinds of activities as are supported under Subpart 2 programs. Is there a need to continue the special Subpart 1 discretionary program for Indian-controlled schools?

State Involvement in LEA Formula Program

Most Department of Education programs that allocate funds by formula to LEAs are administered by States. For these programs (e.g., Chapter 1, Chapter 2, Vocational Education, Mathematics and Science Education), State involvement helps to ensure accountability and coordination of programs. Should States be given a role—and the funds to carry out that role—in administering Subpart 1 of the Indian Education Act? If so, should States be required to collect and maintain data on the educational status and needs of Indian children? If Subpart 1 were to be a State-administered program, what difficulties might arise from the fact that nonpublic, tribal, and BIA schools are among the grant recipients?

Definition of Indian

The definition of "Indian" contained in the Indian Education Act has not been altered, except for minor, technical changes, since the program was first enacted. The definition, which defines eligibility for services under the Act, is more inclusive than the definition of Indian used by the BIA. Under the Indian Education Act, eligible Indians include members of both State and federally recognized tribes, as well as first- and second-degree descendants of those members.

The definition affects more than just who receives services. For the Subpart 1 formula program, it determines the size of an LEA's grant, since grants are computed according to the number of Indian children in the school district (weighted by State per pupil expenditures for education). Subpart 1 requires LEAs to maintain documentation of the eligibility of students they count. The question of what should constitute sufficient documentation has long been an issue, and program audits have sometimes found that LEAs maintain incomplete or inconclusive records. Further, the eligibility of some Indian children, who may have community recognition but no tribal records, is difficult to document.

Should the definition of Indian in the Indian Education Act be changed? If so, how? Should the rules regarding documentation of eligibility be changed to ensure that only eligible children are counted? Does the need to ensure that eligible Indian children receive the services they need outweigh the need for tightened eligibility standards?

Eligibility of Children for Services

Under the Subpart 1 formula program, any Indian child who meets the Act's definition of Indian and is enrolled in the schools of the applicant is eligible to be counted for fund allocation purposes and to receive services, regardless of the child's socioeconomic or educational achievement status. Should the eligibility requirements be modified to include some measure of educational need? If so, how?

Parental Involvement

The Subpart 1 formula program contains parental involvement requirements that are among the strongest of any program administered

by the Department of Education. To receive a grant, an LEA must have an elected parent committee that, among other things, participates fully in designing the local Subpart 1 project, including providing written approval of the application. There have been cases in which an LEA did not receive an award because it was unable to reach agreement with its parent committee. However, some tribes and parents have contended that the current provisions do not ensure an adequate level of parental involvement. Should any of the parent committee provisions be modified? If so, how?

Subpart 2: Elementary and Secondary Programs

Subpart 2 authorizes two small discretionary programs—"Planning, Pilot, and Demonstrations" and "Educational Services"—whose purpose is to improve educational opportunities for Indian children. Although there are some differences, the programs have similar goals, and funds can be used for similar activities. Is there a need to maintain two separate programs in this area? How could the impact of these programs be enhanced to benefit the greatest number of Indian children? How could the programs be amended to encourage the development of "break the mold" educational programs? How can the impact of these programs be enhanced?

Subpart 2: Educational Personnel Development

Subpart 2 authorizes two programs for Educational Personnel Development. The aims of these programs are similar (to increase the number of Indian teachers and other school personnel serving Indian children), and combining them might facilitate the development of a more coherent educational personnel development strategy for Indian education. Issues in this area include: How should tribal organizations and institutions of higher education interact? What organizations—e.g., tribes, colleges and universities, tribal community colleges, other Indian organziations—should be eligible for grants? What is the relative need for preservice training of Indian classroom teachers versus graduate-level training of Indian school administrators and other Indian education professionals? Do Indians who are already in the profession need training to help them move into other education-related fields or become more proficient in specific subject areas? Should individuals who participate in training programs be required to teach (or provide other educational services) in a school serving Indian children for a specified period of time or, failing that, to repay the cost of their training?

Fellowship Program

The Indian Fellowship Program authorizes for undergraduate students (in the fields of engineering, natural resources, and business administration) and graduate students (in those three fields, plus medicine, education, law, and psychology). Is there a reason to change these fields? As an alternative, should all fields of study be eligible? Because Pell Grants, BIA scholarships, and other sources of support are available for needy undergraduate students, should this program be limited to fellowships for graduate students?

Students under this program apply directly to the Department of Education and may attend any accredited college or university. Other Department graduate fellowship programs seem to work very well as grant programs for which colleges and universities develop a program, apply to the Department for a grant, and are then allotted a certain number of slots for students. In these programs, potential fellows apply directly to the institutions of higher education that run the programs. Would a fellowship program like this work well for Indian students?

Fellowship awards in most programs carry with them a requirement that the recipient of a fellowship perform some sort of service in return for the fellowship (e.g., teaching in certain schools for a specified length of time, working in health, clinics, providing legal services, etc.) In awarding Indian Education Fellowships, the Secretary takes into account applicants' apparent commitment to providing leadership in the Indian community. However, the law does not require fellows, once they have completed their degrees, to provide any particular services in their field of study or to the Indian community. What kinds of "service" or "payback" provisions, if any, would be appropriate for the Indian Fellowship Program?

Educational Partnerships

This program supports partnerships between public schools or institutions of higher education and organizations and businesses in the private sector. Given the extent of business-school partnership activity across the Nation, is there a need for this Federal program? If so, what changes should be made to ensure that schools derive some measurable benefit from the partnership?

Star Schools

When first authorized, the Star Schools program was described in statute as a demonstration program, and individual awards were limited to support for a two-year period. In the recent reauthorization, the word "demonstration" was dropped from the statement of the program purpose, changes were made to permit grantees to apply for an additional two years of funding on the condition that the services provided would expand beyond those supported during the first two years, and a provision was added requiring that at least 25 percent of the amount available be used for facilities and equipment. A major purpose of the Star Schools program has been the installation of telecommunications equipment and facilities to serve elementary and secondary schools. Is there a continuing need for the Federal Government to provide funding to assist with the construction of a telecommunications infrastructure that permits the delivery by satellite of instruction for elementary and secondary schools? Should the Federal role concentrate on demonstrating other types and uses of telecommunications technologies in elementary and secondary education? What other changes in the Star Schools authority would most effectively promote better and greater use of technology in elementary and secondary education?

Stewart B. McKinney Homeless Assistance

Education for Homeless Children and Youth

Under the McKinney Act, each State is required, every two years, to gather extensive data on homeless children and youth in the State. A recent Department study illustrated the prohibitive cost of locating and counting homeless children and youth and the questionable reliability of the data obtained. Should States continue to provide these data? What other mechanisms could be used to estimate the magnitude of the homelessness problem and provide a basis for funding decisions?

Recent amendments to the McKinney Act have increased State planning requirements. Do these requirements provide an effective tool for development of State strategies in educating homeless children?

The amended Act also requires that specific percentages of funds be spent by LEAs on "primary activities" and "related activities." Are these

requirements too rigid? Should they be changed?

Since the problems of the homeless are varied and interrelated, would States and localities benefit from having a number of McKinney Act programs combined into a consolidated grant program for the homeless? Should States have the flexibility to combine education funds with other McKinney Act funds to provide comprehensive and coordinated services to the homeless?

Literacy Training for Homeless Adults

When evaluating grant applications for this program, the Secretary reviews each application to determine the extent to which the program design is tailored to the literacy and basic skills needs of specific homeless populations (for example, homeless mothers with children, substance abusers, and the chronically mentally ill). Should the statute provide a priority for services to any particular sub-population of the adult homeless?

Format for Comments

This request for comments is designed to elicit the views of interested parties on how the Department's elementary and secondary education programs can be structured to meet the objectives of the reauthorization effort as stated in this notice.

The Secretary requests that each respondent identify his or her role in education and the perspective from which he or she views the educational system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen.

The Secretary urges each commenter to be specific regarding his or her proposals and to include, if possible, the data requirements, timing, procedures, and actual legislative language that the commenter proposes for the improved or redesigned program.

Programs Under Consideration

The following is a complete list of programs under the scope of the reauthorization:

Elementary and Secondary Education Act of 1965

Title I

Chapter 1—Basic Grants, Concentration Grants, Capital Expenses for Private School Children, Even Start, Secondary School Basic Skills and Dropout Prevention, State Agency Programs: Migrant, Handicapped, Neglected and Delinquent Children, State Administration, State Program Improvement Grants, Evaluation and Technical Assistance, Rural Technical Assistance Centers

Chapter 2—State and Local Programs, National Diffusion Network, Inexpensive Book Distribution, Arts in Education, Law-Related Education, Blue Ribbon Schools

Title II

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The following are the National Education Goals:

1. *Readiness for School*—By the year 2000, all children in America will start school ready to learn.

2. *High School Completion*—By the year 2000, the high school graduation rate will increase to 90 percent.

3. *Student Achievement and Citizenship*—By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

4. *Science and Mathematics*—By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

5. *Adult Literacy and Lifelong Learning*—By the year 2000, every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

6. *Safe, Disciplined, and Drug-Free Schools*—By the year 2000, every American school will be free of drugs and violence and will offer a disciplined environment conducive to learning.

Dated: January 29, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-2672 Filed 2-3-92; 8:45 am]

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federal register

Tuesday
February 4, 1992

Part X

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980

Agricultural Resource Conservation Demonstration Program (Farms for the Future Act of 1990); Interim Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Agricultural Resource Conservation Demonstration Program (Farms for the Future Act of 1990)

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Farmers Home Administration (FmHA) is issuing a regulation to implement section 1465 of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 4201 note, as amended by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (FACT Act). A national farmland preservation effort is needed to preserve farmland for future generations. The intended effect of this action is to assist states in financing farmland preservation.

DATES: Effective February 4, 1992. Written comments must be submitted on or before May 4, 1992.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0575–0152. Public reporting burden for this collection of information is estimated to average 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and the Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Senior Loan Specialist, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, room 6310, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700, telephone (202) 720–1495.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be significant but nonmajor. The annual effect on the economy is likely to be less than $100 million and will not likely increase costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. In addition, there will likely be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay, to affect more than one Agency, or to be controversial. The expected net result is to provide a new service within a State operating under this program. Currently, Vermont appears to be the only State for which funds may be available. Prior to any other State becoming eligible for assistance, there must be provisions therefore made in an appropriations act. In order to determine the potential impact if such an appropriation act is passed, FmHA will complete a Regulatory Impact Analysis is accordance with the requirements of Executive Order 12291 and consistent with the guidelines in appendix V of the 1990 Regulatory Program of the United States prior to publication of a final rule for all eligible States other then Vermont. A final rule, effective for Vermont only, may be adopted prior to completion of the Regulatory Impact Analysis.

Intergovernmental Review

This program is not listed in the Catalog of Federal Domestic Assistance.

Environmental Impact

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

A national farmland protection effort is needed to preserve our national farmland resources for future generations. The FACT Act, as amended, authorized a demonstration program to guarantee loans to assist States in financing such an effort. The program provides for Federal guarantees of timely payments of principal and interest due for 10 years and substantial interest assistance on loans made to States and instrumentalities of States. A number of States currently have programs in which the State purchases development rights from farmers so the farmland is not developed. The proposed program was fashioned, to some extent, after several of these programs. States are required to share in this effort by contributing an amount equal to at least half the amount of the loan guaranteed by FmHA. Each eligible State may receive up to $10 million in loan guarantees per fiscal year. Loan funds may be invested by the borrower to increase the capital available for farmland preservation.

This interim rule defines this new loan guarantee program and establishes procedures for the public and lending institutions to use in applying for loan guarantees and for FmHA to follow in administering the program. The FACT Act also authorized a somewhat modified demonstration program for the State of Vermont. Procedures for this demonstration program have been incorporated into this rule.

FmHA is implementing this interim rule immediately upon publication. The Agency, however, is requesting comments to give the public the opportunity to suggest alternative rule provisions or courses of action in implementing this program. Specific comments are also requested on existing programs and alternate methods for protecting farmland through means other than implementation of this program. In addition, comments are specifically requested concerning criteria in the proposed regulation pertaining to eligible loan purposes. Any comments submitted pursuant to the proposed rule published in the **Federal Register** on September 24, 1991 (56 FR 48116) and extension of comment period published on October 29, 1991 (56 FR 55636), must be resubmitted in connection with the interim final rule if the respondent wishes them to be considered in drafting the final rule.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 4201 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Agricultural Resource Conservation Demonstration Program

2. Subpart J of part 1980, consisting of §§ 1980.901 through 1980.1000 and Appendices A through D, is added as follows:

PART 1980—GENERAL

Subpart J—Agricultural Resource Conservation Demonstration Program

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Appendices to Subpart J

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Appendix C—Form FmHA 1980–77, "Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program)"
Appendix D—Form FmHA 1980–78, "Interest Assistance Agreement (Agricultural Resource Conservation Demonstration Program)"

Subpart J—Agricultural Resource Conservation Demonstration Program

§ 1980.901 Introduction.

(a) This subpart contains the regulations for Agricultural Resource Conservation Demonstration Program (ARCDP) loans guaranteed by the Farmers Home Administration (FmHA) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, or liquidating such loans. This program is commonly referred to as Farms for the Future.

(b) The regulations apply to all States, including Vermont, unless otherwise specified.

(c) The purpose of the ARCDP is to assist States in financing a farmland protection effort to preserve our vital farmland resources for future generations. This purpose is achieved through the guaranteeing of prompt payments and interest assistance on loans used to purchase development rights easements and other types of easements on farmland, the purchase of farmland in fee simple, and related activities.

(d) The ARCDP is administered by the Administrator through a State Director serving each State. The State Director or his/her designee is the focal point for the program and the local contact person for processing and servicing activities.

§ 1980.902 Definitions.

The following general definitions are applicable to the terms used in this subpart.

Appraisal or Appraisal Report. A written statement impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property, as of a specific date, supported by the presentation and analysis of relevant market information.

Conditional Commitment for Guarantee. Form FmHA 1980–75, "Conditional Commitment for Guarantee (Agricultural Resource Conservation Demonstration Program)." FmHA's notification to the lender that the material submitted is approved subject to the completion of all conditions and requirements set forth in the Conditional Commitment for Guarantee.

Development rights. The rights of the fee simple owner of farmland to develop, construct on, or otherwise improve agricultural land for uses that result in rendering such land no longer farmland. For purposes of this subpart, mineral rights are considered development rights if their development would render the agriculture land no longer farmland.

Easement. The vehicle by which development rights or other rights are passed from the owner of farmland to the borrower.

Easement property. The real estate described in the easement.

Farmland. Land which is used, or is suitable for use, in the production of livestock or crops to include prime and unique farmland and additional

farmland of statewide and local importance as defined in appendix A to subpart G of part 1940 of this chapter.

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into a Lender's Agreement and issued a Loan Note Guarantee.

Lender. The organization making and servicing the loan which is guaranteed under the provisions of this subpart.

Lender's Agreement. Form FmHA 1980–76, "Lender's Agreement (Agricultural Resource Conservation Demonstration Program)." The signed agreement between FmHA and the lender setting forth the lender's responsibilities when the Loan Note Guarantee is issued.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Loan Note Guarantee. Form FmHA 1980–77, "Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program)." The signed commitment to the lender, issued by FmHA, setting forth the terms and conditions of the guarantee.

Market Value. The most probable price which a property, or interests in a property, should bring in a competitive and open market under all conditions requisite to a fair sale. (If a nonprofit organization has acquired an easement and wishes to sell it to the borrower, the borrower may elect to reimburse the nonprofit organization for the purchase price and actual, reasonable, and customary expenses incidental to the easement's purchase by the nonprofit organization.)

Note. The term "note" also includes "bond."

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected to perform according to those terms and conditions in the future.

Proposed borrower. The entity requesting the loan to be guaranteed under provisions of this subpart.

Protective advance. An advance made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet obligations to protect or preserve collateral. Ordinarily, protective advances are made when liquidation is contemplated or in progress. A protective advance will become an indebtedness of the borrower.

Seller. The owner of farmland who sells development rights and other rights to the borrower for compensation under provisions of this subpart.

State. Any of the 50 States, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States.

State trust fund. A trust fund or account established by an eligible State, or other public instrumentality of an eligible State, into which guaranteed loan funds and other funds are deposited and disbursed for farmland preservation purposes and debt service payments.

§§ 1980.903–1980.909 [Reserved]

§ 1980.910 Eligible loan purposes.

Guaranteed loan funds may be used:

(a) When in accordance with the State Farmland Preservation Plan (see § 1980.918 of this subpart);

(1) To purchase development rights easements, conservation easements, other types of easements, and farmland in fee simple or some lesser estate in land. The borrower will pay no more than the market value, as defined in § 1980.902 of this subpart, of the property or easement acquired;

(2) To pay reasonable and customary fees associated with purchasing easements and real estate including real estate appraisals, surveys, engineering, hazardous waste site assessments, legal matters, and recording costs;

(3) To pay costs of enforcing easements and land use restrictions; and

(4) For other purposes described in the State Farmland Preservation Plan that directly promote a farmland protection effort.

(b) To pay the loan guarantee fee; and

(c) To generate earnings to be used for future farmland preservation efforts. This includes investments, not exceeding 10 years in duration, in direct obligations of the United States and obligations guaranteed by, or an agency of, the United States and deposits covered by insurance in any member bank of the Federal Reserve System or any federally insured State nonmember bank.

§ 1980.911 Ineligible loan purposes.

Loan funds will not be used to pay overhead expenses of the borrower including salaries, wages, office equipment and supplies, utilities, insurance premiums, office lease payments, or similar uses.

§ 1980.912 [Reserved]

§ 1980.913 Transactions which will not be guaranteed.

A note which provides for payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee attached to, or relating to, a note which provides for payment of interest on interest is void.

§§ 1980.914—1980.916 [Reserved]

§ 1980.917 Guarantee fee.

Guarantee fee rates are specified in Exhibit K of FmHA Instruction 440.1 (available in any FmHA Office). The fee will be the applicable rate multiplied by the principal loan amount, paid one time only, at the time the Loan Note Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

§ 1980.918 State Farmland Preservation Plan.

(a) Each proposed borrower must prepare a State Farmland Preservation Plan (Plan) that describes, in detail, the intended uses of the guaranteed loan funds and State matching funds, as well as the policies and procedures the proposed borrower intends to use in implementing the program. It is expected that Plans in different States will vary considerably to reflect the needs and desires of individual States and will emphasize different aspects of farmland preservation. After reviewing the plan for compliance with the regulations, the State Director will ensure that needed changes are made and concur in the Plan.

(1) The Plan must show how the properties selected will contribute most to the preservation of the agriculture potential of the area. The plan must specify the criteria to be used by borrowers when selecting properties. The following are suggested criteria:

(i) Properties that contain the largest tracts of farmland available or, are contiguous to other easement properties or fee simple properties owned by the borrower and

(ii) Contain the highest percentage of available prime farmland as determined by the USDA Soil Conservation Service.

(2) The Plan must describe, in detail, the restrictions to be imposed by easements, if any are to be purchased.

(3) It is suggested that a preliminary hazardous waste site survey be performed for each property being considered.

(4) It is intended that all easements will be perpetual. However, the Plan must describe the conditions when the trade or sale and release of an easement will be considered. All sale proceeds must be returned to the State trust fund to be subsequently used for purposes consistent with this subpart.

(5) The deed of easement must thoroughly describe the restrictions and other requirements being imposed. A copy of the proposed deed of easement must be included as part of the Plan.

(6) The restrictions and other requirements imposed by the easements must be monitored and enforced. The Plan must describe how this will be accomplished including the penalties that will be imposed on violators of provisions of the easements.

(7) The easement must give the borrower and other appropriate parties the right to enter the easement property for inspections and enforcement of the easement provisions.

(8) All appropriate document must include nondiscrimination language. (See § 1980.943 of this subpart.)

(b) The Plan for Vermont may be limited to the general goals and policies of the Vermont Housing and Conservation Board.

§ 1980.919 Eligible State.

(a) A State or public instrumentality of a State that on or before August 1, 1991:

(1) Had established, by legislative or executive action, sufficient and appropriate under State law, a fund that is separate and identifiable for accounting and audit purposes. The fund need not be funded.

(2) Operates or administers a land preservation fund, or has an officially adopted plan to operate or administer the fund, that invests funds in the protection or preservation of farmland for agriculture purposes. The fund need not be used exclusively for farmland protection, but only the amount actually invested for these purposes will be considered eligible for State matching funds. (See § 1980.921 of this subpart.)

(3) Possesses the legal authority to work cooperatively with the State, municipalities, counties, districts, or other political subdivisions of a State, private nonprofit corporations, and public organizations involved in farmland preservation.

(b) The State of Vermont is considered eligible for assistance under this program.

§ 1980.920 Eligible borrower.

A State trust fund within an eligible State or a State acting in conjunction with the State trust fund.

§ 1980.921 Legal authority.

The borrower must have the legal authority necessary to:

(a) Obtain, pledge security for, and repay the proposed loan;

(b) Perform all activities described in the State Farmland Preservation Plan; and

(c) Purchase investments to generate income, if applicable.

§ 1980.922 State matching funds requirements.

Each State and/or borrower must contribute, for farmland protection, an amount equal to at least half the amount of the loan guaranteed by FmHA.

(a) Such funds and donations must be available for use at the time the loan is closed or were previously expended in the same fiscal year by the borrower and/or State for purposes consistent with this subpart.

(b) State matching funds may include:

(1) Cash contributions of the State, political subdivisions of a State, charitable organization, private persons, or any other entity;

(2) The fair market value of any donation in land to the borrower or charitable organization working with the borrower when;

(i) The donation is consistent with the State Farmland Preservation Plan, and

(ii) The fair market value is based on an appraisal determined adequate by the borrower.

(3) Investment earnings of the State trust fund.

(c) State matching funds may not include:

(1) The value of land donated to charitable organizations by the borrower; or

(2) The value of in-kind services provided by the State or others.

(d) When calculating the required State matching funds contribution for the State of Vermont for fiscal year 1992, both the eligible amount calculated for fiscal year 1992 and the eligible amount made available in fiscal year 1991 to the Vermont Conservation and Housing Board for farmland preservation, will be considered contributions for fiscal year 1992.

§§ 1980.923–1980.925 [Reserved]

§ 1980.926 Eligible lenders.

Eligible lenders must be authorized to do business pursuant to the applicable laws of the State. Eligible lenders include:

(a) Any Federal or State chartered bank or savings and loan association;

(b) Other legally organized lending agency;

(c) A Bank of Cooperatives or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

(d) State governments and agencies;

(e) Political subdivisions of a State; and

(f) Any nonprofit conservation organization.

§ 1980.927 Participation of others.

The lender may use agents, correspondents, branches, financial experts, nonprofit organizations with the primary objective of land preservation, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. Others may participate with a lender, but FmHA's relationship will be solely with the lender.

§§ 1980.928–1980.932 [Reserved]

§ 1980.933 Full faith and credit.

The Loan Note Guarantee will be effective for a period not exceeding 10 years from the date of Loan Note Guarantee. It constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which the lender participates in or condones, and the following:

(a) The Loan Note Guarantee will not be honored by FmHA to the extent that any delinquency or loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security, regardless of the time FmHA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner contrary to the manner in which a reasonably prudent lender would act; and

(b) The Loan Note Guarantee will not be honored by FmHA to the extent that loan funds were used for purposes inconsistent with this subpart.

§ 1980.934 Loan limits.

Each eligible State may receive no more than $10 million in loans guaranteed under this subpart per Federal fiscal year.

§ 1980.935 Interest rate.

The interest rate may be a fixed or variable rate as negotiated between the proposed borrower and lender. At no time will the interest rate exceed 10 percent per year.

§§ 1980.936–1980.939 [Reserved]

§ 1980.940 Terms of loan repayment.

The terms of the loan will be negotiated between the proposed borrower and lender with the exception of the interest payments which will be due annually. Principal and interest will

be due and payable as provided in the debt instrument.

§ 1980.941 Interest assistance.

Form FmHA 1980–78, "Interest Assistance Agreement (Agricultural Resource Conservation Demonstration Program)," will fully document the interest assistance to be provided by FmHA. The lender will annually advise FmHA of the accrued interest due by completing Form FmHA 1980–24, "Request Interest Rate Buydown/ Subsidy Payment to Guaranteed Lender," and FmHA will request the funds from the Finance Office. These funds shall be deposited into the State trust fund and shall be used solely to pay interest on the loan as it becomes due.

(a) In each of the first 5 years, FmHA will pay to the borrower an amount equal to the annual interest payment due.

(b) In each of the sixth through tenth years, FmHA will pay to the borrower a portion of the annual interest payment due. This portion will be the greater of:

(1) An amount equal to 3 percentage points of the interest due as prescribed in the debt instrument; or

(2) An amount equal to the difference between the interest due as prescribed in the debt instrument and that charged by FmHA to its Limited Resource Operating Loan borrowers (as prescribed in Exhibit B of FmHA Instruction 440.1, available in any FmHA Office).

§ 1980.942 Equal opportunity and nondiscrimination requirements.

In accordance with the Equal Credit Opportunity Act, title V of Public Law 93–495, with respect to any aspect of a credit transaction, neither the lender nor FmHA will discriminate against any borrower or proposed borrower, and the borrower will not discriminate against a proposed seller of rights or property on the basis of race, color, religion, national origin, age, sex, marital status, or physical/mental handicap, providing the person can execute a legal document. The lender will comply with the requirements of this act as set forth in the Federal Reserve Board's regulation implementing this act. (See 12 CFR part 202).

§ 1980.943 Other Federal, State, and local requirements.

(a) In addition to the specific requirements of this subpart, loan proposals will be coordinated with all appropriate Federal, State, and local agencies.

(b) Effective with the issuance of the Loan Note Guarantee, borrowers and lenders are required to comply with all applicable Federal, State, or local laws; regulatory commission rules; ordinances; and regulations which are presently in existence, or may be later adopted, including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for loan repayment;

(2) Land use zoning; and

(3) Protection of the environment.

§§ 1980.944–1980.947 [Reserved]

§ 1980.948 Economic feasibility requirements.

All loans made under the provisions of this subpart must be based on taxes, assessments, or other satisfactory sources of revenue in an amount sufficient to provide for operating expenses and debt repayment.

§ 1980.949 [Reserved]

§ 1980.950 Security requirements.

(a) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence, and of record, to protect the interests of the lender and FmHA.

(b) Security must be of such a nature that repayment of the loan is reasonably assured. The security may include, but is not limited to:

(1) General obligation bonds, pledges of taxes or assessments; and

(2) To the extent consistent with relevant banking laws and practices, the investments and deposits described in § 1980.910(c) of this subpart.

(c) Easements and land purchased with loan funds may not be pledged as security.

§ 1980.951 [Reserved]

§ 1980.952 Fees and charges by the lenders.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" include similar non-guaranteed loans.

(b) *Late payment and default charges.* Late payment and default charges will not be covered by the guarantee and will not be added to the principal and interest due. Such charges may be assessed only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) The payment in cash, check, money order, wire transfer, or similar medium has not been received by the lender at its main office, branch office, or other designated place of payment; and

(3) The lender agrees with the borrower in writing that late payment charges will not be increased while the Loan Note Guarantee is in effect.

§ 1980.953 Environmental requirements.

The FmHA is responsible for assuring that the requirements of subpart G of part 1940 of this chapter are met. The FmHA will review the complete application and initiate a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the easements, and other practices authorized by this subpart that can be identified at the time the assessment is completed. The borrower will provide a written statement from the State Historic Preservation Officer (SHPO) to the lender of any effect that can be identified at the time the loan application is submitted, that the practices authorized by this subpart will have on any district, site, structure, or object that has been or is eligible to be included in the National Register of Historic Places. (See subpart F of part 1901 of this chapter.)

§ 1980.954–1980.956 [Reserved]

§ 1980.957 Application processing.

(a) *Application conference.* The State Director will arrange for a conference with the lender and proposed borrower to provide copies of appropriate appendices and forms and furnish guidance necessary for orderly application processing. The FmHA will confirm decisions made at this conference, by letter, to the lender and proposed borrower. The State Director will arrange for additional conferences as needed.

(b) *Contents of application package.* (1) Completed SF–424.1, "Application for Federal Assistance."

(2) Form FmHA 1980–74, "Application for Loan and Guarantee (Agricultural Resource Conservation Demonstration Program)."

(3) Proposed loan agreement containing at least the following:

(i) Proposed security; and

(ii) Proposed borrower's financial projections including the plan for loan repayment.

(4) State Farmland Preservation Plan (see § 1980.918 of this subpart).

(5) Evidence that the required State matching funds will be available at loan closing.

(6) Copies of the proposed borrower's organizational documents when the proposed borrower is not a State.

(7) Evidence that a farmland preservation program was being

operated or administered on August 1, 1991.

(8) Form FmHA 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."

(9) Any additional information as may be required by the State Director.

(c) *Review of decision.* FmHA will complete Form FmHA 1942-43, "Project Summary Community Facilities (Other Than Utility-type Projects)." A determination will be made as to whether the proposed borrower is eligible, the proposed loan is for eligible purposes, there is reasonable assurance of repayment ability, security is sufficient, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available.

(d) *Issuing Conditional Commitment for Guarantee.* (1) If FmHA decides to conditionally commit to guaranteeing the loan, it will provide the lender and proposed borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee and a full description of the approved uses of guaranteed loan funds.

(2) If at any time prior to issuance of the Conditional Commitment for Guarantee, FmHA decides that favorable action will not be taken, the State Director will notify the lender in writing of the reasons why the request was not favorably considered. The notification will state that a review of this decision by FmHA may be requested by the lender under § 1980.990 of this subpart and subpart B of part 1900 of this chapter. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(3) The State Director will send copies of the following documents to the National Office Community Facilities Division within 30 days after the Conditional Commitment for Guarantee has been accepted:

(i) Project Summary, Form FmHA 1942-43;

(ii) Executed Lender's Agreement, Form FmHA 1980-76;

(iii) Executed Conditional Commitment for Guarantee (with attachments) accepted by the lender and proposed borrower, Form FmHA 1980-75;

(iv) Proposed loan agreement between the lender and proposed borrower;

(v) Application for Loan and Guarantee, Form FmHA 1980-74; and

(vi) Lender Certification required by § 1980.966(a) of this subpart, if the Loan Note Guarantee has been issued. If it has not been issued, provide a proposed date for its issuance in the cover memorandum.

§ 1980.958 [Reserved]

§ 1980.959 Reserving/obligating funds and loan approval.

(a) The State Director is authorized to approve loans made under this subpart in accordance with Exhibit B of FmHA Instruction 1901-A, (available in any FmHA Office.)

(b) The State Director will prepare an original and two copies of Form FmHA 1940-3 for each loan to be obligated. The State Director will sign the original and one copy and conform the second copy. The form will not be mailed to the Finance Office. FmHA will prepare and execute Form FmHA 1980-75, and notify the lender of the approval by forwarding signed copies of Form FmHA 1940-3 and the Conditional Commitment for Guarantee to the lender on the obligation date (unless the Administrator has given the Finance Office prior authorization to obligate before the 6-day reservation period, and directs the State Director to forward Form FmHA 1940-3 to the lender prior to issuing of the Conditional Commitment for Guarantee.) The State Director will record the actual date of lender notification on the original Form FmHA 1940-3 and retain the original and remaining conformed copy. The State Office terminal will be used to request the reservation /obligation of funds. When the State Office terminal is inoperative and will be for a significant period of time or during emergency situations, the State Office will request the Finance Office to reserve/obligate the funds. Any specific security, processing, or reporting requirements will be addressed at the time of the telephone call.

(c) All loan guarantee applications must be approved, or disapproved, and the lender notified in writing, within 30 days of receipt of a completed application.

(1) If an application is not complete, FmHA will provide the lender with a written listing of the items missing within 20 days of receipt of the application.

(2) When a decision to disapprove an application is reversed or revised by an appeal, FmHA will notify the lender of the action within 15 days after the reversal/revision decision is made.

(d) Loans in Vermont must be approved or disapproved, and the lender notified in writing, within 30 days of receipt of a complete application. The Loan Note Guarantee and Interest Assistance Agreement shall be issued upon request of the lender once the loan is approved. All conditions of the Conditional Commitment for Guarantee must be met prior to the loan being closed and the Loan Note Guarantee being issued. The other conditions for loan approval and issuing the Loan Note Guarantee in Vermont are consistent with other States, unless otherwise specified.

§ 1980.960 Case and identification numbers.

(a) *Case Number.* The case number will be the proposed borrower's Internal Revenue Service Taxpayer Identification (Tax ID) Number, preceded by the State and county code numbers. FmHA will provide the lender with these numbers. Only one case number will be assigned to each borrower regardless of the number of loans it has, unless an exception is granted by the National Office.

(b) *Temporary ID numbers.* When a proposed borrower has not received a Tax ID Number, FmHA will assign a temporary ID number. See the Forms Manual Insert (FMI) for Form FmHA 1940-3, "Request for Obligation of Funds (Guaranteed Loans)," for specific instructions. Any temporary ID number assigned by FmHA must be replaced with the Tax ID Number prior to issuing the Loan Note Guarantee, unless prior approval of the National Office is received.

(c) *ID number of lender.* The lender's Tax ID Number will be used as its ID number in correspondence and FmHA forms relating to the guarantee.

§§ 1980.961-1980.962 [Reserved]

§ 1980.963 Funding applications.

In order to ensure the equitable distribution of funds available for loan guarantees under this subpart, the National Office will retain all the authorized funds in the National Office. All complete approved applications received from eligible borrowers, except Vermont, by July 1 of each fiscal year will be funded subject to the availability of funds. They will be funded on a proportional basis, based on the size of the loan requested.

§ 1980.964 National Office review.

(a) The following will be submitted to the National Office when the loan guarantee exceeds the State Director's approval authority:

(1) Transmittal memorandum including:

(i) State Director's recommendation;

(ii) Date of expected obligation; and

(iii) Any unusual circumstances;

(2) Entire application package; and

(3) Complete Class II environmental assessment.

(b) In all cases, the State Farmland Preservation Plan will be submitted to the National Office for concurrence prior to issuing the Conditional Commitment for Guarantee.

§ 1980.965 Review of requirements of the Conditional Commitment for Guarantee.

Immediately after reviewing the conditions and requirements in the Conditional Commitment for Guarantee, the lender and proposed borrower should complete and sign the "Acceptance of Conditions" section of the form and return a copy to FmHA. If certain conditions cannot be met, the lender and proposed borrower may propose alternate conditions to FmHA.

§ 1980.966 Conditions precedent to issuing the Loan Note Guarantee.

(a) *Lender certification.* The lender must certify that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee, except those approved in the interim by FmHA in writing;

(2) Truth in lending requirements, if applicable, have been met;

(3) All equal employment opportunity and nondiscrimination requirements have been, or will be, met at the appropriate time;

(4) The loan has been properly closed, and the required security instruments have been obtained;

(5) The borrower has marketable title to the collateral, subject only to the instrument securing the guaranteed loan and other exceptions approved in writing by FmHA;

(6) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee;

(7) All other requirements of the Conditional Commitment for Guarantee have been met;

(8) If any advances have occurred, they were made for purposes consistent with the Conditional Commitment for Guarantee and as specified in the Form FmHA 1980–74, "Application for Loan and Guarantee." A copy of a detailed loan settlement statement of the lender will be attached to support this certification; and

(9) There has been no adverse change(s) in the proposed borrower's financial condition nor any other adverse change in the proposed borrower during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the proposed borrower and its guarantors not more than 60 days old at time of certification.

(b) *Execution of Lender's Agreement.* The lender has executed and delivered the Lender's Agreement, Form FmHA 1980–76, to FmHA.

(c) *Changes in Conditional Commitment for Guarantee.* Once the Conditional Commitment for Guarantee is issued and accepted by the lender and proposed borrower, only minor changes will be considered unless otherwise provided for in this subpart.

(d) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in § 1980.966(a) of this subpart. For any loans involving bonds, the opinion of a recognized bond counsel will be reviewed to determine the adequacy of the bonds issued or to be issued. Only when the State Director is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(e) *Review by OGC.* The State Director will forward the loan docket to the Office of the General Counsel (OGC) for review prior to issuing the Loan Note Guarantee, but after the Conditional Commitment for Guarantee has been issued and after the lender's proposed closing documents with lender's legal counsel's opinion have been received by FmHA. The State Director will include with the docket a letter identifying any items, documents, or problems that may have a significant impact on the loan or guarantee or may be contrary to the regulations and need to be specifically addressed. Copies of the following documents should be submitted to OGC for review:

(1) National Office concurrence letter, if applicable;

(2) Form FmHA 1980–75, "Conditional Commitment for Guarantee," including any amendments;

(3) Loan agreement;

(4) Proposed promissory notes and/or bond transcripts;

(5) Proposed security instruments;

(6) Proposed Form FmHA 1980–76, "Lender's Agreement";

(7) Proposed lender certifications as required by § 1980.966(a) of this subpart; and

(8) Opinion of lender's counsel in form prescribed by OGC.

(f) *OGC advice.* OGC will review the docket and furnish advice to FmHA on whether it should issue the Loan Note Guarantee once the loan is closed. Such advice is for the benefit of FmHA only and does not relieve the lender of any of its responsibilities under FmHA regulations. Any deficiencies noted by OGC will be corrected prior to issuing the Loan Note Guarantee.

(g) *Loan closing.* The lender will notify FmHA when the date for loan closing has been established.

(h) *Substitution of borrower.* FmHA will not issue a Loan Note Guarantee to a lender who is in receipt of a Conditional Commitment for Guarantee with an obligation in a previous fiscal year, if the originally approved proposed borrower (including changes in legal entity) is changed. All requests for exceptions must be approved by the FmHA National Office.

(i) *Inspections.* The lender will notify FmHA of any scheduled field inspections. FmHA may attend such field inspections. Any inspections or reviews conducted by FmHA, including those with the lender, are for the sole benefit of FmHA. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

§ 1980.967 Substitution of lender.

With prior written concurrence of the FmHA Administrator, the State Director may approve the substitution of a new eligible lender in place of a lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued), provided there are no changes in the proposed borrower, State Farmland Preservation Plan, loan conditions, or loan agreement. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender. The substituted lender will execute a new Part "B" of the Application for Loan and Guarantee. If approved by FmHA, the Administrator will issue a letter of amendment to the original Conditional Commitment for Guarantee, reflecting the new lender who will acknowledge acceptance of the letter or amendment in writing. The State Director will complete Form FmHA 1980–42, "Notice of Substitution of Lender."

§ 1980.968 Issuance of Lender's Agreement, Loan Note Guarantee, and Interest Assistance Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 1980–76. The original will be delivered to FmHA and a signed duplicate original retained by the lender. There will be a Lender's Agreement executed for all loans guaranteed by FmHA.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, FmHA will execute the Loan Note Guarantee, Form FmHA 1980–77. The original will be retained by the lender and attached to the original note. A conformed copy with a conformed copy of the note attached will be retained by FmHA.

(2) If the lender has selected the multi-note system as provided in the Lender's Agreement, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on each Loan Note Guarantee.

(3) If the lender requests a series of new notes to replace previously issued guaranteed notes as provided in the Lender's Agreement, the State Director may reissue new Loan Note Guarantees in exchange for the original Loan Note Guarantees.

(c) *Interest Assistance Agreement.* Form FmHA 1980–78, will be executed concurrently with the Loan Note Guarantee.

(d) *FmHA's refusal to execute the Loan Note Guarantee.* If FmHA determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, it will promptly inform the lender of the reasons, giving a reasonable period within which to satisfy FmHA objections. If the lender writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, grant any additional time it considers necessary and reasonable. If the lender is unable to satisfy FmHA objections, the lender will be informed of its appeal rights as set out in § 1980.990 of this subpart and subpart B of part 1900 of this chapter.

(e) *Cancellation of obligation.* If the conditions for the loan are rejected or cannot be met after completion of any appeal, FmHA will cancel the obligation using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

(f) *Payment of guarantee fee.* The lender will prepare a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each loan to be guaranteed, and deliver with the guarantee fee to the FmHA representative who concurrently delivers the Loan Note Guarantee. The State Office will enter guarantee fees received on Form FmHA 451–2, "Schedule of Remittances," and process in accordance with subpart B of part 1951 of this chapter.

(g) *FmHA representatives authorized to execute forms.* State Directors and, if delegated by the State Director, Community Programs and Community and Business Programs Chiefs are authorized to execute the Lender's Agreement, Loan Note Guarantee, and Interest Assistance Agreement.

§§ 1980.969–1980.972 [Reserved]

§ 1980.973 Disbursement of funds.

The lender is responsible for assuring that guaranteed loan funds are disbursed in accordance with the provisions of this subpart.

§ 1980.974 [Reserved]

§ 1980.975 Loan servicing.

In accordance with the lender's loan agreement, the lender will be responsible for servicing the entire loan, including any advances made to the lender by FmHA under its guarantee of timely payments in accordance with the Loan Note Guarantee. The lender will notify FmHA of any violations of the lender's loan agreement.

(a) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the FmHA State Office with a summary evaluation by the lender. After receipt of the evaluation, the State Director will determine if a joint FmHA, lender, and borrower visit will be necessary. Lender visits to the borrower will be conducted at least once every 3 years but may be scheduled more frequently if conditions warrant. Borrowers with problem loans will be visited by the lender at least annually.

(b) The lender will make an initial visit to the borrower within the first 6 months following the initial loan closing to review the borrower's accounts and procedures.

(c) The State Director will meet annually with each lender or his/her agent with whom a loan guarantee is outstanding to review the lender's performance and determine if any future actions are needed. FmHA will document the meeting in the running record of each borrower serviced by the lender and followed with a letter to the lender.

§ 1980.976 Borrower reports.

The borrower will furnish the State Director with an annual listing of the easements and properties acquired with guaranteed loan funds. The listing should include at a minimum:

(a) Location of each easement or property;

(b) Numbers of acres under each easement or property; and

(c) Purchase price of each easement or property.

§ 1980.977 Access to lender's records.

The lender will permit representatives of FmHA and other agencies of the USDA authorized by that Department to inspect and make copies of any records of the lender pertaining to loans guaranteed by FmHA. Such inspection and copying may be made during the regular office hours of the lender, or any other time the lender and FmHA find convenient.

§ 1980.978 [Reserved]

§ 1980.979 Loan classification.

All guaranteed loans made under this subpart will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. The loans will be classified as set out in FmHA Instruction 1904–C (available in any FmHA Office).

§ 1980.980 Sale or assignment of guaranteed loan.

Loans guaranteed under provisions of this subpart may not be sold or assigned by the lender to any other lender or investor.

§ 1980.981 Defaults by borrower.

The FmHA will 100 percent guarantee, for a period not to exceed 10 years from the date of the Loan Note Guarantee, the timely payment of principal and interest due on loans guaranteed under provisions of this subpart.

(a) In case of monetary default or significant non-monetary default, the lender will negotiate with the borrower in good faith in an attempt to resolve the problem and cure the default. If unsuccessful, the lender will arrange a meeting with FmHA and the borrower. A memorandum of the meeting, listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by FmHA and retained in the FmHA loan file. When a solution to a delinquency cannot be reached within 60 days of the payment due date and when requested by the lender, in writing, using Form FmHA 449–30, "Loan Note Guarantee Report of Loss," FmHA will request funds from the Finance Office to pay the delinquency. The check will be made payable to the lender.

(1) Such advance must be considered an indebtedness of the borrower and will accrue interest at the note rate.

(2) Any such advance is immediately due and payable. It is the lender's responsibility to collect advances from the borrower and promptly remit to FmHA.

(3) The loan will be considered a problem loan until the advance and

accrued interest on such advance are fully repaid by the borrower.

(4) Any late payment or default charges will not be paid by FmHA.

(b) The State Director will report all delinquent and problem loans quarterly to the National Office Community Facilities Division by the 10th day of January, April, July, and October.

§ 1980.982 Liquidation.

Liquidation will be conducted in accordance with the Lender's Agreement.

(a) When either the lender or FmHA determines that liquidation is necessary, the lender will prepare a liquidation plan. The State Director will forward the lender's liquidation plan, along with appropriate recommendations and exceptions to the plan, to the National Office Community Facilities Division. Guidance will be provided by the National Office.

(b) Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the Government. The approved partial liquidation plan is only food for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender.

(c) FmHA will exercise its option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. The State Director has no authority to exercise this option.

§ 1980.983 Protective advances.

Protective advances may be made in accordance with the Lender's Agreement. Protective advances are normally involved only when the loan is being liquidated.

(a) Within delegated authorities, the State Director may approve protective advances in writing. Advances must be reasonable when associated with the value of collateral being preserved.

(b) When considering protective advances, sound judgement must be exercised in determining that the additional funds advanced will actually preserve or protect the collateral and recovery is actually enhanced by making the advance.

§§ 1980.984–1980.986 [Reserved]

§ 1980.987 Transfers and assumptions.

(a) *General.* It is the policy of FmHA to approve transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan. All transfers and assumptions must be approved, in writing, by FmHA. Transfers and assumptions may be approved subject to the following:

(1) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan;

(2) The entire unpaid balance on the guaranteed loan is assumed by the new borrower; and

(3) All funds in the State Trust Fund are transferred to the new borrower.

(4) The loan will continue to be secured in a manner equal to or in better greater degree.

(b) *Eligible borrowers.* (1) The total indebtedness must be transferred to an eligible borrower on the same terms.

(2) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer.

(c) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) *Amount.* The transfer fees will be a standard fee plus the cost of the appraisal, as applicable. This fee will be established by the FmHA National Office and issued annually to all FmHA State Offices for further distribution.

(2) *Remittance.* The lender will collect and submit the fee to the FmHA State Office. The FmHA State Office will submit the fee to the Finance Office identified as a transfer fee using Form FmHA 451–2, "Schedule of Remittance."

(3) *Waiver.* When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(d) *Processing transfers and assumptions.* (1) In any transfer and assumption case, the transferor, may be released from liability by the lender with FmHA written concurrence, only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed.

(2) The lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(3) The State Director may approve all transfer and assumption provisions, including the transferor's release from liability, if the guaranteed loan debt balance is within his/her loan approval authority.

Note: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

(4) A copy of the Assumption Agreement will be retained in the FmHA file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA 1980–7, "Notification of Transfer and Assumption of a Guaranteed Loan," and submit Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," for all new borrowers and Form FmHA 1980–51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance Office records may be adjusted accordingly.

(5) If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the National Office Community Facilities Division for approval.

(6) The assumption will be made on the lender's form of assumption agreement and will contain the FmHA case number of the transferor and transferee.

(7) Loan terms cannot be changed.

(8) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA before any borrower or guarantor is released from liability.

(e) *Submission to National Office.* (1) All proposed transfers or assumptions will be forwarded to the National Office for prior review and approval before making any commitments.

(2) All submissions to the National Office will contain:

(i) Transfer case file;

(ii) OGC comments on the proposed transfer or assumption;

(iii) Appropriate forms to complete the transfer prepared by the transferee;

(iv) Completed environmental review; and

(v) Any other necessary supporting information.

§ 1980.988 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) The lender will file a proof of claim, when necessary, and all the necessary papers and pleadings concerning the case;

(2) The lender will attend and, when necessary, participate in meetings of the creditors and all court proceedings;

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral;

(4) When appropriate, the lender should seek dismissal of the proceedings; and

(5) FmHA will be kept adequately and regularly informed, in writing, of all aspects of the proceedings.

(b) Activities related to bankruptcy proceedings are considered loan servicing. The related expenses are the responsibility of the lender.

(c) In bankruptcy, if an independent appraisal is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(d) The State Director should report all bankruptcy cases immediately to the National Office by forwarding a copy of Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." The State Director must keep OGC informed of the proceedings.

§ 1980.989 State Director's additional authorizations and guidance.

Any proposed servicing actions which the State Director or lender is not authorized by this subpart to approve, will be referred to the Administrator, Attention: Community Facilities Division.

§ 1980.990 Appeals.

Only the borrower or proposed borrower and lender can appeal FmHA decisions. The borrower and lender must jointly execute the written request for review of the decision made by FmHA, and both parties must participate in the appeal. A decision by the lender which may be adverse to the interest of the borrower or proposed borrower is not a decision by FmHA, even when concurred in by FmHA. Appeals will be handled in accordance with subpart B of part 1900 of this chapter.

§§ 1980.991–1980.994 [Reserved]

§ 1980.995 Replacement of loss, theft, destruction, mutilation, or defacement of Form FmHA 1980–77, "Loan Note Guarantee."

Except where the evidence of debt was or is a bearer instrument, the FmHA State Director is authorized, on behalf of FmHA, to issue a replacement Loan Note Guarantee(s) to the lender upon receipt of an acceptable certificate of loss and an indemnity bond. After the required documentation has been received, the State Director will review all documents presented by the lender to assure all requirements are met and consult with OGC to assure that all documents are of legal sufficiency before the reissuance of the Loan Note Guarantee(s).

(a) A certificate of loss properly notarized should include:

(1) Legal name and present address of the owner who is requesting the replacement forms;

(2) Legal name and address of lender of record;

(3) Capacity of person certifying;

(4) Full identification of the Loan Note Guarantee including the name of the borrower, FmHA case number, date of the Loan Note Guarantee, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, and percentage of guarantee. Any existing part of the document to be replaced should be attached to the certificate; and

(5) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee.

(b) An indemnity bond acceptable to FmHA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a State or Territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a Letter of Certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Security of the Treasury and listed in Treasury Department Circular 580.

(c) All indemnity bonds must be issued and/or made payable to the United States of America acting through the FmHA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save FmHA harmless against and claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(d) In those cases where the guaranteed loan was closed under the "Multi-Note System" provisions of Lender's Agreement, FmHA will not attempt to or participate in the obtaining of replacement notes from the borrower. Should such note be replaced, the terms of the note cannot be changed. The Lender's Agreement describes general conditions for reissuing notes. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA will replace any instruments.

(e) If the decision is to reissue Loan Note Guarantee(s), the following procedure will be followed:

(1) Multi-not system. A new Form FmHA 1980–77 will be prepared using the original face amounts and amounts guaranteed (not outstanding loan balance). At the top of the form type "This Loan Note Guarantee is issued to replace the original dated _____ which was (insert "lost, stolen, destroyed, defaced or mutilated"). Only execute an original for the holder. Copies may be conformed for the lender and FmHA file. If borrower notes are needed, they must be obtained by the holder from the borrower. The indemnity bond must be kept in safekeeping;

(2) The lender must execute the replacement forms prior to FmHA execution of the same; and

(3) Certificate of Incumbency may be provided.

§ 1980.996 Lender's request to terminate Loan Note Guarantee.

If the Loan Note Guarantee has not automatically terminated, the lender may request FmHA to terminate the Loan Note Guarantee for any reason. The lender will provide the State Director with a written notice that the Loan Note Guarantee is paid in full and/or terminated. Within 30 days, the State Director will forward a memorandum to the Finance Office indicating that the loan is paid in full and/or the Loan Note Guarantee is cancelled at the lender's request.

§§ 1980.997–1980.998 [Reserved]

§ 1980.999 FmHA Forms.

(a) Forms FmHA 1980–75, "Conditional Commitment for Guarantee (Agricultural Resource Conservation Demonstration Program)"; FmHA 1980–76, "Lender's Agreement (Agricultural Resource Conservation Demonstration Program)"; FmHA 1980–77, "Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program)"; and FmHA 1989–78, "Interest Assistance Agreement (Agricultural Resource Conservation Demonstration Program)"; and incorporated into and made a part of this subpart, and appear as appendices A, B, C, and D to this subpart J.

(b) The following FmHA forms will be used in the processing and servicing of loans made under this subpart. Refer to the Forms Manual Inserts and directions printed on the form for specific details concerning completion of the forms, number of copies, and distributions.

Copies of forms may be obtained from any FmHA State office.

FmHA

Form No.	Title of form	Purpose and code*
1980-77	Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program).	Used to document FmHA's guarantee and related responsibilities. (1)
1980-76	Lender's Agreement (Agricultural Resource Conservation Demonstration Program).	Used to document lender's responsibilities. (2)
1980-78	Interest Assistance Agreement (Agricultural Resource Conservation Demonstration Program).	Used to document FmHA's agreement to subsidize borrower's interest. (1)
1980-74	Application for Loan and Guarantee (Agricultural Resource Conservation Demonstration Program).	Used to document lender's guarantee request. (3)
1980-75	Conditional Commitment for Guarantee (Agricultural Resource Conservation Demonstration Program).	Used to document FmHA's conditions to issue Loan Note Guarantee. (2)
1940-3	Request for Obligation of Funds (Guaranteed Loans)	Used to approve loan and establish account. (1)
1980-19	Guaranteed Loan Closing Report	Used to pay guarantee fee and establish guarantee loan account. (2)
1980-24	Request Interest Rate Buydown/Subsidy Payment to Guaranteed Lender.	Used by lender to request interest assistance.
449-30	Loan Note Guarantee Report of Loss	Used to request delinquent payments. (3)
1980-41	Guaranteed Loan Status Report	Used to update FmHA's records of outstanding balance of loan. (3)
1980-42	Notice of Substitution of Lender	Used to change FmHA record of lender. (1)
1980-43	Lender's Guaranteed Loan Payment	Used by lender to transmit payments due FmHA as a holder. (3)
1980-44	Guaranteed Loan Borrower Default Status	Used by lender to inform FmHA of borrower default. (3)
1980-45	Notice of Liquidation Responsibility	Used by FmHA to indicate to Finance Office liquidation responsibility. (1)
1980-46	Report of Liquidation Expense	Used by FmHA to pay liquidation costs or appraisal fees. (1)
1980-47	Guaranteed Loan Borrower Adjustments	Used by FmHA to adjust borrower loan account. (1)
1980-49	Guaranteed Loan Status Update Adjustment	Used by FmHA to update status elements on loans. (1)
1980-51	Add, Change, or Delete Guaranteed Loan Record	Used by FmHA to update borrower information. (1)
1980-52	Report Request	Used by FmHA to request reports on guaranteed loans. (1)
449-30	Loan Note Guarantee Report of Loss	Used to claim reimbursement for losses. (2)
1980-40	Reverse a Report of Liquidation Expense	Used by FmHA to collect appraisal fees recovered from the liquidation of loan assets. (2)
Exhibit H, Subpart G of Part 1940	Environmental Assessment for Class II Actions	Format for Class II Environmental Assessment. (1)

* *Code:* (1) FmHA use only.
(2) FmHA and lender use.
(3) Lender use only.

§ 1980.1000 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0575-0152. Public reporting burden for this collection of information is estimated to average 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and the Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

Appendices to Subpart J

Form Approved

OMB No. 0575-0152

Appendix A—Form FmHA 1980-75, Conditional Commitment for Guarantee Agricultural Resource Conservation Demonstration Program

7 CFR Part 1980

Subpart J

Case No. _____
TO: Lender _____
State _____
Lender's Address _____
Borrower _____
Principal Amount of Loan $ _____

From an examination of information supplied by the lender on the above proposed loan, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the **Federal Register** and related forms, it will execute Form(s) FmHA 1980-77, "Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program)" subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The annual interest rate for the loan will be ____%. The annual interest assistance rate will be ____% for years 1 through 5 and for years 6 through 10 a rate equal to the difference between the note interest rate and that charged by FmHA to its Limited Resource Operating Loan borrowers but not less than 3 percent per annum.[1]

A Loan Note Guarantee will not be issued until the lender certifies as required in 7 CFR 1980.966 there have been no adverse changes in the borrower's financial condition, or any other adverse change in the borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 60 days old at the time of certification.

[1] Insert the fixed interest rate and the appropriate interest assistance rate.

This agreement becomes null and void unless the conditions are accepted by the lender and borrower within 60 days from the date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes, will be specified in Form FmHA 1980–74, "Application for Loan and Guarantee" and State Farmland Preservation Plan. Once this instrument is executed and returned to FmHA, no major change in conditions or approved loan purpose as listed on these forms will be considered. Additional conditions and requirements including the source and use of funds: [2]

This conditional commitment will expire on ____ [3] unless the time is extended in writing by FmHA, or upon the lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

United States of America

By: _____

Date: _____

FmHA: _____

(Title)

Acceptance of Conditions

To: Farmers Home Administration (FmHA) [4]

The conditions of this Conditional Commitment for Guarantee, including attachments, are acceptable and the undersigned intend to proceed with the loan transaction and request issuance of a Loan Note Guarantee within ____ days.

_____

(Name of Lender)

_____

(Date)

By: _____

(Signature of Lender)

_____

(Date)

_____

(Signature of Borrower)

Form Approved

OMB No. 0575–0152

Appendix B—Form FmHA 1980–76, Lender's Agreement Agricultural Resource Conservation Demonstration Program

FmHA Loan ID No. _____

7 CFR Part 1980

Subpart J

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $____ as evidenced by ____ note(s) (include Bond as appropriate) described as follows:

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA), has entered into a "Loan Note Guarantee (Agricultural Resource Conservation Demonstration Program)" (Form FmHA 1980–77) or has issued a "Conditional Commitment for Guarantee (Agricultural Resource Conservation Demonstration Program)" (Form FmHA 1980–75) to enter into a Loan Note Guarantee with the lender applicable to such. The terms of the Loan Note Guarantee are controlling.

The Parties Agree:

I. FmHA will 100 percent guarantee the timely payment of principal and interest payments due for a period not to exceed 10 years from the date of the Loan Note Guarantee.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it became such lender or which the lender participates in or condones and the following:

The Loan Note Guarantee will not be honored by FmHA to the extent that any delinquency or loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner contrary to the manner in which a reasonably prudent lender would act. The Loan Note Guarantee will not be honored by FmHA to the extent that loan funds are used for purposes other than those specifically approved by FmHA in the Conditional Commitment for Guarantee.

III. The lender agrees loan funds will be used for the purposes authorized in Subpart J of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 1980–75.

IV. The lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Bank of Cooperatives or other Farm Credit System (FCS) institution with direct lending authority that have normal stock share requirements for participation) have a substantial financial interest in the borrower. The lender certifies that neither the borrower nor its officers or directors, stockholders or other owners have a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Bank of Cooperatives or other FCS institution with direct lending authority, the lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the lender's agent in servicing the account.

V. The lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the borrower, borrower's business, or any parent subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VI. The lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the borrower.

VII. The lender certifies that it has paid the required guarantee fee.

VIII. Servicing.

A. The lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority.

B. The lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the borrower of any violations. None of these instruments will be altered without FmHA's prior written concurrence. The lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including interest assistance) on the loan as they fall due.

3. Inspecting the collateral (when appropriate) as often as necessary to properly service the loan.

4. Monitoring the State Farmland Preservation Plan.

5. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained on security property with a loss payable clause in favor of the lender as secured party.

6. Assuring that taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based; the borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the program.

7. In the case of guarantees secured by collateral, assuring the security is properly maintained.

8. Obtaining the lien coverage and lien priorities specified by the lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

9. Assuring that the borrower obtains marketable title to the collateral and easements or properties in fee simple acquired with loan funds.

10. Assuring that the borrower obtains marketable title to the easements or

[2] Insert any additional conditions or requirements in this space or on an attachment referred to in this space.

[3] FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the Acceptance of Conditions.

[4] Return completed and signed copy of this form to issuing FmHA State Office.

properties in fee simple acquired with loan funds.

11. Assuring that the borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

12. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

13. Obtaining from the borrower periodic financial statements under the following schedule:

The lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and records of actions to the FmHA State Office responsible for the loan.

14. Monitoring the use of loan funds to ensure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, Exhibit M.

IX. Default. In case of any monetary default, the lender will negotiate with the borrower in good faith in an attempt to resolve any problem to permit the borrower to cure the default. When a loan becomes 60 days or more past due, the lender will arrange a meeting with FmHA and the borrower to resolve the problem. When an immediate solution to the delinquency cannot be reached, and upon demand by the lender, FmHA will make funds available to pay the delinquent payment. FmHA will not pay any late payment charges to the lender. All such advances are immediately due and payable and it is the responsibility of the lender to collect them from the borrower. The loan will be considered a problem loan until the advance and accrued interest on such advance is fully repaid to FmHA through the lender.

X. Liquidation. If the lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the lender. The lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. The lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan debt instrument(s) and related security instruments.

2. Information lists concerning the borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal loan balance, including accrued interest, is less than $200,000, the lender will obtain an estimate of the market and potential liquidation value of the collateral. On loan balances in excess of $200,000, the lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the lender and FmHA to determine the appropriate liquidation actions.

B. FmHA's response to the lender's liquidation plan. FmHA will inform the lender in writing whether it concurs in the lender's liquidation plan. Should FmHA and the Lender not agree on the lender's liquidation plan, negotiations will take place between FmHA and the lender to resolve the disagreement. The lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The lender will transfer to FmHA all rights and interest necessary to allow FmHA to liquidate the loan.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary, including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the lender, as the case may be.

D. Liquidation: Accounting and Reports. When the lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. The lender will transmit to FmHA any payment received from the borrower from liquidation or other proceeds, etc., using Form FmHA 449–30, "Loan Note Guarantee Report of Loss." When FmHA liquidates, the lender will be provided with similar reports on request.

E. Income from collateral. Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

XI. Protective Advances.

Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XII. Future Recovery.

After a loan has been liquidated, any future funds which may be recovered by the lender will be forwarded to FmHA.

XIII. Bankruptcy.

The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.

XIV. Other Requirements.

This agreement is subject to all the requirements of subpart J of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XV. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to the execution of such contract. FmHA in no way warrants that such a contract has been, or will be, executed.

XVI. Notices.

All notices and actions will be initiated through FmHA.

XVII. Environmental Requirements.

The lender will ensure that the borrower complies with the measure identified in the Government's environmental impact analysis for the program for the purpose of avoiding or reducing the adverse environmental impacts of the program's operation.

Dated this ___ day of _____, 19__.

LENDER:

ATTEST: _____

(Seal)

By: _____

Title: _____

United States of America

Farmers Home Administration

By: _____

Title: _____

Form Approved

OMB No. 0575–0152

Appendix C—Form FmHA 1980–77, Loan Note Guarantee Agricultural Resource Conservation Demonstration Program

7 CFR Part 1980

Subpart J

State _____

Date of Note _____

Borrower _____

FmHA Loan ID Number _____

Lender _____

Lender's IRS Tax ID Number _____

Lender's Address _____

Principal Amount of Loan $ _____

The principal amount of loan evidenced by __ note(s) (includes bonds as appropriate) is described below. This instrument is attached to note __ in the face amount of $____ and is number __ of __.

Lender's note number	Face amount	Percent of total face amount
Total	$____	100

In consideration of the making of the subject loan by the above-named lender, the United States of America, acting through the Farmers Home Administration, of the United States Department of Agriculture (called "FmHA"), pursuant to the Farms for the Future Act of 1990 (7 U.S.C. 4201 note, as amended by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, ____), does hereby agree that in accordance with, and subject to, the conditions and requirements in this instrument, for a period not to exceed 10 years from the date of this instrument, will:

(a) at the lender's request, advance to the lender the unpaid portion of any principal and/or interest payment, 60 days or more past due as evidenced by said note(s). Such advance will accrue interest at the note rate and must be an indebtedness of the borrower.

(b) pay to the lender, any principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including, but not limited to, advances for taxes, annual assessments, any ground rents, and insurance premiums affecting the collateral.

Definition of Lender

The lender is the person or organization making and servicing the loan which is guaranteed under the provisions of subpart J, 7 CFR part 1980. The lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. *Loan Servicing.* The lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, the lender will structure repayments as provided in the loan agreement. The lender will be responsible for servicing the entire loan, including any advances made by FmHA to the lender under its guarantee of timely payments.

2. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it became such a lender or which the lender participates in or condones and the following:

(a) The Loan Note Guarantee will not be honored by FmHA to the extent that any delinquency or loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner contrary to the manner in which a reasonably prudent lender would act.

(b) The Loan Note Guarantee will not be honored by FmHA to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980-75, "Conditional Commitment for Guarantee (Agricultural Resource Conservation Demonstration Program)."

(c) The Loan Note Guarantee is void if the note to which this is attached or relates provides for payment of interest on interest.

3. *Protective Advances.* Protective advances made by the lender pursuant to the regulations will be guaranteed to the same extent as provided in the Loan Note Guarantee.

4. *Lender's Obligations.* The lender will promptly remit to FmHA any payment or portion of a payment, including accrued interest thereon, previously advanced by FmHA to the lender under its guarantee of timely payments and subsequently received from the borrower.

5. *When Guarantee Terminates.* This Loan Note Guarantee will terminate automatically upon full payment of the guaranteed loan; or upon full payment of any loss obligations hereunder. The guarantee of timely payment of principal and interest payments due shall terminate 10 years from the date of this instrument. Losses occurring after such 10-year period are not covered by this guarantee.

6. *Settlement.* The amount due under this instrument will be determined and paid as provided in the subpart J of part 1980 of title 7 CFR in effect on the date of this instrument.

7. *Interest Assistance.* In addition to FmHA's guarantee of timely payments of principal and interest, FmHA will pay a portion of the interest to the borrower as provided in the executed Form FmHA 1980-78, "Interest Assistance Agreement (Agricultural Resource Conservation Demonstration Program)."

8. *Notices.*

All notice and actions will be initiated through the FmHA ____ for ____ (State) with mailing address at the date of this instrument

_____

_____

United States of America
Farmers Home Administration
By: _____

_____

(Date)
Title: _____

Form Approved

OMB No. 0575-0152

Appendix D—Form FmHA 1980-78, Interest Assistance Agreement Agricultural Resource Conservation Demonstration Program

7 CFR Part 1980

Subpart J

State _____
Date of Note _____
Borrower _____
FmHA Loan ID No. _____
Lender _____
Lender's IRS Tax ID No. _____
Lender's Address _____
Principal Amount of Loan _____

The principal amount of loan is evidenced by _____ note(s) described below.

Lender's note no.	Amount of note	Note interest rate

This agreement is effective beginning ____ and expires on ____. The United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA), pursuant to the Farms for the Future Act of 1990 (7 U.S.C. 4201 note, as amended by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, ____), agrees that in accordance with and subject to the conditions and requirements in this agreement, to assist the borrower in making its interest payments, will pay the borrower as follows:

In each of the initial 5 years of the loan beginning ____ and ending ____, FmHA agrees to pay the borrower an amount equal to the interest accruing on the loan each of the first 5 years.

In each of the sixth through tenth years of the loan beginning ____ and ending ____, FmHA agrees to pay the borrower an amount equal to the difference between the note interest rate and the rate of interest then being charged FmHA Limited Resource Operating Loan borrowers but not less than 3 percent per annum.

Payments will be made to the borrower 10 days prior to an interest payment due date. The payment shall be by wire transfer into the Trust Fund Account identified as follows:
Bank _____
Account # _____
Wire Transfer Information _____

Conditions of Interest Assistance

1. *Interest Assistance Payments.* FmHA payments made in connection with interest assistance will be calculated using a 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980-19, "Guaranteed Loan Closing Report," the preferred method which may not change once established. The lender will notify FmHA of the interest due using Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Lender," 30 days prior to the payment due date.

2. *When Interest Assistance Payments Cease.* Interest assistance payments will cease upon termination of the Loan Note Guarantee reaching the expiration date set forth in this agreement or upon cancellation by the Government.

3. *Cancellation of Interest.* The lender certifies that the amount of interest reduction on the subject borrower's account will be permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt which will be paid by FmHA.

4. *Regulatory Changes.* This Agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provision of this Agreement.

5. *Cancellation.* The Interest Assistance Agreement is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this Agreement is executed or for which the lender participates in or condones.

6. *Access to Lender's Files.* Upon request by FmHA, the lender will permit representatives of FmHA (or other agencies of the U.S. Department of Agriculture

authorized by that Department) to inspect and make copies of any of the records of the lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or any other time the lender and FmHA find convenient.

7. *Use of Interest Assistance.* Borrower shall use the interest assistance solely to promptly pay interest as it becomes due on the loan. To the extent permitted by law and the supervisory agency, the lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining interest assistance claims.

Address: _____

United States of America
Farmers Home Administration

By: _____
Title: _____

Acknowledged
Borrower:
Attest: _____
(SEAL)
By: _____
Title: _____

Lender:
Attest: _____
(SEAL)
By: _____
Title: _____

Dated: December 16, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-2669 Filed 1-31-92; 11:31 am]

BILLING CODE 3410-07-M

federal register

Tuesday
February 4, 1992

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park, Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; Special Federal Aviation Regulation (SFAR) No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; extension of expiration date.

SUMMARY: This proposal would continue for an additional 3 years the effectiveness of the temporary procedures for the operation of all aircraft in the airspace above Grand Canyon National Park up to an altitude of 14,500 feet above mean sea level. The provisions of SFAR 50-2 originally established the flight restriction areas for a period of 4 years to allow the National Park Service (NPS) time to complete studies of the impact of aircraft overflights on the Grand Canyon and to forward its recommendations to the FAA. This proposal would continue the effectiveness of these procedures while NPS studies and analyses are being conducted.

DATES: Comments must be received on or before April 6, 1992.

ADDRESSES: Comments on the proposed rule should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25149, 800 Independence Avenue SW., Washington, DC., 20591. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Melodie De Marr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments as they may desire on any portion of the proposal. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above. All comments received, as well as a report summarizing any substantive public contacts with the Federal Aviation Administration (FAA) personnel on this rulemaking, will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments must submit with their comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25149." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the comment closing date.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC, 20591; or by calling (202) 267-3484. Requests should be identified by the docket number or the special rule number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On June 5, 1987, the FAA issued SFAR 50-1 (52 FR 22734, June 15, 1987) which established flight regulations in the vicinity of the Grand Canyon National Park.

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at three parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. (Pub. L. 100-91).

Section 3 of Public Law 100-91 required the Secretary of the Interior to submit to the FAA Administrator recommendations for action necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the Grand Canyon. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Public Law 100-91 further required the Administrator of the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. The plan was to implement the recommendations of the Secretary without change unless the Administrator determined, after consultation with the Secretary and opportunity for notice and public hearing, that implementing the recommendations would adversely affect aviation safety. In that event, the FAA was required to revise the Department of the Interior (DOI) recommendations to resolve the safety concerns and issue regulations implementing the revised recommendations in the plan.

In December 1987, the Office of the Secretary of the Interior transmitted recommendations to the FAA for an aircraft management plan at the Grand Canyon. The recommendations submitted included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR 50-2 (53 FR 20264, June 2, 1988) which revised the procedures for operation of aircraft in the airspace above the Grand Canyon. The rule implemented the preliminary recommendations of the Office of the Secretary of the Interior for an aircraft management plan at the Grand Canyon with some modifications that the FAA initiated in the interest of aviation safety.

Public Law 100-91 also required the DOI to conduct a study, with the technical assistance of the Secretary of Transportation, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the National Park System. The research was to include an evaluation of the noise levels associated with overflights. Before submission to Congress, the DOI is to provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations would have on the safety of aircraft operations. The FAA is to consult with the DOI to resolve these issues. The final report must include a finding by the FAA that implementation of the DOI recommendations will not have adverse effects on the safety of aircraft operations, or, in the alternative, a statement of the reasons why the recommendations will have an adverse effect.

On a continuing basis, the FAA reviews the existing rules and regulations pertaining to flight in the National Airspace System which includes the airspace over national park

units. The rules currently provide for the safety of aircraft by specifying a minimum safe altitude for the operation of aircraft. The FAA will consider specific rule changes relating to aircraft overflights of national park system units, consistent with aviation safety, after completion of the NPS studies on the impact of aircraft overflights and the FAA's receipt of NPS recommendations.

This proposed action would continue the provisions of SFAR 50–2 for another 3 years to allow the NPS to complete studies to assess the adverse impact of aircraft overflights at Grand Canyon National Park and forward its recommendations to the FAA and to Congress. At that time, the FAA will determine the necessity for adjustment of flight restrictions over the Grand Canyon National Park.

Environmental Review

An environmental assessment of SFAR 50–2 and a Finding of No Significant Impact were placed in the rules docket. The environmental assessment concluded that, as a result of the SFAR, certain areas of the Grand Canyon would be subject to less aircraft noise than under existing regulations; and other areas, in particular the Hermits Rest area of the south canyon rim, would be subject to a slight increase in perceived aircraft noise. However, in consideration of the volume of traffic, the altitude of flight routes, and the noise characteristics of the aircraft typically used in canyon flights, the FAA has determined that no significant environmental impact would result from this proposed rule.

Regulatory Evaluation Summary

This action proposes to extend the provisions of SFAR 50–2 for 3 years. SFAR 50–2 was justified based on DOI's December 1987 benefit-cost analysis. Since that SFAR was published as a final rule in June 1988, the FAA has not obtained any information that is contrary to that analysis. In its original benefit-cost analysis, the DOI concluded the cost to air tour operators would be negligible and there would be significant benefits to park resources and visitors. Therefore, the DOI determined that the requirements of SFAR 50–2 would be cost-beneficial. For lack of information to the contrary, the FAA contends that the DOI's negligible cost impact conclusion is still valid. However, a recent review of Docket No. 25149 revealed that one operator stated that his company would incur an additional operating cost of $150,000 as a result of the original SFAR 50–2 published in 1988. The FAA solicits further comments on this proposed SFAR concerning additional operating costs imposed on affected operators.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

International Trade Impact Statement

This proposed SFAR is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour aircraft operators potentially impacted by this proposed SFAR do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that all small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Government agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities potentially impacted by this proposed SFAR represent part 135 air tour operators with nine or less aircraft owned, but not necessarily operated. Based on FAA Order 2100.14A, the FAA's annualized threshold of significant economic impact for each of these small entities is estimated to be $60,000 (in 1990 dollars.) As a result of adopting the DOI assessment of negligible cost of compliance to the small entities operating over the Grand Canyon, which was published in the cost-benefit analysis for SFAR 50–2 on June 2, 1988, the FAA concludes that this same proposal would not have a substantial economic impact on a substantial number of small entities.

Federalism Determination

The amendment proposed herein will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice will be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposed amendment is not major under Executive Order 12291. In addition, the FAA certified that this proposed amendment, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed amendment is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commercial operators, Grand Canyon.

The Proposed Special Federal Aviation Regulation

For the reasons set out above, the Federal Aviation Administration proposes to amend 14 CFR parts 91 and 135 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

3. Section 9 of Special Federal Aviation Regulation No. 50–2 is revised to read as follows:

Special Federal Aviation Regulation No. 50–2 Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9. Termination date. This Special Federal Aviation Regulation expires on June 15, 1995.

* * * * *

Issued in Washington, DC on January 29, 1992.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 92-2623 Filed 2-3-92; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
February 4, 1992

Part XII

National Archives and Records Administration

Self-Service Videotape Copying; Notice

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Self-Service Videotape Copying

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: On November 19, 1991 at 56 FR 58311, NARA issued a final rule that prohibited researchers from bringing their personal video copying equipment into the Motion Picture, Sound, and Video Research Room. To accommodate researchers who formerly used personal equipment to make reference copies of our film and video holdings, NARA is planning to offer self-service videotape copying of nonrestricted film and video holdings in a special research room.

A description of the proposed service is available to interested persons by calling the NARA contact shown in this notice. NARA welcomes comments on the proposal and will take such comments into consideration in the development of operating procedures for the service.

DATES: Comments on the proposal should be received by March 20, 1992 to be considered.

ADDRESSES: Written comments should be sent to Director, Policy and Program Analysis Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the description of the proposed service or for further information, please call John Constance or Mary Ann Palmos on (202) 501-5110.

Dated: February 3, 1992.

Don W. Wilson,

Archivest of the United States.

[FR Doc. 92-2869 Filed 2-3-92; 10:43 am]

BILLING CODE 7515-01-M

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.