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Vol. 53 No. 39

federal register

Monday
February 29, 1988

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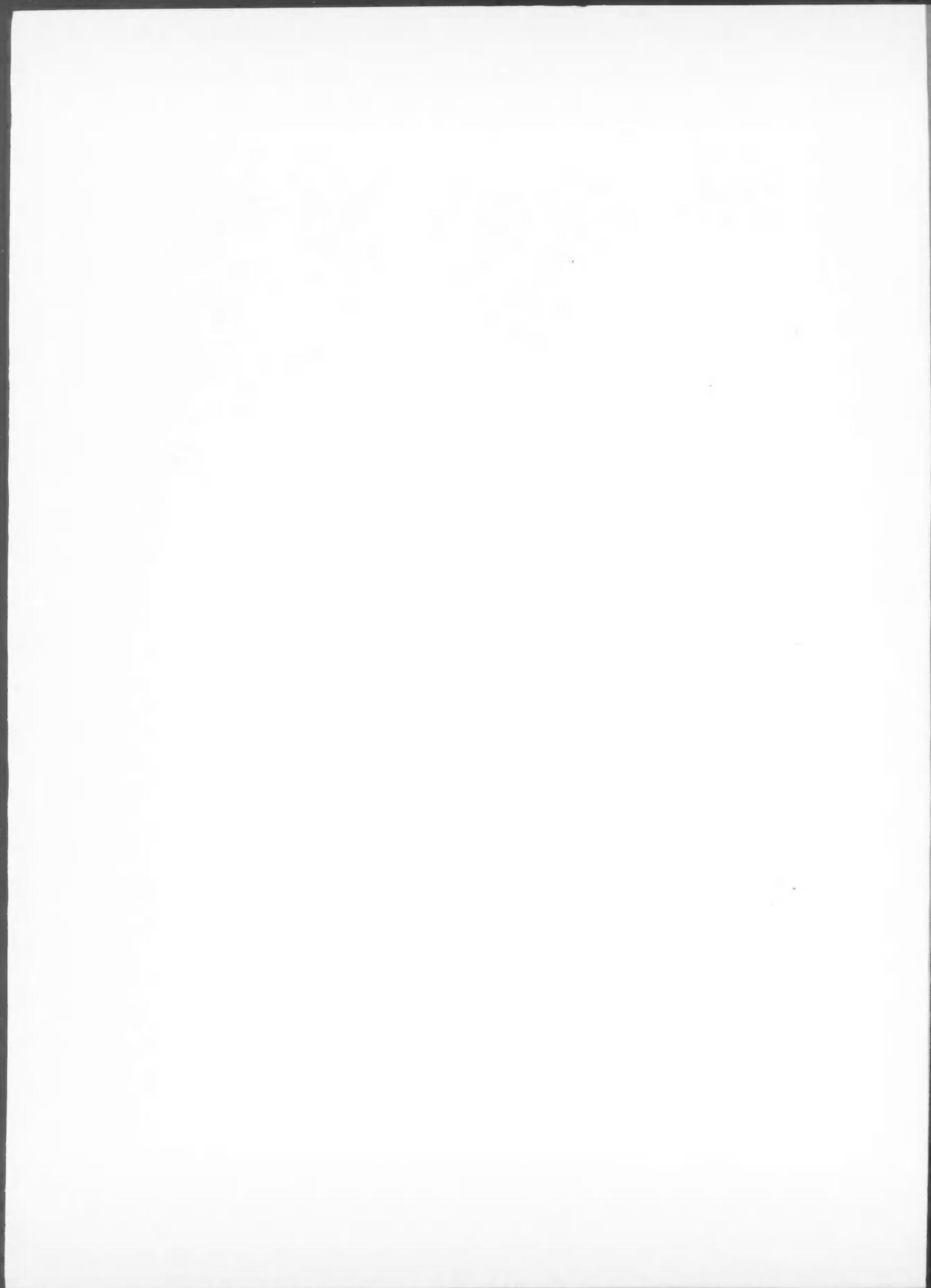

2-29-88
Vol. 53 No. 39
Pages 5969-6114

federal register

Monday
February 29, 1988

Briefings on How To Use the Federal Register—
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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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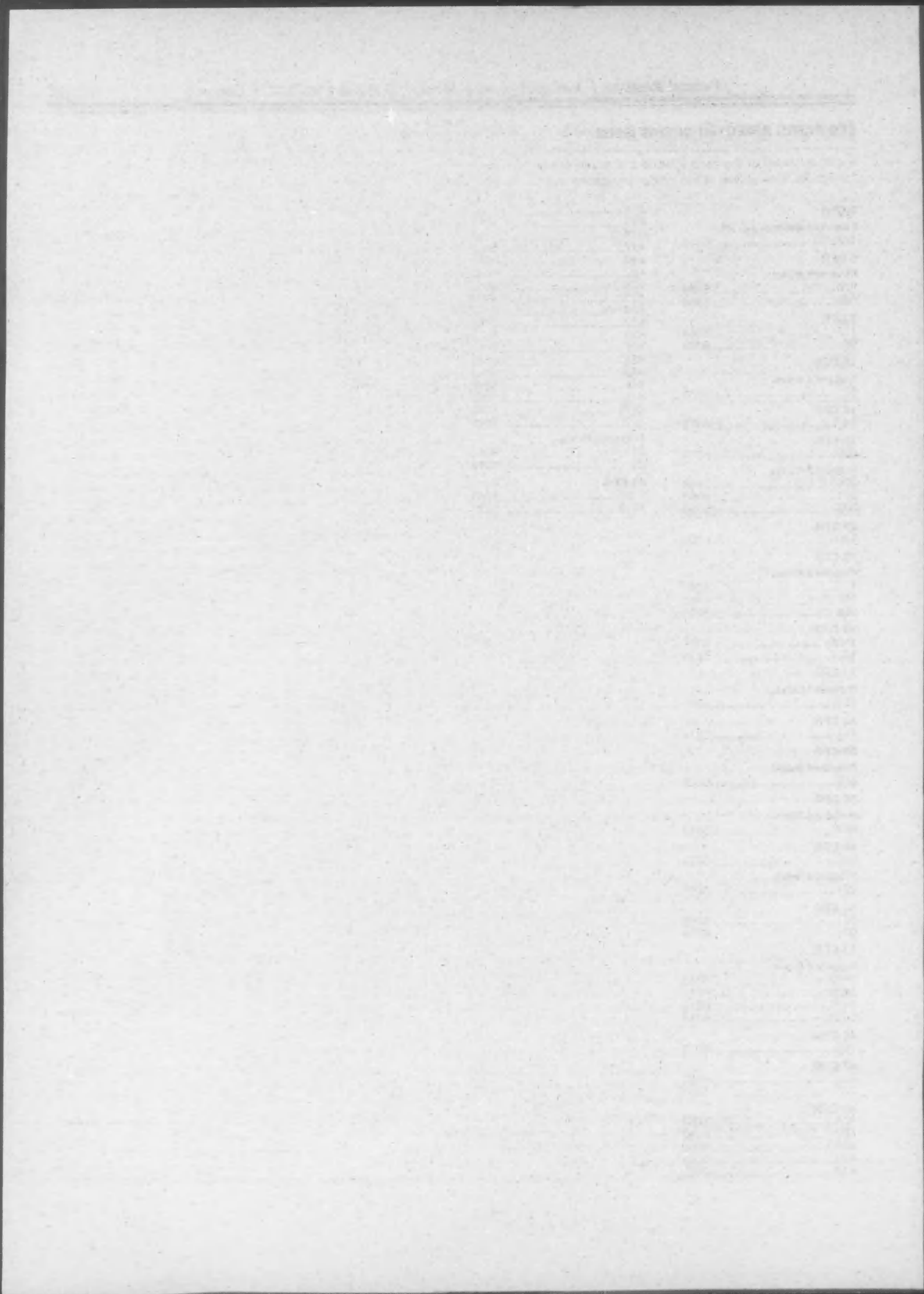

Rules and Regulations

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) hereby amends 7 CFR Part 1, Subpart G, § 1.123 by adding three systems of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). The existing list of exempt systems of records is also amended to reflect changes in the numbering and names of those systems. Notice of the amendments, inviting public comments, was published as a proposed rule in the **Federal Register** on September 30, 1987, at 52 FR 36580. No public comments were received.

DATE: The amendments become effective March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Milton Sloane, Special Programs Division, Office of Information, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-8164.

SUPPLEMENTARY INFORMATION: These amendments are necessary to provide for exemption of a Privacy Act system of records maintained by the Agricultural Marketing Service (AMS) entitled "AMS Office of Compliance Review Cases, USDA/AMS-11" and for the exemption of two existing systems of records. The two systems are "Administrative proceedings brought by the Department, court cases in which the Government is plaintiff and the court cases in which the Government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGC-43" and "Investigations Undertaken by the Government Pursuant to the United States Grain Standards Act of 1976, as amended, or the Agricultural Marketing Act of 1946, as amended, USDA/FGIS-2."

A separate notice regarding USDA/AMS-11 was published in the **Federal Register** on October 22, 1987, at 52 FR 39554. That system contains detailed information pertaining to cases in which the AMS Office of Compliance is involved. The authority for maintenance of that system is found in the legislation listed in 7 CFR Part 2, Subpart F, § 2.50. The legislation enumerated in that section authorizes AMS to be responsible for compliance activities pertaining to the various programs administered by AMS.

System notices for USDA/OGC-43 and USDA/FGIS-2 already have been published, but they inadvertently were left off the list of exempt systems. USDA/OGC-43 contains information from investigations conducted pursuant to 7 U.S.C. 243, which authorizes both the investigation of storage, warehousing, weighing, classifying, and certification of agricultural products, and the inspection of warehouses. In accordance with 7 U.S.C. 71, *et seq.*, and 7 U.S.C. 1621, *et seq.*, USDA/FGIS-2 consists of investigatory material pertaining to alleged violations of the subject Acts. They, therefore, contain "investigatory material compiled for law enforcement purposes * * *" and may be exempted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2).

Amendments to the existing list of systems maintained by USDA are necessary to reflect changes made in the numbering of systems, the restructuring of some systems, and the transfer of a system. The system formerly entitled "Court cases brought by the Government pursuant to either the Naval Stores Act, the Honeybee Act, the Virus-Serum-Toxin Act or the Tobacco Seed and Plant Exportation Act, USDA/OGC-33" has been split into two systems, both of which are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) as follows: "Court cases brought by the Government pursuant to either the Naval Stores Act or the Tobacco Seed and Plant Exportation Act, USDA/OGC-29" and "Cases by and against the Department under the Virus-Serum-Toxin Act, USDA/OGC-44."

A system formerly maintained by the Animal and Plant Health Inspection Service and entitled, "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industrial Compliance Records System, USDA/APHIS-1," has been transferred to the Food Safety and Inspection Service and is entitled "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS-1."

This rule has been reviewed under the Secretary's Memorandum 1512-1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1.

Privacy.

For the reasons set out in the preamble, 7 CFR, Subtitle A, Part 1, Subpart G, § 1.123 of the Code of Federal Regulations is amended as set forth below:

PART 1—[AMENDED]

1. The authority citation for Part 1, Subpart G, continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Part 1, Subpart G—Privacy Act Regulations, § 1.123 is amended by revising the list of exempt systems to read as follows:

§ 1.123 Specific exemptions.

* * * * *

Agricultural Marketing Service

AMS Office of Compliance Review Cases, USDA/AMS-11.

Agricultural Stabilization and Conservation Service

EEO Complaints and Discrimination Investigation Reports, USDA/ASCS-12.

Investigation and Audit Reports, USDA/ASCS-18.

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Farmers Home Administration

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Federal Grain Inspection Service

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Community Development Division

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Food and Nutrition Division

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Foreign Agriculture and Commodity Stabilization Division

Agricultural Stabilization and Conservation Service (ASCS), Foreign Agricultural Service (FAS), and Commodity Credit Corporation Cases, USDA/OGC-15.

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Administrative proceedings brought by the Department, court cases in which the government is plaintiff and court cases in which the government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGC-43.

Marketing Division

Administrative proceedings brought by the Department pursuant to the Plant Variety Protection Act, the Federal Seed Act, or the Agricultural Marketing Act of 1946, USDA/OGC-18.

Cases brought by the Government pursuant to the Cotton Future provisions of the Internal Revenue Code of 1954, USDA/OGC-22.

Court cases brought by the Government pursuant to either the Agricultural Marketing Act of 1946 or the Tobacco Inspection Act, USDA/OGC-24.

Court cases brought by the Government pursuant to either the Agricultural Marketing Agreement Act of 1937, as amended, or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act, USDA/OGC-25.

Court cases brought by the Government pursuant to either the Cotton Research and Promotion Act, Potato Research and Promotion Act, the Egg Research and Consumer Information Act, USDA/OGC-26.

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Packers and Stockyards Division

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Office of Inspector General

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Investigative Files and Subject/Title Index, USDA/OIG-3.

Office of the Secretary

Non-Career Applicant File, USDA/SEC-1.

Done this 22 day of February 1988, at Washington, D.C.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-4225 Filed 2-26-88; 8:45 am]

BILLING CODE 3410-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published in the **Federal Register** on December 23, 1987 by DOE.

EFFECTIVE DATE: The revised Table 1 is effective February 29, 1988. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-326-3035 or Neil J. Blickman, 202-326-3038, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The Appliance Labeling Rule was subsequently amended on December 10, 1987 (52 FR 46888) to add a new category of appliances to the Rule—central air conditioners (which includes heat pumps). As a result, the rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed

by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981 in the **Federal Register** (46 FR 2974).

On December 23, 1987, DOE published (52 FR 48563) the most recent figures for representative average unit energy costs. Consequently, Table 1 is being updated to reflect these latest cost figures. Accordingly, Table 1 is revised to read as set forth below.

Mandatory Use of Revised Cost Figures

The dates when use of the figures in the Revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1988 Submissions of Data Under § 305.8 of the Commission's Rule: The new cost figures must be used in all 1988 submissions.

For Labeling and Advertising of Products Under the Commission's Rule: Based on 1988 submissions using the 1988 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1988 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the *Register*.

Advertising of Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, and space heaters) must use the 1988 representative average unit costs for energy in all representatives effective May 31, 1988.

List of Subjects in 16 CFR Part 305

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

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

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

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1988)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu[1]
Electricity	8.04¢/kWh[2,3].	$0.0804/kWh.	$23.56
Natural Gas	56.2¢/therm[4] or $5.80/MCF[5,6].	0.00000562/Btu.	5.62
No. 2 heating oil.	$0.83/gallon[7].	0.00000598/Btu.	5.98
Propane	70.0¢/gallon[8].	0.00000769/Btu.	7.69

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,032 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu.

* * * * *

Emily H. Rock,

Secretary.

[FR Doc. 88–4244 Filed 2–26–88; 8:45 am]

BILLING CODE 6750-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1625 and 1627

Removal of Regulatory Language Made Obsolete by Amendments to the Age Discrimination in Employment Act of 1967 (ADEA) and Reenactment of the Exemption for Tenured Faculty

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulations.

SUMMARY: This document amends and/or revises the Commission's ADEA regulations to reflect certain of the 1986 amendments to the Age Discrimination in Employment Act of 1967 (ADEA). Specifically, these amendments revise or remove language made obsolete by the lifting of the Act's age 70 cap and address the temporary reenactment of the exemption for employees serving under contracts of unlimited tenure. These changes in the law generally became effective on January 1, 1987 (exceptions may apply in situations involving collective bargaining agreements).

Additionally, this document removes a discussion of health insurance benefits made largely obsolete by ADEA.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James E. Cooks, Attorney Advisor, ADEA Division Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507, (202) 634–6423.

SUPPLEMENTARY INFORMATION: Section 12(a) of the ADEA, 29 U.S.C. 631(a), previously provided coverage for individuals employed or seeking employment who were at least 40 years old but less than 70 (there has not been an upper age limit in the Federal sector since 1978). However, in October of 1986, sec. 12 of the ADEA was amended by the Age Discrimination in Employment Amendments of 1986, Pub. L. 99–592, 100 Stat. 3342 (1986), which, among other things removed the age 70 limit. Accordingly, unless a specific exemption applies, an employer can no longer force retirement or otherwise discriminate on the basis of age against individuals who have attained the age of 70 or above.

The removal of the age 70 limit became effective on January 1, 1987 except where there is a collective bargaining agreement containing a conflicting provision that was in effect on June 30, 1986, and which terminates

after January 1, 1987. In that case, the amendment is effective on the termination of the agreement or January 1, 1990, whichever occurs first.

Additionally, the 1986 amendments reenacted, on a temporary basis, the exemption permitting compulsory retirement of employees serving under contracts of unlimited tenure. Section 6, Pub. L. No. 99-592.

The ADEA was first amended in 1978 to allow the compulsory or mandatory retirement of tenured faculty at age 65. That exception to the Act's age 40-69 coverage was repealed in July of 1982. However, section 12(d) of the ADEA, 29 U.S.C. 631(d), is now reenacted and revised to temporarily permit compulsory retirement of tenured faculty at institutions of higher education (as defined by section 1201(a) of the Higher Education Act of 1965) who have attained 70 years of age.

The Commission wishes to emphasize that the revisions made by this rulemaking are "housekeeping" changes and are intended solely to eliminate obsolete references in the regulations to the termination of the Act's coverage at age 70, to revise and reimplement its interpretation on the exemption for employees serving under contracts of unlimited tenure, and to remove a discussion of health insurance benefits made obsolete by section 4(g) of the ADEA. Substantive regulatory guidance involving other areas of the ADEA, e.g., the law enforcement officer and firefighter exemption, pension contributions and accruals, costs and benefits under employee benefit plans (now at 29 CFR 1625.10), is currently under study. Guidance regarding the effect of the lifting of the age 70 cap on specific parts of § 1625.10, e.g., discussion of life insurance and long-term disability benefits will be developed in due course.

The Commission is also taking this opportunity to remove from its interpretations the language now contained in § 1625.10(f)(1)(ii), 29 CFR 1625.10(f)(1)(ii), addressing health insurance. Subsequent to the publication of § 1625.10(f)(1)(ii), Congress enacted section 4(g) of the ADEA, 29 U.S.C. 623(g), providing that employers must offer any employee 65 or older, and any employee's spouse aged 65 or older, coverage under any group health plan under the same conditions as offered to any employee, and the spouse of such employee, under age 65. *See* section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982 adding ADEA's section 4(g), since amended by section 2301(b) of the Deficit Reduction Act of 1984, Pub. L. 98-369. As previously announced by the Commission, the explicit language of section 4(g), as well as the legislative intent behind its adoption, are clearly at odds with the provisions of § 1625.10(f)(1)(ii) and can no longer be relied on. *See* 50 FR 50614 (December 11, 1985). Thus, in addition to provisions made obsolete by Pub. L. 99-592, the Commission is removing § 1625.10(f)(1)(ii) from its interpretative regulations.

The Commission hereby provides notice that it is amending and/or revising its regulations to reflect the removal of the ADEA's age 70 limit, and the temporary renewal of the exemption permitting compulsory retirement of employees serving under contracts of unlimited tenure, and the Act's treatment of group health plans under section 4(g).

Impact Analysis—Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 of Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Similarly, the Chairman of the EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this amendment will not result in a significant impact on a substantial number of small employers.

List of Subjects

29 CFR Part 1625

Age Discrimination In Employment Act.

29 CFR Part 1627

Equal employment opportunity, Reporting and recordkeeping requirements.

For reasons set out in the preamble, Title 29, Chapter XIV, Parts 1625 and 1627 of the Code of Federal Regulations, are amended as set forth below.

PART 1625—[AMENDED]

1. The authority citation for Part 1625 is revised to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10-68; Secretary's Order No. 11-68; Sec. 12, 29 U.S.C. 631, Pub. L. No. 99-592, 100 Stat. 3342; Sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Section 1625.2 is amended by revising the first sentence in paragraphs (a) and (b) to read as follows:

§ 1625.2 Discrimination between individuals protected by the Act.

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over. * * *

(b) The extension of additional benefits, such as increased severance pay, to older employees within the protected group may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. * * *

3. Section 1625.5 is amended by revising the third sentence to read as follows:

§ 1625.5 Employment applications.

* * * That the purpose is not one proscribed by the statute should be made known to the applicant, either by a reference on the application form to the statutory prohibition in language to the following effect:

The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age," or by other means.

* * *

4. Section 1625.8 is amended by revising the introductory text to read as follows:

§ 1625.8 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that * * * It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act except that no such seniority system * * * shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual. * * *

(In the case of employees covered by a collective bargaining agreement which was in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act), the provisions of this section with respect to involuntary retirement of individuals between the ages of 65 and 70 were effective upon the termination of the collective bargaining agreement or January 1,

1980, whichever occurred first.) (See also § 1625.9 (d), (e), and (f).)

* * * * *

5. Section 1625.9 is amended by revising paragraph (c), removing paragraphs (d) and (e), and redesignating paragraph (f) as new paragraph (d) and revising it to read as follows:

§ 1625.9 Prohibition of involuntary retirement.

* * * * *

(c)(1) The amendment protects all individuals covered by section 12(a) of the Act. Section 12(a) was amended in October of 1986 by the Age Discrimination in Employment Amendments of 1986, Pub. L. 99-592, 100 Stat. 3342 (1986), which removed the age 70 limit. Section 12(a) provides that the Act's prohibitions shall be limited to individuals who are at least forty years of age. Accordingly, unless a specific exemption applies, an employer can no longer force retirement or otherwise discriminate on the basis of age against an individual because (s)he is 70 or older.

(2) The amendment to section 12(a) of the Act became effective on January 1, 1987, except with respect to any employee subject to a collective bargaining agreement containing a provision that would be superseded by such amendment that was in effect on June 30, 1986, and which terminates after January 1, 1987. In that case, the amendment is effective on the termination of the agreement or January 1, 1990, whichever comes first.

(d) Neither section 4(f)(2) nor any other provision of the Act makes it unlawful for a plan to permit individuals to elect early retirement at a specified age at their own option. Nor is it unlawful for a plan to require early retirement for reasons other than age.

6. Section 1625.10 is amended by revising the last sentence in paragraph (f)(1)(i), removing the existing (f)(1)(ii), redesignating (f)(1)(iii) as (f)(1)(ii), revising the introductory text of (f)(1)(ii), revising paragraph (f)(1)(ii)(B), and by redesignating (f)(1)(iv) as (f)(1)(iii) as follows:

§ 1625.10 Costs and benefits under employee benefit plans.

* * * * *

(f) * * *

(1) * * *

(i) * * * However, it is not unlawful for life insurance coverage to cease upon separation from service.

(ii) Long-term disability. Under a benefit-by-benefit approach, where employees who are disabled at younger ages are entitled to long-term disability benefits, there is no cost—based justification for denying such benefits altogether, on the basis of age, to employees who are disabled at older ages. It is not unlawful to cut off long-term disability benefits and coverage on the basis of some non-age factor, such as recovery from disability. Reductions on the basis of age in the level or duration of benefits available for disability are justifiable only on the basis of age-related cost considerations as set forth elsewhere in this section. An employer which provides long-term disability coverage to all employees may avoid any increases in the cost to it that such coverage for older employees would entail by reducing the level of benefits available to older employees. An employer may also avoid such cost increases by reducing the duration of benefits available to employees who become disabled at older ages, without reducing the level of benefits. In this connection, the Department would not assert a violation where the level of benefits is not reduced and the duration of benefits is reduced in the following manner:

* * * * *

(B) With respect to disabilities which occur after age 60, benefits cease 5 years after disablement. Cost data may be produced to support other patterns of reduction as well.

* * * * *

7. Section 1625.11 is amended by revising paragraphs (a)(1), (a)(2) and the first sentence of (g) to read as follows:

§ 1625.11 Exemption for employees serving under a contract of unlimited tenure.

(a)(1) Section 12(d) of the Act, added by the 1986 amendments, provides:

> Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965).

(2) This exemption from the Act's protection of covered individuals took effect on January 1, 1987, and is repealed on December 31, 1993 (see section 6 of the Age Discrimination in Employment Act Amendments of 1986, Pub. L. No. 99-592, 100 Stat. 3342). The Equal Employment Opportunity Commission is required to enter into an agreement with the National Academy of Sciences, for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

* * * * *

(g) An employee within the exemption can lawfully be forced to retire on account of age at age 70 (see (a)(1) above). * * *

8. Section 1625.12(a) is revised as follows:

§ 1625.12 Exemption for bona fide executive or high policymaking employees.

(a) Section 12(c)(1) of the Act, added by the 1978 amendments and as amended in 1984 and 1986, provides: "Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or higher policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee which equals, in the aggregate, at least $44,000."

* * * * *

PART 1627—[AMENDED]

1. The authority citation for Part 1627 is revised 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. No. 99-592, 100 Stat. 3342; Sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Section 1627.17 is amended by revising paragraph (a) as follows:

§ 1627.17 Calculating the amount of qualified retirement benefits for purposes of the exemption for bona fide executives or high policymaking employees.

(a) Section 12(c)(1) of the Act, added by the 1978 amendments and amended in 1984 and 1986, provides: "Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000." The Commission's interpretative statements regarding this exemption are set forth in section 1625 of this chapter.

* * * * *

Signed this 4th Day of February 1988, at Washington, DC For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507.

[FR Doc. 88-4219 Filed 2-26-88; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-87-12]

Drawbridge Operation Regulations; Bayou Black, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development, the Coast Guard is changing the regulation governing the operation of the lift span bridge on U.S. Highway 90 over Bayou Black, mile 7.0 near Gibson, Terrebonne Parish, Louisiana, by permitting the draw to remain closed to navigation at all times. This change is being made because only small pleasure boats, which are not affected by the closed drawspan, routinely pass the site. The bridge was originally built in 1919 and moved to its present location in 1946. The entire substructure is of treated timber bents over 40 years old. The total cost to bring the bridge up to current structural, mechanical and electrical operational standards would be $695,000. In view of the cost and the absence of significant navigation on the waterway, this action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of small boat traffic.

EFFECTIVE DATE: This regulation becomes effective on March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, Telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 25 November 1987, the Coast Guard published a proposed rule (52 FR 45203) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 3 December 1987. In each notice interested parties were given until 11 January 1988 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Three letters of comment were received about the proposed rule change. The National Marine Fisheries Service and the United States Department of Interior, Fish and Wildlife Service offered no objection to the proposed rule. The other respondent inquired about the possibility of a study being made to determine the effect of the proposed action on possible future growth of the Gibson community. The Coast Guard has carefully considered the comments. The bridge cannot now be safely operated for the passage of navigation; available bridge opening data do not indicate a need to maintain the draw in an operable condition; and, there is no known potential for sizeable future growth of the Gibson community. Therefore, in the absence of significant objection to the proposal as published in (52 FR 45203) on 25 November 1987, the final rule is unchanged from the proposed rule.

Economic Assessment and Certification

This regulation is considered to be non-major under executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the period from 1979 to present the bridge opened an average of only 6.2 times per year for passage of navigation, consisting primarily of one privately owned houseboat. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.425 is revised to read as follows:

§ 117.425 Black Bayou

The draws of the Terrebonne Parish Police Jury bridges, miles 7.5, 15.0, 18.7 and 22.5, between Gibson and Houma, shall open on signal if at least 24 hours notice is given. The draw of the US90 bridge, mile 7.0 near Gibson, need not be opened for the passage of vessels.

Date: February 4, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88-4248 Filed 2-26-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-034-FRL-3329-1]

Approval and Promulgation of Implementation Plans, North Carolina; Miscellaneous Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 14, 1987, the North Carolina Division of Environmental Management submitted regulatory amendments for incorporation into their federally approved State Implementation Plan (SIP). The changes were proposed for approval on October 5, 1987 (52 FR 37175). The comment period ended November 4, 1987, and no comments were received. This notice finalizes the approval of the changes, making them part of the federally approved SIP.

DATES: This rule will become effective on March 30, 1988.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

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

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

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the Region IV EPA Air

Programs Branch, at the above address and the following phone number: (404) 347-2864 or (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On April 14, 1987, the State of North Carolina submitted eight revisions to their State Implementation Plan (SIP). The revisions were adopted by the Environmental Management Commission on April 9, 1987, after a public hearing held on January 20, 1987. Changes to three regulations, 2D.0524—New Source Performance Standards, 2D.0525—National Emission Standards for Hazardous Air Pollutants, and 2D.0528—Total Reduced Sulfur from Kraft Pulp Mills, are all being processed in separate notices. Amendments to regulations 2D.0103, .0501, .0505, .0533 and 2H.0607 are being approved here. The amendments are described below.

- 2D.0103—Copies of Referenced Federal Regulations. The change in this regulation is to correct the address of the recently moved Winston-Salem regional office.
- 2D.0501—Compliance With Emission Control Standards. The amendments here clarify the ASTM methods used. The State is specifying the years that the ASTM methods were last certified. The State is also replacing ASTM D 270, which has been withdrawn by ASTM, with a sampling method of their own. The new method is at least as restrictive as the old ASTM method. It should be noted that these fuel sampling methods will be the subject of a future SIP revision where the sampling frequency will be specified to ensure the short-term SO_2 emission limits can be adequately checked for compliance.
- 2D.0505—Control of Particulates from Incinerators. The proposed changes to this regulation would allow an operator to choose a new emission limit of 0.08 grains per dry standard cubic foot, which is the federal new source performance standard. The current federally approved limit is a pounds per hour standard. If this option is chosen, a demonstration that the use of the new limit will not cause an ambient air quality standard violation will be required. The option of using the new standard represents a relaxation for three sources in the State. EPA has indicated to the State, and the State has agreed, that any new permits associated with the action will be submitted as SIP revisions. The three sources for which this option represents a relaxation are Rocky Mount Waste Water Treatment Plant, Mitchell Systems, and City of Greensboro, North Buffalo Plant.

On July 1, 1987 (52 FR 24646) EPA promulgated new particulate National Ambient Air Quality Standards (NAAQS) to regulate particles that are 10 micrometers or less in diameter. These PM_{10} standards became effective July 31 and replaced the total suspended particulate standards. The air quality demonstrations required prior to adopting the proposed 0.08 grains per dry standard cubic foot limit will need to include demonstrations that the new particulate standards will not be violated.

- 2D.0533—Stack Height. The definition of emission limitation is being added to this rule. EPA, when proposing to approve the original North Carolina stack height regulation, requested that this be added. North Carolina is complying with that request.
- 2H.0607—Copies of Referenced Documents. Here as in 2D.0103 the address of the Winston-Salem regional office is being changed.

Final Action

EPA is approving the above regulation changes which were submitted to EPA April 14, 1987.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed with the United States Court of Appeals for the appropriate circuit by April 29, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter.

Note.—Incorporation by Reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

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

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

2. Section 52.1770 is amended by adding paragraph (c)(56) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(56) Revisions to miscellaneous regulations of Title 15 of the North Carolina Administrative Code (15 NCAC) were submitted April 14, 1987.

(i) Incorporation by reference.

(A) Amendments to the following regulations (15 NCAC) were adopted by the North Carolina Environmental Management Commission on April 9, 1987:

2D.0103—Copies of Referenced Federal Regulations, paragraph (a)(2).
2D.0501—Compliance with Emission Control Standards, paragraph (c)(4).
2D.0505—Control of Particulates from Incinerators, paragraph (b).
2D.0533—Stack Height, paragraph (a)(7).
2H.0607—Copies of Referenced Documents, (a) introductory text and paragraph (a)(2).

(B) Letter of April 14, 1987, to EPA from the State of North Carolina Department of Natural Resources and Community Development.

(ii) Other material—none.

[FR Doc. 88-3307 Filed 2-26-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1301

Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to help safeguard Head Start children from child abuse and neglect. The rule requires that local Head Start program personnel policies on staff recruitment and selection require a declaration from all prospective employees prior to employment. The declaration must list all: (1) Pending and prior criminal arrests and charges related to child sexual abuse and their disposition; (2) convictions related to other forms of child abuse and/or neglect; and (3) convictions of violent felonies.

The personnel policies must specify that, prior to employment, individuals must be interviewed and their personal and employment references must be checked. The policies also must include a probationary period for all new employees that allows time to monitor

employee performance and examine the results of national or State criminal record checks if conducted. Finally, prior to permanent employment, a national and State criminal record check must be made, to the extent required by State law or administrative requirements.

EFFECTIVE DATE: This rule is effective March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth Strong Ussery, Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 755-7782.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. In fiscal year (FY) 1986, Head Start served 451,732 children through a network of more than 1,305 grantees and more than 670 delegate agencies which have an approved written agreement with the grantees to operate Head Start programs.

While Head Start is targeted primarily on children whose families have incomes at or below the proverty line or are eligible for public assistance, the Administration for Children, Youth and Families' policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. Head Start also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

II. Rulemaking History

Historically, Head Start has been concerned with preventing child abuse and neglect. On January 26, 1977, ACYF published a policy instruction for Head Start programs entitled "Indentification and Reporting of Child Abuse and Neglect." A brochure entitled "Child Sexual Abuse Prevention—Tips to Parents" was developed in 1984. It was mailed in 1985 to all Head Start programs, and also received wide public distribution. In addition, the existing structure of Head Start programs helps prevent child abuse and neglect in Head Start centers through emphasizing parental involvement with parental visits to the Head Start center, parent education, careful supervision of staff and continuing staff training, as well as through the use of the social services component to assist Head Start families in locating resources and providing other family support.

Finally, on April 3, 1985, the Department published a Notice of Proposed Rulemaking (NPRM) that proposed changes in Head Start personnel policies (50 FR 13253) in order to emphasize the importance of careful screening of prospective employees in Head Start programs. The following additions to the regulations at 45 CFR 1301.31 were proposed:

1. Head Start personnel policies on recruitment and selection of staff must require a declaration from all prospective employees listing:

—All pending and prior criminal arrests and charges related to child abuse, neglect and/or child sexual abuse and their disposition; and

—All felony convictions and current criminal charges.

The declaration may exclude:

—Traffic fines of $50.00 or less;

—Any offense, other than an offense related to child abuse and/or child sexual abuse, or a violent felony committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

—Any conviction the record of which has been expunged under Federal or State law; and

—Any conviction set aside under the Federal Youth and Corrections Act or similar State authority.

2. The policies governing recruitment and selection of staff must provide that before an employee is hired on a permanent basis, the grantee or delegate agency will have conducted:

—An interview of the applicant;

—A check of personal and employment references to be provided by the applicant, including verification of the accuracy of the information provided by the applicant; and

—A check to determine if the applicant has a criminal record at the State or national level of crimes related to child abuse and neglect, to the extent permitted by State law.

3. The policies must require that the grantee or delegate agency will:

—Explicitly advise every employee and volunteer that sexual activity with children is illegal; and

—Develop a plan for responding to suspected or reported child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program.

Interested persons and organizations were invited to submit comments on or before June 3, 1985. The Department received 80 letters from individuals, advocacy organizations, national and local service organizations, and State agencies, including 58 Head Start agencies.

Below is a summary of the comments received and a discussion of the changes made in the final rule in response to these comments.

III. Provisions of the Final Rule

In general, commenters supported the purpose of the NPRM although many stated that new regulations were unnecessary because there had not been any known cases of child abuse and neglect associated with Head Start programs. Many Head Start agencies also reported that procedures for background and employment history checks had long been a part of their standard procedures.

A number of commenters, however, misunderstood the NPRM to require national and State criminal record checks for all Head Start programs in all States. This was not our intent and we have discussed it below. A number of other commenters objected to national criminal record checks based on the findings in a report by the Office of the Inspector General that such record checks have limited effectiveness.

In summary, we made the following changes in the final rule:

—The language regarding criminal record checks is clarified to require such checks only if required by State law or administrative requirement.

—The requirement in the NPRM for Head Start programs to advise every employee and volunteer that sexual abuse of children is illegal has been dropped.

—The requirements for declaration of arrests have been limited to declarations of arrests for child sexual abuse.

—Proposed requirements for declaration of all felony convictions and current criminal charges have been changed to require declaration of all convictions of violent felonies.

—We have added a requirement that violent felonies committed before age 18 also must be declared.

—A requirement for a probationary period for all new employees has been added.

Below is a section by section discussion of the comments and charges made.

Section 1301.31 (a) and (b)

Although we proposed no changes to paragraphs (a) and (b) and we received no comments on these paragraphs, we are taking this opportunity to add the words "and implement" to the first sentence of paragraph (a). The sentence will now read, "Head Start agencies must establish and implement personnel policies for themselves and their delegate agencies." This addition is made to remove any ambiguity that may exist about the intent of this section.

Section 1301.31(c)

The NPRM proposed in § 1301.31(c)(1) that the personnel policies require prospective employees to sign a declaration listing:

(1) All pending and prior criminal arrests and charges and their disposition related to child abuse, neglect and/or child sexual abuse; and

(2) All felony convictions and current criminal charges.

Many of the commenters opposed the proposal to require a declaration of current criminal charges (as opposed to convictions) stating their belief that arrests are often arbitrary and unfounded, and such a declaration is unfair. We agree in part and, therefore, the declaration of current criminal charges has been dropped except for criminal charges related to child sexual abuse. These have been retained because convictions related to child sexual abuse may be difficult to obtain. We also have retained requirements for declaration of all convictions related to other forms of child abuse and neglect and all convictions of violent felonies.

One commenter suggested that we also require information on pending and prior criminal arrests, charges and their disposition related to spouse abuse and other domestic violence. We do not believe it is necessary to expand the declaration to include such additional information that may not be directly related to employment in the Head Start program.

A recommendation was made by one commenter that we also ask for a declaration of civil offenses. As our intent was to prevent child abuse we do not believe it is necessary to include this requirement in the rule. Grantees have the discretion to seek additional appropriate information from prospective employees as they see fit.

The NPRM did not address the matter of whether current employees or volunteers be required to sign the declaration. However, some commenters proposed that current staff and volunteers be included in this requirement and others suggested they be excluded. The OHDS will allow each grantee to determine whether current staff and volunteers must sign the declaration required of new employees by this rule.

The purpose of the employee declaration form is to help provide programs with important information about prospective employees so programs can avoid hiring people that they believe should not be caring for children. Programs must make their own specific determinations of how to use the information obtained. Information about arrests, charges and convictions per se do not necessarily prohibit the hiring of a person by a Head Start program. Such information must be evaluated to consider the nature and gravity of the offense(s), the time that has passed since the conviction and/or completion of the sentence, as well as the nature of the job held or sought.

Section 1301.31(d)

Section 1301.31(c)(2) of the NPRM defined specifically what may be excluded from the employee declaration. However, in paragraph (d)(2) an exception requires the prospective employee to declare any offense related to child abuse and/or child sexual abuse, committed before the prospective employee's 18th birthday, which was finally adjudicated in a juvenile court or under a youth offender law. One commenter recommended that prospective employees also be required to declare violent felonies committed before age 18. They believe such information is as important as information about child abuse offenses. We agree that such information is needed in order to evaluate a prospective employee and have revised the regulation accordingly.

Another commenter mentioned that when juvenile records are sealed prior to the 18th birthday, the offense would not be known and that exclusion, therefore, would be unnecessary. Retaining the exclusion serves to make this clear to prospective employees.

Section 1301.31(e)

The NPRM proposed in § 1301.31(d) that grantees must have policies that require an interview of the applicant and a check of his/her personal and employment references prior to hiring new staff on a permanent basis.

The commenters were unanimous in their support for this requirement. Interviews and reference checks appear to be standard procedures according to comments received from many Head Start grantees. Because of the addition of paragraph (f) regarding a required probationary period, discussed below, the reference in paragraph (e) has been changed from "employees hired on a permanent basis" to employees "hired for a probationary period."

Section 1301.31(f)

We have added paragraph (f) which requires that all new employees serve a probationary period. This probationary period for new employees allows time for Head Start administrators and staff to monitor employee performance and evaluate the information obtained as a result of the criminal record checks.

Many Head Start and other day care programs already utilize probationary periods and many experts in the child care and child abuse prevention field consider a probationary period for new employees to be an important step in insuring the safety of children.

Section 1301.31(g)

The NPRM proposed, in § 1301.31(d)(3), that grantees or delegate agencies must, to the extent permitted by State law, conduct a criminal record check at the State or national level of crimes related to child abuse and neglect. A small number of respondents supported the requirements for State and national record checks, particularly from States that already have mandatory laws requiring such criminal record checks. Most commenters, however, misunderstood the language of the NPRM to require State and national criminal record checks for all prospective employees of Head Start. They objected wrongly to such national criminal record checks because of the cost of the record checks, the increased paperwork, alternative and better uses of program funds, perceived potential infringement on civil rights, and the findings of the Department's Office of the Inspector General in a report dated January 1985 on "Preventing Sexual Abuse in Day Care Programs". That report stated that national criminal record checks through the Federal Bureau of Investigation (FBI) have limited effectiveness because child sexual abuse frequently is unreported and the conviction rate for child sexual abuse crimes is low, with only one to fifteen percent of sexual abusers having criminal records.

The Department has clarified the language in paragraph (g) to require

State and national criminal record checks if required by State law or administrative requirement. This means that grantees and delegate agencies must conduct only those criminal record checks required in their States. If State law or administrative requirement requires no such checks, then criminal record checks need not be initiated. If State law or administrative requirement requires only State level checks then the criminal check is mandatory at only the State level. If State law also requires national criminal record checks, the program also must make this check. Typically, the State licensing agency is responsible for working with the State law enforcement agency to access criminal records at the State and national level through the FBI.

Payment of the cost of criminal record checks may be from Federal grant funds or from non-Federal sources. In some States, the agency mandated to license Head Start programs conducts the criminal record check at no charge. In other States, the individual applying for employment may be asked to be responsible for the cost of these criminal record checks.

One commenter suggested that Indian Head Start grantees should be exempt from the requirement for State and national criminal record checks in certain circumstances, such as for an applicant who was born or raised on an Indian Reservation and is well known. Similarly, a commenter also advocated exempting applicants in rural areas if the applicants are long-time residents and are well known in the community. Our response is that this is a matter for State law or regulation.

A few commenters felt that the crimes to be considered during record checks should only include recent and relevant crimes and should be accompanied with information about rehabilitation. We believe programs should have access to all the information covered by the rule.

There were also recommendations that the State child care licensing agency screen and control information and act as the liaison with the State law enforcement agency and thus the FBI for the national criminal record checks. In some States, this is already the case. However, we believe the State should have discretion in making this determination.

One commenter suggested that the Department consider establishing an interagency agreement between headquarters ACYF and the FBI and between regional offices and various State investigative agencies. These agreements would facilitate the national and State criminal checks and waive any costs involved. It was also suggested that a national clearinghouse with a toll-free number be established to assist local programs.

In addition, there were several recommendations that information derived from criminal and employer and personal checks should be kept confidential and should be known only to the official having the authority to hire; and that such information should be made known to the applicant so that he or she may have notice and an opportunity to respond. Commenters provided copies of State laws to illustrate their points. The Department believes that grantees should develop systematic approaches to implementing record checks that will not infringe on individual civil rights, while establishing a system to protect children.

A number of comments indicated that agencies should not adopt an arbitrary policy of refusal to hire solely on the basis of an arrest, a pending criminal charge or a conviction, but that an agency should review the circumstances of each case in order to assess the relevancy of the charge or conviction to the hiring decision. In response to these comments, a statement to this effect has been added at paragraph (g)(2). The hiring decision itself should be based on the qualifications and capability of the applicant to care for and work with children in accordance with the Head Start Performance Standards and each grantee's job requirements.

Section 1301.31(h)

The NPRM proposed in § 1301.31(e)(1) to require grantees or delegate agencies to advise all employees and volunteers that sexual activity with children is illegal. This proposed requirement was taken from the Office of the Inspector General (OIG) report mentioned earlier and was intended as an additional safeguard for Head Start staff and volunteers which could be easily implemented.

However, a number of commenters disagreed with the proposed requirement. This requirement was described as an "administrative nuisance," and "absurd." One commenter stated that "no person intelligent enough to meet other job requirements is so uninformed as to fail to realize that sexual abuse or exploitation of children is illegal." In addition, concern surfaced that informing employees, prospective employees and volunteers that one particular activity is illegal without listing other activities that are illegal, may be confusing and appear to imply that other illegal activities not listed are acceptable.

We agree and, therefore, have deleted this proposal.

The NPRM also proposed, in § 1301.31(e)(2) to require that a plan must be developed for responding to suspected or known child abuse in the program or outside the program. This was not a new requirement but was added to the NPRM in order to underscore its importance, as an integral part of Head Start's concern for the prevention of child abuse and neglect. A number of commenters suggested that more explicit information be provided on what constitutes a "plan to report abuse." A plan to report abuse is now required and has previously been outlined in the Policy Instruction, "Identification and Reporting of Child Abuse and Neglect," published in the January 26, 1977 **Federal Register** (42 FR 4970–4971), and provided to all Head Start programs. This policy is now published as an appendix to § 1301.31, Personnel policies.

This policy, specifically "Section B.1., Staff responsibility," provides information necessary to establish an effective plan for responding to known or suspected child abuse of Head Start children. Additional copies of both these documents may be ordered by writing to ACYF, P.O. Box 1182, Washington, DC 20013. The agency responsible for coordinating child abuse in the State also can be helpful in developing such a plan.

Several requests were received for a definition of child abuse and neglect and child sexual abuse. Grantees and State agencies should refer to their own State laws for a definition of child abuse and neglect.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Nothing in the rule is likely to create substantial costs. The Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small

entities," we prepare an analysis describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. While this regulation would affect small entities (Head Start grantees and delegate agencies), it is not substantial and in many instances the small entities already may meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule.

The Department submitted § 1301.31 of the NPRM to OMB for their review and approval, as it contains information collection requirements. OMB approved the proposed information collection and assigned a control number (0980-0173), which is effective until October 31, 1988.

List of Subjects in 45 CFR Part 1301

Head Start administrative practices and procedures, Education of disadvantaged, Grant programs/social programs, Child abuse and neglect.

For the reasons set forth in the Preamble, 45 CFR Part 1301, Subpart D, is amended as follows:

Part 1301—Head Start Grants Administration

1. The authority citation for Part 1301 is revised to read as follows:

Authority: 42 U.S.C. 9831 et seq.

2. Section 1301.31 is revised as follows:

§ 1301.31 Personnel policies.

(a) Head Start agencies must establish and implement personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits), conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies must be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start grantee and delegate agency employees.

(c) The policies must require that all prospective employees must sign a declaration prior to employment which lists:

(1) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(2) Convictions related to other forms of child abuse and/or neglect; and

(3) All convictions of violent felonies.

(d) The declaration required by paragraph (c) of this section may exclude:

(1) Traffic fines of $50.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday, which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(e) The policies governing recruitment and selection of staff must require that before an employee is hired for a probationary period, the grantee or delegate agency will have conducted:

(1) An interview of the applicant, and

(2) A check of personal and employment references provided by the applicant, including verification of the accurary of the information provided by the applicant.

(f) The policies governing recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of criminal record checks discussed in paragraph (g) of this section.

(g)(1) The personal policies governing recruitment and selection of permanent Head Start staff must require that before staff are hired on a permanent basis, the grantee or delegate agency will have conducted a State and/or national criminal record check if required by State law and/or administrative requirement.

(2) An agency must not adopt an arbitrary policy of refusal to hire solely on the basis of arrest, a pending criminal charge, or a conviction. The agency must review each case in order to assess the relevancy of an arrest charge or conviction to a hiring decision.

(h) Grantees or delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program. The policy was originally promulgated in the January 26, 1977 **Federal Register** (42 FR 4970-4971), "Identification and Reporting of Child Abuse and Neglect," and is published as an appendix to this section.

(Approved by the Office of Management and Budget under control number 0980-0173.)

Appendix A to § 1301.31—Identification and Reporting of Child Abuse and Neglect

The Chapter N-30-356-1 in the Head Start Policy Manual reads as follows:

N-30-356-1-00 Purpose.
10 Scope.
20 Applicable law and policy.
30 Policy.

Authority: 80 Stat. 2304 (42 U.S.C. 2928h).

N-30-356-1-00 *Purpose.* This chapter sets forth the policy governing the prevention, identification, treatment, and reporting of child abuse and neglect in Head Start.

N-30-356-1-10 *Scope.* This policy applies to all Head Start and delegate agencies that operate or propose to operate a Full-Year or Summer Head Start program, or experimental or demonstration programs funded by Head Start. This issuance constitutes Head Start policy and noncompliance with this policy will result in appropriate action by the responsible HEW official.

N-30-356-1-20 *Applicable law and policy.* Section 511 of the Headstart-Follow Through Act, P.L. 93-644, requires Head Start agencies to provide comprehensive health, nutritional educational, social and other services to the children to attain their full potential. The prevention, identification, treatment, and reporting of child abuse and neglect is a part of the social services in Head Start. In order for a State to be eligible for grants under the Child Abuse Prevention and Treatment Act (hereinafter called "the Act"), P.L. 93-247, the State must have a child abuse and neglect reporting law which defines "child abuse and neglect" substantially as that term is defined in the regulations implementing the Act, 45 CFR 1340.1-2(b). That definition is as follows:

A. "(b) 'Child abuse and neglect' means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"1. 'Harm or threatened harm to a child's health or welfare' can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by State law; or neglectful treatment or maltreatment, including the failure to

provide adequate food, clothing, or shelter. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services to be provided to the child, where his health requires it.

"2. 'Child' means a person under the age of eighteen.

"3. 'A person responsible for a child's health or welfare' includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution."

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N-30-356-1-30 *Policy*—A. *General provisions.* 1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.

a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.

b. In those States and localities in which such reporting by pre-school and day care staff is "permissive" under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for goodfaith voluntary reporting.

2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.

3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected—recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.

4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. *Special provisions*—1. *Staff responsibility.* Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;

b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;

c. Knowing what community medical and social services are available for families with an abuse or neglect problem;

d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;

e. Discussing the report with the family if it appears desirable or necessary to do so;

f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. *Training.* Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: November 17, 1987.

Phillip N. Hawkes,

Acting Assistant Secretary for Human Development Services.

Approved: February 10, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-4253 Filed 2-26-88; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Radio Frequency Devices; Clarification of Rules

AGENCY: Federal Communications Commission.

ACTION: Public notice re: Clarification of verification rules.

SUMMARY: This Public Notice clarifies the information to be included in the test report required by 47 CFR 2.955 for radio frequency devices suject to verification of compliance with FCC Rules. These reports are required to show compliance of equipment that have a potential for causing harmful interference to radio communications.

Many of the verification reports examined to date lack sufficient information for the agency to determine compliance of Class A computing devices and like equipment. The Public Notice is intended to clarify the deficiencies of the reports.

This action is intended to assist manufacturers and test firms in preparing test reports for equipment subject to FCC Rules.

DATE: Effective February 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Art Wall, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: 47 CFR Subpart J of Part 2.

Federal Communications Commission.
H. Walker Feaster,
Acting Secretary.

Information To Be Included in Verification Reports Clarified

Business computers and TV receivers are examples of devices subject to technical standards that are designed to minimize their interference potential to radio and TV reception. In addition, these specific RF devices are subject to verification by the manufacturer or the party responsible for importing the device into the U.S.A. Verification is the least burdensome of the equipment authorization procedures for a device subject to the FCC Rules. This procedure requires the manufacturer or importer to test the device for compliance with the applicable FCC Rules and to maintain the test report and other information enumerated in 47 CFR 2.955. The Commission does not issue a grant of authorization for devices subject to verification.

A recent review of a number of verification test reports submitted by manufacturers of Class A computing devices indicates that many of the reports have been found to be inadequate for determining compliance with the FCC Rules and Regulations. To correct this situation, manufacturers and importers of radio frequency devices subject to FCC Rules are cautioned that data in verification test reports required by 47 CFR 2.951 *et seq.* of the Commission's Rules must contain, as a minimum, the information listed below.

In addition to the AC line conducted and radiated test data demonstrating compliance with the Commission's Rules, all verification test reports shall include, as a minimum, the following information:

1. *Date of test*—The verification test report shall indicate the actual date all testing was performed.

2. *Company performing the tests*—The verification report shall state the name of the test laboratory, company, or individual performing the verification testing. Please be advised that the Commission may request additional information regarding the test site, the test equipment, or the qualifications of the company or individual performing verification tests in order to determine if a Class A computing device has been properly tested.

3. *Signature on the test report*—The verification test report shall be signed by the individual responsible for determining if the Class A computing device complies with the Commission's Rules. It shall also include the name and signature of an official of the company responsible for marketing the device under test.

4. *Description of the test procedure*—The verification test report shall contain a description of how the device was actually tested. For example, with a computer, merely stating that the device was tested per MP-4 is not enough of a description. The description shall include the following, but is not limited to:

(a) A list of the test equipment used.

(b) Description of the EUT and support equipment. Support equipment for a computer includes the external peripherals and internal cards with which the EUT is tested.

(c) Identification of the EUT and support equipment by model number and/or FCCID, and, if appropriate, serial number.

(d) Types and lengths of interface cables used and how they were arranged or moved during testing.

(e) Photographs—At least two photographs shall be included in the verfication test report; one showing the test set-up for the higest line conducted emission and the other one showing the test set-up for the highest radiated emission. These photographs must be focused originals which show enough detail to confirm other information contained in the test report.

(f) Modifications made to the EUT—The verification test report should list all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the FCC Rules.

For further guidelines on what information to include in verification test reports, please refer to Paragraph 7.0, Data Recording Format, contained in FCC measurement procedure MP-4, revised July 1987.

Questions concerning this Public Notice, may be directed to Mr. Richard Fabina at the FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone 301-725-1585.

[FR Doc. 88-4192 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-296; RM-5902]

Radio Broadcasting Services; Jacksonville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Winfas, Inc., substitutes Channel 254C1 for Channel 254C2 at Jacksonville, North Carolina, and modifies the construction permit of Station WRCM to specify the higher powered channel. Channel 254C1 can be allocated to Jacksonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 kilometers (12.3 miles) south. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 7, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-296, adopted January 27, 1988, and released February 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 FM Table of Allotments for Jacksonville, North Carolina, is amended by adding Channel 254C1 and deleting Channel 254C2.

Federal Communications Commission.
Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-4193 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-No. 1)]

Class Exemption for the Acquisition and Operation of Rail Lines

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts new rules at 49 CFR Part 1150, Subpart D, to

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govern certain exempt acquisitions and operations under 49 U.S.C. 10901. Prior rules continue to apply to transactions in which the new carrier will qualify as a Class III carrier. The revised rules, applicable to transactions where the new carrier will be in Class I or Class II, require that: (1) A notice of intent to file a notice of exemption be served on specified individuals and entities at least 14 days prior to the filing of the notice of exemption; (2) the exemption will not be effective until 21 days after the notice of exemption is filed; and (3) stays of the notice's effectiveness will be considered under specific new procedures.

By a notice of proposed rulemaking (52 FR 37350, October 6, 1987), this proceeding was reopened to review the existing rules in light of the Commission's experience under them. The revisions, which are set forth below, are directed to those transactions with substantial impact. The expanded notice period and data and service requirements are intended to give communities, State agencies, labor, shippers, and other interested parties additional time and information to study the consequences of these sales. Also, the additional time will ensure that, should a stay be warranted in an individual case under the established stay criteria, it will be processed efficiently.

EFFECTIVE DATE: The rules are effective on March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation. This action will not have a significant impact on a substantial number of small entities.

List of subjects in 49 CFR Part 1150

Administrative Practice and Procedure, Railroads.

For the reasons set out in the preamble and explained fully in the decision, Part 1150 of Title 49, Code of Federal Regulations, is amended as set forth below:

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

1. The authority citation for Part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

2. Section 1150.32 is amended by revising the heading to read as follows:

§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.

3. Section 1150.33 is amended by revising the heading and adding paragraph (h) to read as follows:

§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.

* * * * *

(h) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

4. Section 1150.34 is amended by revising the heading to read as follows:

§ 1150.34 Caption summary—transactions that involve creation of Class III carriers.

5. Section 1150.35 is added to read as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Commission.

(b) The notice of intent must contain all the information required in § 1150.33 plus:

(1) A general statement of service intentions; and

(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each State in which track is to be sold;

(2) The State(s) Department of Transportation or equivalent agency;

(3) The national offices of the labor unions with employees on the affected line(s); and

(4) Shippers representing at least 50 percent of the volume of traffic on the line(s) in the most recent 12 months for which data is available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of (b) above and of § 1150.34, and certify compliance with § 1150.35 (a), (b), and (c), attaching a copy of the notice of intent.

(e) The exemption will be effective 21 days after the notice is filed. The Commission, through the Director of the Office of Proceedings, will publish a notice in the **Federal Register** within 30 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10505(d) does not automatically stay the transaction. Stay petitions must be filed within 7 days of the filing of the notice of exemption. Replies will be due 7 days thereafter. To be considered, stay petitions must be timely served on the applicant.

(g) Applicant must comply with § 1150.33(g) regarding section 106 of the National Historic Preservation Act, 16 U.S.C. 470.

Decided: February 11, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Chairman Gradison commented with a separate expression. Commissioner Lamboley dissented in part with a separate expression. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 88-4368 Filed 2-26-88; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1312

[No. 37321 (Sub-2)]

Revision of Tariff Regulations; Computer Determination of Mileages

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission is amending 49 CFR Part 1312 to allow all carriers to file electronic distance determination systems in lieu of printed distance guides. The current regulation allows only motor common carriers to file these systems. The Commission has found that a computerized base for determining distances would be consistent with the tariff publishing and filing requirements of the statute. The proposed rule in this proceeding was published on November 9, 1987, at 52 FR 43092.

DATE: The revision is effective on March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-6887, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 284-4357/4359 (assistance for the hearing impaired is available through TDD services at (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

The Commission certifies that the revision will not have a significant economic impact on a substantial number of small entities. The action is permissive in nature and, thus will effect only those carriers that choose to use electronic distance determination systems. Voluntary filings under the rule would not entail additional record keeping or other administrative burdens on these carriers, nor will the ability of small shippers to obtain information be substantially impaired.

This action does not affect significantly either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Railroads, Tariffs.

Decided: February 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. Section 1312.30 is amended by revising paragraph (c)(5) to read as follows:

§ 1312.30 Distance rates.

* * * * *

(c) * * *

(5) Distance guides shall provide distance tables or combinations of tables and maps. Tables shall provide specific distances between a substantial number of the points and be shown as having precedence over the distances determined by the use of maps. Each guide shall provide rules stating its application. The rules shall include a means for determining distances between all locations with the territorial coverage of the guide, regardless of whether all the locations are shown in the guide or whether distances are shown between all locations. If distances between certain points or areas are to be determined only through a certain gateway or interchange point, those points or areas and the gateway or interchange point shall be identified. Distance guides filed in "paper" format may exceed the maximum size limitations imposed by § 1312.3 but may not exceed 14 ½ by 17½ inches in size. Carriers may file automated distance determination systems which are linked by reference in abbreviated distance guides or rate tariffs to computer stored information provided the following conditions are met:

(i) Carriers or their tariff publishing agents shall make arrangements with the Commission for the receipt, storage and use of the systems through existing Commission techology and facilities.

(ii) In the event that a system is not compatible with Commission technology, the necessary implementing equipment and programs shall be placed on file with the Commission for use by Commission personnel and the public at no cost.

(iii) Proposed changes in the systems shall be given notice and reflect the nature of the change, as required by 49 U.S.C. 10762(c)(3) and § 1312.4(e) and § 1312.17(f). However, if an electronic distance determination system is not inherently capable of giving notice and symbolization of changes within the program, then printed tariff amendments to the distance guides or rate tariffs will be required. The amendments shall show the currently effective provisions as well as the proposed changes thereto.

(iv) The distance guides or rate tariffs shall provide all the information necessary to access and utilize the systems.

* * * * *

[FR Doc. 88-4270 Filed 2-26-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870 and 890

Continuation of Health and Life Insurance Coverage During Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations concerning the continuation of Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) coverage during retirement to specify that the statutory minimum-participation requirements for continuing such coverage(s) must be set as of the commencing date of the affected individual's annuity. The FEHB law and the FEGLI law set forth the minimum participation requirements a retiring employee must meet "immediately before retirement" in order to continue insurance coverage. However, the Civil Service Retirement (CSR) law provides for various commencing dates of annuity payments for immediate annuities determined, in part, by the date pay ceased, or the date the employee separates from Federal service. In the past, some confusion has been expressed as to what constituted the employee's "retirement date" for the purpose of contining FEHB and/or FEGLI coverage during retirement. These proposed amendments to the FEHB and FEGLI regulations should remove any ambiguity which currently exists and clarify for both Federal agencies and employees at what point in time the statutory minimum-participation requirements must be met.

DATES: Comments must be received on or before April 29, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The FEHB law and the FEGLI law both specify that for coverage to continue during retirement, the retiring employee must retire on an immediate annuity and have participated in the respective program for the 5 years of service immediately before becoming an annuitant or for the full period or periods of service during which the employee was eligible for coverage, if covered for less than 5 years. The Civil Service Retirement law provides that, in the case of an optional retirement, the annuity may begin either on the first day of the month after the employee separates from Federal service *or* on the first day of the month after the pay ceases and the age and service requirements have been met. Other annuities, such as those based on an involuntary separation or for disability, may begin either on the day after separation from the service *or* the day after pay ceases and the age and service or disability requirements for title to annuity have been met.

The insurance laws specify that an employee must be enrolled for 5 years (or from the first opportunity for coverage) *immediately before becoming an annuitant*. The retirement law provides for any one of three determinants in establishing the commencing date of annuity—last day of pay, the date following the last day of pay on which the age and service requirements have been met, or the date of separation. In some instances, such as might occur in a disability retirement where the employee is placed on leave without pay while his disability application is pending, the employee might meet the eligibility requirements for an immediate annuity on the day after the last day of pay but not meet the minimum participation requirements for continued FEHB coverage until the date of separation. (This can occur if an employee has not been covered by the FEHB or FEGLI Program throughout his or her entire Federal career.) In these circumstances, the employee may want his annuity commencing date to be based on the last day of pay but to establish eligibility for continued insurance coverage based on the later separation date. However, we have found that it is simply inconsistent to claim one date as the date of retirement for one purpose (as in the commencing date of annuity) and then settle upon a different date as the date of retirement for other purposes (such as the continuation of health benefits and life insurance). If the former employee's annuity benefits begin as of a certain date, he or she must be considered as "retired" for purposes of the FEHB and FEGLI Programs on that date as well.

Therefore, OPM proposes to amend its regulations in the areas of health benefits and life insurance to specify that the statutory requirements for continuing coverage as an annuitant must be met by the commencing date of annuity.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because their effect will be limited solely to retiring Federal employees.

List of Subjects in 5 CFR Parts 870 and 890

Administrative practice and procedure, Government employees, Health benefits, Life insurance, Retirement, Worker's compensation.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM proposes to amend Parts 870 and 890 of Title 5 of the Code of Federal Regulations as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

2. In § 870.601 of Subpart F, paragraph (a)(2) is revised to read as follows:

§ 870.601 Eligibility for life insurance.

(a) * * *

(2) Has been enrolled for basic life insurance for the five years of service immedicately preceding the commencing date of annuity payments or for the full

period(s) of service during which he/she was entitled to be insured.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

4. In Subpart C of Part 890, paragraph 890.303(a) is revised to read as follows:

§ 890.303 Continuation of enrollment.

(a) *On transfer or retirement.* (1) Except as otherwise provided by this part, the registration of an employee or annuitant eligible to continue rerollment continues without change when he or she moves from one employing office to another, without a break in service of more than 3 days, whether the personnel action is designated as a transfer or not.

(2) In order for an employee to continue an enrollment as an annuitant, he or she must meet the participation requirements set forth at 8905(b) of title 5, United States Code, for continuing an enrollment as an annuitant as of the commencing date of his or her annuity or monthly compensation.

(3) For the purpose of this part, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled during the first of the periods set forth in § 890.301 in which he or she was eligible to register or was covered at that time by the enrollment of another employee or annuitant, or registered to be enrolled effective not later than December 31, 1964.

* * * * *

[FR Doc. 88-4281 Filed 2-26-88; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Alternative Method for Leakage Rate Testing

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing a limited amendment to clarify the requirements of its regulations applicable to the leakage testing of containments of light-water-cooled nuclear power plants. The proposed rule would explicitly permit the use of a statistical data analysis technique that the NRC considers to be an acceptable method of calculating containment leakage rates.

DATES: Comment period expires March 30, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m. weekdays. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. E. Gunter Arndt, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, telephone (301) 492-3945.

SUPPLEMENTARY INFORMATION:

Background

In 1973, when the Commission initially promulgated its requirements concerning containment integrated leakage rate testing (10 CFR Part 50, Appendix J), the Commission required licensees to use state-of-the-art leakage test methodology and specifically called for Type A test methods described in American National Standard ANSI-N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors" (Appendix J, Sec. III.A.3). That standard accepted two techniques for evaluating test results: the Total Time method and the Point-to-Point method. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. In the Point-to-Point method, the leakage rates are based on the air mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate.

Subsequently, further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. The Mass Point method involves calculation of the air mass at a series of points in time and the plotting of mass against time. A linear regression line is plotted through the mass-time points using a least squares fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

This Mass Point method was incorporated in a newer ANSI standard, ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the NRC staff as an improved alternative method of calculating containment leakage rates. However, it was recently recognized by the NRC staff that a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, would preclude use of the newer, improved method. To alleviate this restriction on the use of an improved alternative methodology, it is necessary to clarify the language in Section II.A.3 to explicitly permit the use of the newer Mass Point method in addition to the earlier methods covered by ANSI-N45.4-1972. A similar revision is in fact proposed as part of the currently pending general revision to Appendix J (see 51 FR 39538, October 29, 1986). However, that proposed rule change involves a number of complex matters, and a final rule concerning the revision to Appendix J may not be completed for some time. In order to minimize any further delay in codifying the accepted use of the Mass Point method, the Commission proposes to modify Section III.A.3 to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the NRC staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI-N45.4-1972. The position stated in the words being added is consistent with the position that has been taken by the NRC staff when granting exemption requests on this matter. In particular, the description of the Mass Point method and its coupling with a test duration of at least 24 hours both reflect those prior exemption approvals and maintain that consistency. Improvements to the wording in the existing Appendix J of 10 CFR Part 50 are contemplated in a proposed general revision to Appendix J and in a related regulatory guide (MS 021-5, "Containment System Leakage Testing") that would endorse ANSI/ANS-56.8. If the more general revision of Appendix J is adopted before this limited revision becomes final, this action will become unnecessary and will be withdrawn. However, this is not likely. Therefore, until such a general revision is adopted, the description of the Mass Point method in ANSI/ANS-56.8 is considered useful for explaining the method and its application in general to the containment leakage rate

test program. Adjustments to the ANSI/ANS–56.8 description of the Mass Point method may be desirable as this method evolves and is applied to this specialized and complex test program. The intent of the proposed wording is to allow sufficient flexibility for such adjustments to be made to the method should a general revision to Appendix J and an explicit endorsement of ANSI/ANS–56.8 through a regulatory guide not promptly replace this limited revision.

The proposed action to be taken is the addition of the following words to Section III.A.3 of the existing rule:

> In addition to the Total Time and Point-to-Point methods described in that standard, the Mass Point method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National Standard ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements," January 20, 1987.

In order to eliminate a contradiction with the intent of this proposed action to permit a change in the methods now permitted, the following sentence will be deleted from Section III.A.3 of the existing rule:

> The method chosen for the initial test shall normally be used for the periodic tests.

Invitation to Comment

Comments from all interested persons on all aspects of this limited revision are requested by the comment expiration date in order that the final revision will reflect consideration of all points of view.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved under the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because, although the proposed rule would be applicable to all current or future operating nuclear power plants, the provisions of the proposed rule would codify and permit the continuation of a previously accepted practice. This proposed action would not encumber those using this accepted practice with the added burden of seeking exemptions to the existing rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In Appendix J, Section III, A.3.(a) is revised to read as follows:

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

III. Leakage Testing Requirements

* * * * *

A. Type A test—* * *

3. Test Methods. (a) All Type A tests shall be conducted in accordance with the provisions of the American National Standard N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors," March 16, 1972. In addition to the Total Time and Point-to-Point methods described in that standard, the Mass Point method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National Standard ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements," January 20, 1987.[1]

* * * * *

Dated at Bethesda, MD, this 17th day of February 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–4228 Filed 2–26–88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 300, 301, and 303

Reporting and Recordkeeping Requirements for Wool Products, Fur Products, and Textile Fiber Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission issues proposed regulations to reduce the burden of complying with the labeling requirements of the Rules and Regulations Under the Wool Products Labeling Act of 1939, the Rules and Regulations Under the Fur Products Labeling Act and the Rules and Regulations Under the Textile Fiber Products Identification Act. Under the proposed amendments, the Recordkeeping provisions in each of the three regulations would be simplified

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[1] ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors" (dated March 16, 1972). Incorporation of ANSI N45.4–1972 by reference was approved by the Director of the Federal Register on October [illegible], 1972. Copies of this standard, as well as ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements" (dated January 20, 1987) may be obtained from the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, IL 60525. A copy of each of these standards is available for inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555.

and streamlined, and the Textile Act and Wool Act regulations would be clarified to ensure that affected industry members understand that required disclosures may be combined on a single label.

DATES: Comments should be received on or before March 30, 1988.

ADDRESSES: (1) Substantive comments on the proposed amendments should be addressed to: Office of the Secretary, Federal Trade Commission, Washington, DC 20580, and should be marked "TWF paperwork Comment."

(2) Comment on the information collection aspects of the proposed amendments should be addressed to: Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the Request for OMB Review under the Paperwork Act may be obtained from; Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Mills, (202) 326-3035.

SUPPLEMENTARY INFORMATION:

Background

The Wool Products Labeling Act of 1939 requires all wool products to bear a label showing the percentage of wool, recycled wool and non-wool fibers contained in the product and the name of the manufacturer or the distributor. The Textile Fiber Products Identification Act requires each household textile product to bear a label showing the percentage of each fiber contained in the product, using the appropriate generic name for the fiber, and the identity of the manufacturer or distributor. Advertisements for textile products must also show the required information if any mention of fiber content is made. Both acts require disclosure of country of origin. The Fur Products Labeling Act requires the labeling, invoicing and advertising of furs and fur products to show the true name of the animal that produced the fur, whether the fur is used, dyed or imported, and the identity of the manufacturer or distributor. The three acts, as well as the Commission's rules implementing them, apply to manufacturers, distributors and retailers of textile, wool and fur products.

Paperwork Reduction Act of 1980

The Commission has estimated that the labeling and recordkeeping requirements contained in the rules implementing the Textile Fiber Products Identification Act, the 15 U.S.C. 70(e), the Wool Products Labeling Act of 1939, 15 U.S.C. 68(d), and the Fur Products Labeling Act, 15 U.S.C. 69(f) entail, in the aggregate, more than 20 million hours of paperwork burden, which is approximately fifty percent of the paperwork burden for all the rules issued by the Commission. As called for by the Paperwork Reduction Act, 44 U.S.C. 3501–3520 ("PRA"), the Commission has reviewed it activities that come within the definitions of "information collection" contained in 5 CFR 1320.7, the rules implementing the PRA. As a result, the Commission has modified several rules to accomplish their statutory or regulatory objectives at a reduced paperwork burden, which is the objective of the proposed amendments set forth in this notice.

Because the proposed changes to the three labeling rules modify existing labeling and recordkeeping requirements, they have been submitted to the Office of Management and Budget as required by § 1320.13 of the PRA rules. Comment on the information collection aspects of the proposed changes may be made to OMB as set forth above.

The current burden estimates for the three rules are based on the original submissions to OMB, which are as follows:

Regulation	Burden hours
Textile rules	15,980,000
Wool rules	2,531,000
Fur rules	138,000

Based on research by the staff, including informal contacts with industry representatives, the Commission has determined that the estimates for the Textile and Wool Rules should be increased by slightly more than 16% cumulatively to account for growth in the markets. The 16% is based primarily on rough estimates of the increases in the markets affected by the rules. These increases are based on the 1983 estimates, as adjusted by market statistics published in 1986. Although the original decision to calculate the estimates on a per-garment basis may not be the only way to derive these figures, in the interest of continuity and ease of comparison (for determining progress toward the goals of the Paperwork Reduction Act) the Commission has maintained the original method of calculating these estimates. The estimates for the Fur Rules have not been adjusted because, according to industry representatives and market statistics, the fur industry has not increased substantially since 1983.

The adjusted estimates for the combined recordkeeping and labeling burden are as follows:

Regulation	Adjusted burden hours
Textile rules	[1] 18,600,000
Wool rules	[2] 2,960,000
Fur rules	[3] 138,000

[1] Recordkeeping burden=1,500,000 hours; labeling burden=17,100,000 hours.

[2] Recordkeeping burden=215,000 hours; labeling burden=2,745,000 hours.

[3] Recordkeeping burden=38,000 hours; labeling burden=100,000.

Proposed Changes

The Commission proposes to reduce the paperwork burden for these three sets of regulations of two ways: (1) Simplifying recordkeeping requirements; and (2) eliminating unnecessary labels. Each proposal is discussed separately below.

1. Reducing Recordkeeping Requirements

The Commission's review of these rules for ways to reduce paperwork burden has focused primarily on recordkeeping because the content of the required information disclosures is tightly tied to the requirements of the statutes and cannot be altered by the Commission. For example, the labels required by the Wool Act and Textile Act must show fiber content, name (or registered identification number issued by the Commission) of manufacturer or distributor, and country of origin. The Commission's review indicates that the rules contain specific lists of categories of records that must be retained and may require more (or more detailed) information than is necessary to demonstrate compliance with the statutes and rules. The Notices announcing the original adoption of these requirements, which were published during the period spanning the 1940's and 1950's, do not give reasons for this approach, but detailed "command and control" regulations were generally thought to be appropriate during that period.

The Commission proposes to update the recordkeeping provisions by deleting unnecessary specificity in the rules' enumeration of required records, and substituting a clearer performance requirement.[4] The proposed new

[4] For example, the proposed amendments would delete from § 300.21 of the Wool Rules the requirement that records be maintained showing:

The date and quantity of each batch, blend, lot, stock, kettle, dye, weaving specifications, or cutting record as applicable to all raw material used.

Continued

recordkeeping requirement language is found in the "Amendments" section of this Notice. Industry members would be required to keep any records that would allow a determination that the information required by the statutes and regulations has accurately been provided, and that the source of finished covered products can be traced back to the raw material supplier. This simplification of the recordkeeping would not affect the Commission's ability to bring enforcement actions.

Under this simplification, it may be likely that many records kept in the normal course of business (absent the Rules' specific recordkeeping requirements) will be sufficient to demonstrate compliance.[5] To the extent that compliance can be demonstrated by records kept in the normal course of business, the recordkeeping burden estimates will be reduced. The reduction occurs because § 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.7(b)(1) (1987), excludes from burden estimates the time and effort "that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records)." If standard business records alone would demonstrate compliance, the recordkeeping burden would be reduced to zero. However, the Commission anticipates that at least some records not otherwise required by standard business practices may be necessary.

In order to estimate the burden hour reductions, the Commission is soliciting comments to determine to what extent standard business records (absent the Textile, Wool and Fur Rules' specific recordkeeping requirements) would show compliance and to what extent additional records would still need to be retained for compliance purposes.

2. Eliminating Unnecessary Labels

The second proposal for reducing the burden of the content disclosure rules concerns the labels on garments regulated by the Textile and Wool Labeling Acts. Some labels found on garments today are required by law (e.g., the FTC Care Labeling Rule, 16 CFR 423), others, such as brand name labels and labels describing product features, are used to accomplish business purposes. The Textile and Wool Acts require certain disclosures and implement statutory specifications for placement or conspicuousness of the disclosures (e.g., § 303.15, Textile Rules, § 300.5, Wool Rules). For example, required information must, by statute, be disclosed on a label located in the center of the neck of garments with necks.

The Rules do not prohibit combining required information on a single label (for example, Textile Act information with Care Labeling Rule information). However, while allowing additional information on the label, the Rules also were written to ensure that required information would not be obscured. In achieving that end, the language of the Rules may, unintentionally but needlessly, deter businesses from efficiently combining information on one label. For example, the Textile Rule, § 303.16(c), states that if non-required information (i.e. information not required by the Textile Act) "* * * is placed on the label or elsewhere on the product, such non-required information shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information. . . ." Consequently, the original burden for the Rules was calculated on the basis that a separate label would be used to comply with the requirements of the labeling acts.

The Commission proposes to amend Rule 10 of the Wool Rules and Rule 16 of the Textile Rules (16 CFR 300.10 and 303.16) to clarify that combining information required by the Rules with other information on a single label is permitted if the conspicuousness and location requirements for the required information are satisfied and the combination of information is not misleading.[6] For example, the name, fiber content and country of origin information required by the Wool and Textile Acts could be combined with Care Labeling information on a single label placed in the neck of a jacket or shirt or in a conspicuous location on a skirt or a pair of trousers. This clarification is likely to encourage industry members who have not taken advantage of label combining before to do so now. The resulting reduction in labeling burden could be significant. The Commission solicits comment as to what extent businesses may already be combining label information, as allowed by the Rules, and on whether and to what extent the proposed amendments will effectuate a burden reduction.

The Commission is not proposing a similar amendment to the Fur Rules. Because the Care Labeling Rule does not apply to fur products, significant burden reduction through combining labels (for example, required labels with brand labels) may be less likely. However, the Commission seeks comment on whether an amendment to the Fur Rules clarifying that required information could be combined onto other labels would reduce the labeling burden. Because the Fur Rules (unlike the Textile and Wool Rules) specify a minimum size (1¾ inches by 2¾ inches) for the label (§ 301.27) and minimum type size for the disclosures (§ 301.29), the Commission also seeks comment on whether replacing the label and type size specifications in Fur Rules §§ 301.27 and 301.29 with a general conspicuousness standard would be desirable, and whether this would (and to what extent) reduce the paperwork burden.

Other Issues

The Commission seeks comment on the following additional issue:

Under § 301.39 of the Fur Rules, certain fur trim products that cost twenty dollars or less to the manufacturer who incorporates them into fur products are exempted from disclosure requirements. The Commission solicits comment on whether the twenty-dollar figure should be increased to account for inflation.

Finally, the Commission proposes to clarify the Fur Rules by moving material relating to the detection of dyestuffs from the end of § 301.41, which concerns

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relating each of the purchase records of such raw material by appropriate lot or stock numbers, letters, or symbols; and The date and quantity of each sale and delivery of wool products manufactured, relating each sale or delivery to the manufacturing or processing record required in (3) hereof by appropriate lot or stock numbers, letters, or symbols and such numbers, information, marks or other means of identification as will identify the said records with the respective wool products to which they relate and the said wool products with the respective records.

The following language would be deleted from § 303.39 of the Textile Rules:

Manufacturers shall also keep and maintain as records under the Act, all purchase and sales invoices, purchase and sales contracts, labels, manufacturing contracts, orders, or duplicate copies thereof; and factory records, business correspondence, and other pertinent documents and data applicable to the purchase, receipt, use, and disposition of all raw stocks, fiber, yarn, fabric, or other manufactured materials obtained by the manufacturer.

Similar language would be deleted from the Fur Rules.

[5] For example, the Commission's staff has learned, through information contact with industry representatives, that apparel manufacturers often keep "fabric libraries," which contain samples of fabrics used and information relating to them, such as fiber content, source, country of origin, price and other information.

[6] The revisions to the Rules are printed in the "Amendments" section of this Notice. The Rules have virtually identical requirements and provisos for conspicuousness and the arrangement of information. However, the requirements appear in different subsections of each of the Rules, not all of which are printed in the "Amendments" section.

the maintenance of records, to the end of § 301.19, which relates to the disclosure of dyes in fur products. This amendment will put all the requirements regarding the disclosure of dyestuffs in one place, and will not affect the substance of the Rules.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this document because the Commission believes that the amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion with respect to the proposed amendments to all three sets of regulations because the proposed amendments, if enacted, will impose no additional cost on small entities and will have the same effect on all business entities within the affected industries, regardless of their size. The reduced burden, with respect to both recordkeeping and labeling practices, will potentially benefit small, medium and large entities within the textile, wool and fur industries.

The Commission has reached this conclusion on the basis of information presently available. The Commission invites comment on whether the proposed amendments would have a significant economic impact on a substantial number of small entities. Subsequent to the receipt of such comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, the Commission certifies, under section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendments, if promulgated, will not have a significant economic effect on a substantial number of small entities.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding the proposals in this Notice. All comments submitted to the Federal Trade Commission in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 136, Federal Trade Commission, 6th Street and Pennsylvania Ave. NW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday of each week except on federal holidays.

(1) *Regulatory Flexibility Act*

The Commission solicits information on whether the amendments proposed today would, if promulgated, have a significant economic impact on a significant number of small entities.

(2) *Recordkeeping Amendments*

The Commission invites comments on the recordkeeping practices of the textile, wool and fur industries and, specifically, on the following:

(a) Would the records that are kept in the normal course of business, absent the recordkeeping requirements of the Textile, Wool and Fur Labeling Rules, be sufficient to assess compliance with the requirements of those Acts?

(b) Would the proposed amendments require industry members to keep any records not otherwise retained in the normal course of business?

(c) Will replacing the Rules' recordkeeping provisions with a general performance requirement (i.e., that records adequate to demonstrate compliance be kept) reduce the paperwork burden of the Rules? If so, what estimate can be made of the extent of the reduction?

(3) Labeling Amendments

The Commission invites comment on the labeling practices of the textile and fur industries and on the impact of the proposed amendments on those practices.

(a) To what extent do industry members already combine information on one label, as currently permitted by the Rules?

(b) Will the amendments proposed to the Textile and Wool Rules to clarify the legality of combining information on labels reduce the burden of labeling textile products? If so, what estimate can be made of the extent of the reduction?

(c) Would similar amendments to the Fur Rules reduce the burden of labeling fur products?

(d) Sections 301.27 and 301.29 of the Fur Rules prescribe a minimum size (1¾ inches by 2¾ inches) for labels on fur products and a minimum type size for the disclosures on the labels. Could the objectives of the Fur Act and Rules be achieved as well by replacing these requirements with a general conspicuousness standard? Would this change reduce the burden associated with the Fur Rules? If so, what estimate can be made of the extent of the reduction?

(4) Exemptions

Section 301.39 of the Fur Rules exempts from coverage, with certain provisos, fur trim products that sell for twenty dollars or less to the manufacturer who uses them. The Commission invites comment on whether this twenty dollar figure should be increased to allow for inflation and, if so, what dollar figure should now be used.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade practices, Wool.

16 CFR Part 301

Fur, Labeling, Trade practices.

16 CFR Part 303

Labeling, Textile, Trade practices.

For the reasons set forth in the preamble, it is proposed that Title 16, Chapters 300, 301, and 303 of the Code of Federal Regulations be amended as follows:

Proposed Amendments

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68(d).

The Commission is proposing to amend Part 300 of Title 16 of the Code of Federal Regulations by revising §§ 300.10(a) and 300.31 to read as follows:

§ 300.10 Arrangement of label information.

(a) The required information may appear on any label attached to the product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. All information required to be displayed in the label of the product shall be set forth in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example: "Distributed by: John Q. Doe Co., Inc., New York, NY Made of 60% Wool 40% Recycled Wool Exclusive of Ornamentation, Made in U.S.A." *provided, however,* that the required name or registered identification number may appear on the reverse side of the label if it is plainly legible, conspicuous and accessible, and *provided further,* that the required name or registered identification number may

be conspicuously set out on a separate label which is prominently and conspicuously displayed in immediate conjunction with, or in close proximity to the label containing the other required information, in accordance with the requirements of Section 300.21. Where only one end of a cloth label is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, the required fiber content information may appear on the reverse side of the label if the front side of such label clearly and conspicuously shows the wording *Fiber Content on Reverse Side.* On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

* * * * *

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of Section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such wool products made by such manufacturer. Such records shall show:

(1) The fiber content of the product specified in Section 4(a)(2)(A) of the Act.

(2) The maximum percentage of the total weight of the wool product of any non-fibrous loading, filling, or adulterating matter as prescribed by Section 4(a)(2)(B) of the Act.

(3) The name, or registered identification number issued by the Commission, of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to Section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured as prescribed by Sections 300.25a and/or 300.25b.

(b) Any person substituting labels shall keep such records as will show the information on the label removed and the name or names of the person or persons from whom the wool product was received.

(c) The purpose of these records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

The authority citation for Part 301 continues to read as follows:

Authority: 15 U.S.C. 69(f).

The Commission is proposing to amend Part 301 of Title 16 of the Code of Federal Regulations by revising §§ 301.19(l) and 301.41 to read as follows:

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

* * * * *

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(1) of the Act. Any person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

(1) In connection with paragraph (h) of this section, the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts. Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs.

(2) A recommended method for preparation of samples would be:—Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1/16 inch. The pliers should be inserted at the same angle as the guard hairs with the tip opened to 1/4 inch. After contact with the hide, the tip should be raised about 1/4 inch, closed tightly and pulled quickly and firmly to remove the hair.

(3) Place an accurately weighed sample of approximately .1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

(4) If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see paragraph 7) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes clear to light green. Add 10 ml. of 1% hydrochloric acid to the dried residue in the beaker. Warm on a hot plate to insure complete solution of the residue.

(5) A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 A line. When analyzing for iron the air-acetylene flame should be as lean as possible.

(6) A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the regent blank.

(7) If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solutions to become clear to light green before removal of the watch glass and evaporation just to dryness.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the Act, each manufacturer or dealer in fur products or furs (including dressers, dyers, bleachers and processors), irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as will readily identify each fur or fur product manufactured or handled. Such records shall show:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artifically colored fur, when such is the fact;

(2) That the fur product contains used fur, when such is the fact;

(3) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(4) that the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(5) The name of the country of origin of any imported furs used in the fur product;

(6) The name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture, import, sell, advertise, offer, transport or distribute the fur product in commerce.

(7) The item number assigned, or reassigned, to each fur or fur product as set out in § 301.40.

(b) The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70(e)

The Commission is proposing to amend Part 303 of Title 16 of the Code of Federal Regulations by revising § 303.16(a) and 303.39(a) to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) The information with respect to textile fiber products required to be shown and displayed upon the label shall be that which is required by the Act and Regulations. The required information may appear on any label attached to the textile fiber product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more and any fibers disclosed in accordance with § 303.3(b) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as other fiber or other fibers appearing last.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured, as provided for in § 303.33.

* * * * *

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such textile fiber products made by such manufacturer. Such records shall show:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in § 303.33.

The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product.

* * * * *

By direction of the Commission

Emily H. Rock,

Secretary.

[FR Doc. 88-4245 Filed 2-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 35a

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations incorporating certain provisions of the Temporary Employment Tax Regulations relating to information reporting and backup withholding under the Interest and Dividend Tax Compliance Act of 1983 that were published in the **Federal Register** in question and answer format (Part 35a) on December 20, 1983 (48 FR 56330), January 3, 1984 (49 FR 62), and February 28, 1984 (49 FR 7227), August 22, 1984 (40 FR 33236, 33239), and August 29, 1984 (49 FR 34340).

These proposed regulations also incorporate changes to the applicable tax law made by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369), the Tax Reform Act of 1984 (98 Stat. 494), and the Tax Reform Act of 1986 (100 Stat. 2085). These proposed regulations affect payors, brokers, and payees of certain reportable payments and provide them with the guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed before April 29, 1988. The regulations are proposed to be effective generally with respect to reportable payments made and transactions occurring after [date which is 30 days after date of publication of this document as a Treasury Decision in the **Federal Register**].

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (INTL-52-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning foreign transactions, Chip Collins of the Office of the Associate Chief Counsel (International) (202-634-5406), concerning broker transactions, and dividend and patronage dividend payments, Arthur E. Davis III of the Legislation and Regulations Division (202-566-3238), and concerning all other provisions, Renay France of the Legislation and Regulations Division (202-566-3459), Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations relating to the requirement that certain payments must be reported to the Internal Revenue Service and that, in certain instances, 20 percent of a reportable payment must be deducted and withheld under section 3406 of the Internal Revenue Code of 1954 (26 U.S.C. 3406). This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 369, 371). These amendments are proposed to be issued under the authority contained in section 3406(a), section 6041(a), section 6042 (a), (b), and (c), section 6043, section 6044 (a) and (c), section 6045, section 6049 (a), (b), (c), and (d), and section 6050A. The temporary regulations contained in Part 35a and proposed to be deleted (§ 35a.9999-3A, and parts of § 35a.9999-3, § 35a.9999-4T, and § 35a.9999-5) will remain in effect until superseded by final regulations on this subject.

These regulations modify and expand upon the various information reporting provisions to the extent that they relate to transactions involving foreign persons. The regulations also clarify the application of backup withholding to certain reportable payments. However, these regulations do not address the application of backup withholding to reportable payments of either foreign source dividends or foreign source

interest paid outside the United States or to payments made outside the United States by foreign branches of banks, brokers, and payee agents. These subjects are reserved and will be addressed in future proposed regulations.

With respect to information reporting of payments of interest by or to foreign persons, these regulations clarify the information reporting requirements applicable to foreign branches of domestic and foreign banks. Foreign branches of domestic banks generally are required to report payments of interest on deposits held by United States persons. The foreign branches, however, are not required to obtain a Form W-8 in order to treat a payee as other than a United States person; rather, they may rely on documentary evidence in their records (beyond merely a foreign address). The regulations also specify that a foreign branch of a foreign bank is subject to information reporting with respect to deposits of United States persons only if the bank is a U.S.-related person (either a controlled foreign corporation or a person with at least 50 percent effectively connected income for the preceding three years).

The regulations modify current regulations that exempt from information reporting any interest paid on deposits of foreign persons with United States branches of foreign and domestic banks. The Internal Revenue Service has determined that information concerning deposits of individual residents of Canada in United States bank accounts would be of significant use in furthering its compliance efforts. Consequently, these regulations require reporting of interest paid on those deposits to residents of Canada, which provides such information to the United States. However, such interest is not subject to backup withholding. The regulations do not require reporting of deposit interest paid to residents of any other foreign country. If at some future time the Service should determine that extension of the requirement to residents of other foreign countries is appropriate, new proposed regulations proposing such an extension would be issued. Payors may, however, report deposit interest paid to a nonresident alien who is a resident of a country other than Canada.

The regulations expand the reporting provisions of current law to require a custodian or nominee of a United States person to make an information return with respect to foreign source interest collected outside the United States on behalf of such person. However, this requirement does not extend to foreign custodians or nominees unless they are U.S.-related persons.

These regulations also change current regulations by not allowing a payor or broker to avoid the requirement to obtain a Form W-8 simply because it has withheld tax on any amount paid to a payee or a customer.

The rules under section 6042 relating to information reporting of dividends paid by foreign corporations are modified by these regulations to correspond more closely to the rules relating to information reporting of interest paid by such corporations.

These regulations also modify and clarify the information reporting provisions of section 6045 as they relate to transactions effected by foreign offices of brokers. The information reporting requirements generally parallel those applicable to foreign branches of banks. Also, these regulations would require a broker to effect a sale at a foreign office in order for the broker to be able to rely on documentary evidence (rather than a Form W-8) in determining whether a customer is a foreign person with respect to whom no information return is required. Further, the definition of documentary evidence for purposes of establishing a payee's foreign status is clarified and modified prospectively only.

These regulations also propose to change certain regulatory provisions affecting payments by and to United States persons. First, the payment of a capital gain dividend is exempt from reporting under section 6042 because it is not a dividend under section 316. Second, the list of exempt recipients under § 1.6049-4(c) has been revised to exclude brokers, nominees, and custodians.

Third, the requirements of a statement to the recipient of reportable payments under section 6042, 6044, and 6049 has been revised by adding to the statement the taxpayer identification number of the person filing the form, by changing the wording of the legend, and by updating the separate mailing requirement.

Effect of the Tax Reform Act of 1984 on Information Reporting

The Tax Reform Act of 1984 amended section 6042 to provide that payments made to exempt recipients (as defined in section 6049(b)(4)) are not subject to information reporting under section 6042. Accordingly, the regulations under section 6042 will be amended to eliminate reporting on exempt recipients identified in regulations under section 6049. Because such payments of dividends are not subject to information reporting, backup withholding will not apply to such payments and dividends. Thus, payments of interest and dividends are afforded the same treatment for purposes of information reporting and backup withholding.

Effect of the Tax Reform Act of 1986

The Tax Reform Act of 1986 added section 6050N to require information reporting on royalty payments according to the forms or regulations prescribed by the Secretary. The Internal Revenue Service expects to issue regulations under section 6050N. In the meantime, payors and nominees are subject to the reporting requirements under section 6050N according to the forms prescribed by the Secretary.

The Tax Reform Act of 1986 also changed the mailing requirements applicable to the delivery of statements to recipients of dividends, patronage dividends, and interest under sections 6042(c), 6044(e), and 6049(c). The Internal Revenue Service issued guidance to the public on the statement mailing requirement under new law through Notice 87-17, 1987-4 I.R.B. 28. These proposed rules do not further address the statement mailing requirements under new law and specifically reserve this topic. Accordingly Notice 87-17 continues to apply.

Non-Applicability of Executive Order 12291

The Commissioner has determined that these regulations are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held

upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to OMB for review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal authors of these regulations are Renay France, Scott McLeod, and John Tolleris of the Legislation and Regulations Division, and P. Ann Fisher of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, however, on matters of both substance and style.

List of Subjects

26 CFR 1.6001-1—1.6019-2

Income taxes, Administration and procedure, Filing requirements, Recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding, Interest and Dividend Tax Compliance Act of 1983.

26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Parts 1, 31, and 35a are as follows:

PART 1—INCOME TAX REGULATIONS

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

Authority: 26 U.S.C. 7805 * * * Section 1.6042 also issued under 26 U.S.C. 6042(b). Section 1.6044 also issued under 26 U.S.C. 6044 (a), (b), and (e). Section 1.6043 also issued under 26 U.S.C. 6043 (a) and (b). Section 1.6045 also issued under 26 U.S.C. 6045(a). Section 1.6049 also issued under 26 U.S.C. 6049 (a), (b), (c), and (d). Section 1.6050-1 also issued under 26 U.S.C. 6050A.

Par. 2. Section 1.6041-1 is amended by adding the following new sentences at the end of paragraphs (a) (1) and (2) to read as follows:

§ 1.6041-1 Return of information as to payments of $600 or more.

(a) *General rule.* (1) * * * However, for purposes of section 6041, the term "interest" does not include amounts described in section 6049(b)(2) (C) or (D). For example, an amount paid to an exempt recipient under § 1.6049-4 or an amount that is not considered interest under § 1.6049-5 is not considered interest for purposes of section 6041. A payment described in subdivision (ii) of this paragraph, except a payment of rent or royalties, shall not include a payment of foreign source income under section 862 if the payee is a foreign person. Unless the payor has actual knowledge that a payee of an amount is a United States person, a payor may treat the payee as a foreign person if the payor receives from the payee the penalties of perjury statement as described in § 1.6049-5(g).

(2) *Prescribed form.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011-2 of this chapter (Regulations on Procedure and Administration.)

* * * * *

Par. 3. Section 1.6041-3 is amended by revising paragraph (m) to read as follows:

§ 1.6041-3 Payments for which no return of information is required under section 6041.

* * * * *

(m) Payments made to employees (other than employees of the United States or any agency thereof) for services performed in Puerto Rico;

* * * * *

Par. 4. Section 1.6041-4 is amended by adding the following new sentence at the end of paragraph (a) to read as follows:

§ 1.6041-4 Returns of information as to foreign items.

(a) *In general.* * * * However, no information return shall be required by this section with respect to the collection of amounts described in section 6049(b)(2) (C) or (D), amounts described in section 6042(b)(2), or amounts exempted from reporting under section 6045 by regulation.

* * * * *

Par. 5. Section 1.6041-7 is amended by revising the section heading and adding a new last sentence to paragraph (a) to read as follows:

§ 1.6041-7 Magnetic media requirement.

(a) *General.* * * * For rules relating to permission to submit the information required by Form 1099 or Form W-2 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011-2 of this chapter (Regulations on Procedure and Administration).

* * * * *

Par. 6. Section 1.6042-2 is amended by—

1. Revising the heading of § 1.6042-2,
2. Adding the introductory text of paragraph (a)(1) and revising (a)(1)(i),
3. Revising paragraph (a)(1)(ii),
4. Removing the reference to "1099M" in the first sentence of paragraph (a)(1)(iii) and adding in its place the reference to "1099",
5. Removing the reference to "1087" in the second sentence of paragraph (a)(4) and inserting "1099" in its place, and removing the third sentence, and
6. Revising the heading of paragraph (e) and adding a new last sentence to paragraph (e).

These revised and added provisions read as follows:

§ 1.6042-2 Returns of information as to dividends paid

(a) *Requirements of reporting*—(1) *In general.* An information return on Form 1099 shall be made under section 6042(a) by—

(i) Every person who makes a payment of dividends (as defined in § 1.6042-3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends paid to the other persons during the calendar year aggregate less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049-4(c)(1)(ii), unless the tax imposed by section 3406 is required to be withheld. In the case of any amount subject to backup withholding under section 3406, an information return shall be made unless the amount is refunded by the payor before the due date of the information return in accordance with the regulations under section 3406. For purposes of this paragraph, until such time as the Commissioner determines that it is feasible to permit aggregation of payments on two or more separate stock ownership accounts, and until this

paragraph is amended accordingly to provide for reporting on an aggregate basis, the requirement for filing Form 1099 under this section will be met only if a person making payments of dividends to another person on two or more separate stock ownership accounts (regardless of whether all dividends are made on only one class of stock) files a separate Form 1099 with respect to each such stock ownership account as required by this paragraph.

(ii) Every person, except to the extent that he acts as a nominee described in paragraph (a)(1)(iii) of this section, who receives payments of dividends as a nominee on behalf of another person. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person on whose behalf the dividends are received, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends received on behalf of the other person during the calendar year aggregate less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049-4(a)(1)(ii), unless the tax imposed by section 3406 is required to be withheld. In the case of any payment of dividends subject to backup withholding under section 3406, however, an information return shall be made unless the amount is refunded by the payor in accordance with the regulations under section 3406 before the due date of the information return. However, the filing of Form 1099 is not required if—

(A) The record owner is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner and furnishes Form K-1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(B) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner and furnishes Form K-1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(C) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return and furnishes Form K-1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406
but only if the name, address, and identifying number of the record owner are included on or with the Form 1041 fiduciary return filed for the estate or trust or the annual return for the tax exempt organization.

* * * * *

(e) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983 see section 6011(e) and § 301.6011-2 of this chapter (Regulations on Procedure and Administration).

Par. 7. Section 1.6042-3 is amended by revising Paragraph (b) to read as follows:

§ 1.6042-3 Dividends subject to reporting.

* * * * *

(b) *Exceptions.* The terms "dividend" does not include—

(1) Any amount paid to a person who is not a United States person. An amount is considered to be an amount paid to a person who is not a United States person if the amount is described in subdivision (i), (ii), (iii), or (iv) of this paragraph. If the amount is paid to joint payees, each joint payee must provide the statement described in this paragraph (b)(1)(i) (or other evidence permitted to be received under § 1.6042-3(b)(i)). If any joint payee has not provided such statement, the exemption from reporting does not apply. See § 1.6049-5(l) for the manner of avoiding keeping backup withholding in such a case.

(i) An amount is described in this subdivision (i) if, unless the payor or middleman has actual knowledge that the payee is a United States person, the payor or middleman receives from the payee the penalties of perjury statement described in § 1.6049-5(g) in accordance with the provisions of that paragraph. A statement from a payee that is a partnership must also include a statement under penalties of perjury that the partnership is composed in whole of nonresident aliens and is not engaged in a trade or business in the United States.

(ii) An amount is described in this subdivision (ii) if the amount paid is subject to withholding under 1441 or 1442 (relating to withholding of tax on nonresident aliens or foreign corporations, respectively) by the person making the distribution or payment. Paragraph (c)(2) of § 1.6049-5 applies in determining whether a distribution or payment is subject to withholding under section 1441 or 1442.

(iii) An amount is described in this subdivision (iii) if the amount would be subject to withholding under subchapter A of chapter 3 of the code by the person paying such amount but for the fact that it is exempt from withholding by reason of a tax treaty. Paragraph (c)(3) of § 1.6049-5 applies in determining whether a distribution or payment would be subject to withholding but for the provisions of a treaty.

(iv) An amount is described in this subdivision (iv) if withholding is not required under subchapter A of chapter 3 of the Code by reason of paragraph (a) or (f) § 1.1441-4. Paragraph (c)(4) of § 1.6049-5 applies in determining whether withholding is not required by reason of paragraph (a) or (f) of § 1.1441-4.

(2) Any amount from sources outside the United States under section 862 (a)(2) that is distributed or paid outside the United States by a foreign corporation other than the amount that is collected on behalf of the actual owner and paid by a nominee, custodian or other agent of the actual owner, which agent is either a United States person or a United States-related person under § 1.6049-5(f)(2) unless such actual owner is not a United States person. A determination by a paying, transfer, or other agent of the corporation or by a nominee, custodian, or other agent of the actual owner of whether an amount is distributed or paid by a foreign corporation and as to whether an amount is income from sources outside the United States shall be made for this purpose in accordance with procedures provided in § 1.6049-5(d)(4)(ii). Solely for purposes of paragraph (b)(2) of this section, a nominee, custodian or other agent of the actual owner may treat the actual owner as a person who is not a United States person if the agent of the actual owner has documentary evidence in its records that the actual owner is not a United States person (provided that the agent of the actual owner does not have actual knowledge that the evidence is false). An agent of the actual owner has documentary evidence in its records that actual owner is not a United States person if (i) the agent of the actual owner obtains and has in its records the statement described in § 1.6049-5(g), a Form 1001 completed under penalties of perjury, or a Form 4224 completed under penalties of perjury, or (ii) the agent of the actual owner has been provided with

documentary evidence (such as a passport, identity credential, or other similar evidence of citizenship and residence) on the basis of which a reasonable person would conclude that the actual owner is not a United States person, and the employee of the agent of the actual owner who has been provided with such evidence signs a separate written statement as part of the records of the account which states that such evidence has been provided and specifies the nature and details of the evidence. The mere fact, however, that the actual owner has provided an address outside the United States is not sufficient evidence for this purpose. For purposes of section 6042 and this section, an amount is considered paid outside the United States by a corporation or its paying agent or by the agent of the actual owner if the corporation or its paying, transfer, or other agent or the agent of the actual owner completes the acts necessary to effect payment outside the United States. A payment is not considered to be made within the United States for purposes of section 6042 and this section by reason of the fact that it is drawn on a United States bank account or by wire or other electronic transfer from a United States account. However, without regard to the location of the account from which the amount is drawn, an amount paid by transfer to an account maintained by the payee or actual owner in the United States or by mail to a United States address is considered to be paid within the United States if the amount is described in subdivision (i) or (ii) of § 1.6049-5(j)(1).

(3) A capital gain dividend as defined in section 852(b)(3)(C). A person making a distribution or payment may treat each distribution or payment as a capital gain dividend (as defined in section 852(b)(3)(C)) if the person has received a copy of the notice required by section 852 and the regulations thereunder that designates the amount as a capital gain dividend.

(4) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described § 1.6049-4(c)(1)(ii).

* * * * *

Par. 8. Section 1.6042-4 is amended by revising the heading, by removing the phrase "Form 1099 or 1087" and adding in its place wherever it appears the phrase "Form 1099", and by adding a new sentence at the end of paragraph (a) to read as follows:

§ 1.6042-4 Statements to recipients of dividend paid before January 1, 1984.

(a) *Requirement.* * * * For the requirement to furnish a statement to a recipient of dividend payments made after December 31, 1983, see § 1.6042-5.

* * * * *

Par. 9. A new § 1.6042-5 is added immediately after § 1.6042-4 to read as follows:

§ 1.6042-5 Official statements to recipients of dividends paid after December 31, 1983.

(a) *Requirement.* Every person filing a Form 1099 under section 6042(a)(1) and § 1.6042-2 with respect to dividends paid after December 31, 1983, shall furnish under section 6042(c) and this section to each person whose identifying number is shown on the form a written statement showing the information required by paragraph (b) of this section. The statement shall be furnished to the recipient in the manner required in paragraph (c) of this section.

(b) *Official statement to recipient for dividends paid after December 31, 1983.* Section 6042(c) and paragraph (a) of this section require every person making an information return under section 6042(a) and § 1.6042-2(a) to furnish a statement to the recipient. This requirement shall be met by furnishing to the recipient an official Form 1099 for dividends paid after December 31, 1983. The official Form 1099 shall be the form prescribed by the Internal Revenue Service for the respective calendar year. The Form 1099 shall include:

(1) The name, address and taxpayer identification number of the recipient,

(2) The aggregate amount of dividends paid to (or received on behalf of) the recipient,

(3) The amount of tax withheld under section 3046, if any,

(4) The name, address and taxpayer identification number of the person making the return,

(5) A statement, in bold and conspicuous type, informing the recipient that the form contains important tax information that is being furnished to the Internal Revenue Service and that if the recipient is required to file an income tax return, the recipient may be subject to a negligence penalty (as described in section 6653(g)) or other sanction in the event that the income is taxable and the Internal Revenue Service determines that the recipient has not included the income on the recipient's tax return, and

(6) Any other information as required by the form.

A reasonable facsimile (as described in § 1.6042-4(b)) of the official Form 1099 will not satisfy the requirement under this section to furnish a statement to any person. A payor, however, may use a form that contains provisions that are substantially similar to those of the official Form 1099 if the payor complies with all applicable revenue procedures relating to substitute Forms 1099. A payor may aggregate all payments of dividends made to a recipient with respect to each separate stock ownership account during a calendar year on one Form 1099.

(c) *Manner of providing the official statement to the recipient.* The official Form 1099 shall be provided to the recipient either in person or by first-class mail. The Form 1099 shall be sent by first-class mail to the recipient at his last known address or personally delivered to the recipient.

(1) *Separate mailing requirement for forms to be filed after December 31, 1984, and on or before October 22, 1986.* With respect to a Form 1099 which is required to be filed after December 31, 1984, and on or before October 22, 1986 (without regard to extensions), a Form 1099 that is mailed to the recipient generally must be furnished separately from any other mail (including the payment subject to reporting) that the payor mails to the recipient. The only items that may be mailed to the recipient with the Form 1099 are—

(i) Statements related to other Forms 1099, Forms 1098, and Forms 5498 (or the account balance on a Form 5498); and

(ii) Any documents relating to a solicitation for the recipient's correct taxpayer identification number (Form W-9) or a solicitation of a Form W-8 or substitute form.

If a payor does not either personally deliver the Form 1099 to the recipient or mail the Form 1099 in a separate first-class mailing to the recipient, the payor shall be considered to have failed to make the statement required under section 6042(c) and will be subject to the penalty under section 6678.

(2) *Statement mailing requirement to be filed after October 22, 1986.* [Reserved]

(d) *Time for furnishing statements.* Each statement required by section 6042(c) and this section shall be furnished to the recipient in accordance with § 1.6042-4(c).

(e) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see sections 6722 and 6724(c) and the regulations thereunder (section 6678 for statements required to be furnished before January 1, 1987).

§ 1.6043-2 [Amended]

Par. 10. Section 1.6043-2 is amended by removing all reference to "1099L" and adding in its place the reference to "1099".

Par. 11. Section 1.6044–2 is amended by adding two new sentences at the end of paragraph (a)(1) and by revising the heading to paragraph (f) and adding a new first sentence to paragraph (f) to read as follows:

§ 1.6044–2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting*—(1) *In general.* * * * The organization is required to make an information return regardless of the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in § 1.6049–4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than $10.

* * * * *

(f) *Magnetic media requirement.* For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Regulations on Procedure and Administration). * * *

Par. 12. Section 1.6044–3 is amended by revising paragraph (c) to read as follows:

§ 1.6044–3 Amounts subject to reporting.

* * * * *

(c) *Exceptions.* An amount described in paragraph (a) of this section does not include—

(1) Any amount described in § 1.6042–3(b), or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii).

* * * * *

Par. 13. Section 1.6044–5 is amended by revising the heading and by adding a new sentance at the end of paragraph (a) to read as follows:

§ 1.6044–5 Statements to recipients of patronage dividends made before January 1, 1984.

(a) *Requirement.* * * * For the requirement to furnish a statement to a patron with respect to payments made after December 31, 1983, see § 1.6044–6.

* * * * *

Par. 14. A new § 1.6044–6 is added immediately after § 1.6044–5 to read as follows:

§ 1.6044–6 Official statements to recipients for payments made after December 31, 1983.

(a) *Requirement.* Every cooperative filing a Form 1099 under section 6044 (a)(1) and § 1.6044–2 with respect to payments made to its patrons after December 31, 1983, shall furnish under section 6044(e) and this section to each patron whose identifying number is shown on the form a written statement showing the information required by paragraph (b) of this section. The statement shall be furnished to the patron in the manner required in paragraph (c) of this section.

(b) *Official statement to recipient for payments made after December 31, 1983.* Section 6044(e) and paragraph (a) of this section require every cooperative making an information return under section 6044(a)(1) and § 1.6044–2(a)(1) to furnish a statement to the patron. This requirement shall be met by furnishing to the patron an official Form 1099 for payments made after December 31, 1983. The official Form 1099 shall be the form prescribed by the Internal Revenue Service for the respective calendar year. The Form 1099 shall include:

(1) The name, address and taxpayer identification number of the recipient,

(2) The aggregate amount of payments made to (or received on behalf of) the patron,

(3) The amount of tax withheld under section 3406, if any,

(4) The name, address, and taxpayer identification number of the cooperative making the return,

(5) A statement, in bold and conspicuous type, informing the recipient that the form contains important tax information that is being furnished to the Internal Revenue Service and that, if the recipient is required to file and income tax return, the recipient may be subject to a negligence penalty (as described in section 6653(g)) or other sanction in the event that the income is taxable on the recipient's tax return and the Internal Revenue Service determines that the recipient has not included the income on the recipient's tax return, and

(6) Any other information as required by the form.

A reasonable facsimile (as described in § 1.6044–5(b)) of the official form 1099 will not satisfy the requirement under this section to furnish a statement to any patron. A cooperative, however, may use a form that contains provisions that are substantially similar to those of the official Form 1099 if the cooperative complies with all applicable revenue procedures relating to substitute Forms 1099. A cooperative may aggregate all payments under section 6044 to a patron during a calendar year on one Form 1099.

(c) *Manner of providing the official statement to the recipient.* The official Form 1099 shall be provided to the patron either in person or by first-class mail. The Form 1099 shall be sent by first-class mail to the patron at his last known address or personally delivered to the patron.

(1) *Separate mailing requirement for forms to be filed after December 31, 1984, and on or before October 22, 1986.* With respect to a Form 1099 which is required to be filed after December 31, 1984 and on or before October 22, 1986 (without regard to extensions), a Form 1099 that is mailed to the patron generally must be furnished separately from any other mail (including the payment subject to reporting) that the cooperative mails to the patron. The only items that may be mailed to the patron with the Form 1099 are—

(i) Statement related to any other Forms 1099, Forms 1098, and Forms 5498 (or the account balance on a form 5498); and

(ii) Any documents relating to a solicitation of the patron's correct taxpayer identification number (Form W–9) or the solicitation of a Form W–8 or substitute form.

If a cooperative does not either personally deliver the Form 1099 to the patron or mail the Form 1099 in a separate first-class mailing to the patron, the cooperative shall be considered to have failed to make the statement under section 6044(a) and will be subject to the penalty under section 6678.

(2) *Statement mailing requirement for forms to be filed after October 22, 1986.* [Reserved]

(d) *Time for furnishing statements.* Each statement required by section 6044 (e) and this section shall be furnished to the patron any time during the year of the payment and on or before January 31, of the following year, but no statement may be furnished before the final payment has been made for the calendar year.

(e) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see sections 6722 and 6724(c) and the regulations thereunder.

Par. 15. Section 1.6045–1 is amended by—

1. Revising paragraph (a)(1),
2. Adding new paragraph (a)(14),
3. Redesignating paragraph (c)(5)(ii) as paragraph (c)(5)(iii) and adding a new paragraph (c)(5)(ii),
4. Revising paragraph (g).

These added and revised provisions read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

(a) Meaning of terms. * * *

(1)(i) Except as provided in paragraph (a)(1)(ii), the term "broker" means—

(A) With respect to a sale affected at an office inside the United States, a person, other than a person who is required to report a transaction under section 6043, who in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others, and includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock; and

(B) With respect to a sale (including a redemption or retirement) effected at an office outside the United States, a person described in a subdivision (i) of this paragraph (a)(1) but only if such person is either a United States person or a United States-related person as defined in § 1.6049-5(f)(2).

(ii) With respect to the redemption or retirement by an international organization of an obligation issued by it, the term "broker" does not include an international organization (as described in § 1.6049-4(c)(1)(ii)(G)), of which the United States is a member and which enjoys immunity with respect to the inviolability of its archives pursuant to an international agreement having full force and effect in the United States (or its paying, transfer, or other agent).

* * * * *

(14) For transactions occurring on September 3, 1982, and thereafter, the term "person" includes any governmental unit and any agency or instrumentality thereof. Under section 6652 and 6722 and the regulations thereunder, no penalty shall be imposed on a person defined under section 6045(c)(4) for failing to file a return or furnish a statement under section 6045 for payments paid or credited before January 1, 1985.

* * * * *

(c) *Reporting by brokers*— * * *

* * * * *

(5) *Form of reporting for regulated futures contracts*—(i) *In general.* * * *

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contract in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(*b*) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(*b*) of this section is comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for purposes of paragraph (c)(5)(i)(*c*) and (*d*) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers*—(i) *In general.* No return of information is required by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph. Unless it has actual knowledge that a customer is a United States person, a broker may treat a customer as an exempt foreign person if—

(A) With respect to a sale affected at an office of the broker inside the United States, the broker obtains the statement described in paragraph (g)(3) of this section; or

(B) With respect to a sale effected at an office of the broker outside the United States by a United States person or a United States-related person under § 1.6049-5(f)(2), either the broker has documentary evidence in its records that the customer is not a United States person or the broker is not acting as a custodian, nominee, or other agent of the payee and the sale is described in paragraph (g)(1)(ii) of this section.

(ii) *Exception for the redemption or retirement of certain stock yielding foreign source dividends or certain obligations issued by foreign persons or targeted to foreign persons.* A sale is described in this subdivision if it is the redemption or retirement of an obligation or stock effected at an office of the broker outside the United States by an issuer (or its paying or transfer agent); and the interest or dividend on the obligation or stock is described in paragraph (g)(1)(ii) (A), (B), or (C) of this section.

(A) Any interest paid with respect to the obligation is described in—

(*1*) § 1.6049-5(c)(6) with respect to a foreign-targeted registered obligation as defined in § 1.6049-5(j)(4) or a foreign-targeted bearer obligation (an obligation not in registered form within the meaning given such term by section 163(f)).

(*2*) § 1.6049-5(d)(3), or

(*3*) § 1.6049-5(e)(2) (i) or (ii).

(B) Any original issue discount paid with respect to the obligation is described in § 1.6049-5(c)(5)(ii).

(C) Any dividend paid with respect to the stock is described in § 1.6042-3(b)(1).

(iii) *Special rule*—(A) *Documentary Evidence.* A broker has documentary evidence in its records that the customer is not a United States person if (*1*) the broker obtains and has in its records the statement described in paragraph (g)(3) of this section, Form 1001 completed under penalties of perjury, or Form 4224 completed under penalties of perjury, or (*2*) the broker has been provided with documentary evidence (such as a passport, identity credential, or other similar evidence of citizenship and residence) on the basis of which a reasonable person would conclude that the customer is not a United States person, and the employee of the broker who has been provided with such evidence signs a separate written statement as part of the records of the account which states that such evidence has been provided and specifies the nature and details of the evidence. The mere fact, however, that a customer has provided an address outside the United States is insufficient evidence to establish for this purpose that the customer is not a United States person.

(B) *Place of effecting sale.* (*1*) *Sale outside the United States.* For purposes of this section and except as provided in subdivision (*2*) of this paragraph (g)(1)(iii)(B), a sale is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(*i*) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(*ii*) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(*2*) *Sale inside the United States.* Notwithstanding the rules of subdivision (*1*) of this paragraph (g)(1)(iii)(B), a sale is considered to be effected by a broker at an office inside the United States if either—

(*i*) The customer has opened an account with a United States office of that broker,

(*ii*) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances),

(*iii*) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in § 1.6049-5(j)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States,

(*iv*) The confirmation of the sale is mailed to a customer at an address in the United States, or

(*v*) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(2) *Barter exchanges.* No return of information is required by a barter exchange with respect to a client or member who is considered to be an exempt foreign person under this paragraph. Unless it has actual knowledge that a client or member is a United States person, a barter exchange may treat the client or member as an exempt foreign person if the barter exchange obtains the statement described in paragraph (g)(3) of this section in accordance with the provisions of that paragraph, except that paragraph (g)(3)(v) of this section shall not apply to barter exchanges.

(3) *Penalties of perjury statement*—(i) *In general.* Except as provided in paragraph (g)(3)(vi) of this section, the broker (or barter exchange) must receive a statement, signed by the customer (or client or member) under penalties of perjury certifying that—

(A) The customer (or client or member) is not a United States person, or in the case that the customer (or client or member) is an individual, that he is neither a citizen nor a resident of the United States;

(B) In the case that the customer (or client or member) is an individual, that the customer (or client or member) has not been, and at the time the statement is furnished reasonably expects not to be, present in the United States for a period aggregating 183 days or more during the calendar year; and

(C) The customer (or client or member) is not, and at the time the statement is furnished reasonably expects not to be, engaged in a trade or business within the United States with respect to which any gain derived from sales effected by the broker (or barter exchange) during the calendar year is effectively connected.

The statement must also contain the name of the customer (or client or member), the address of customer (or client or member), and the taxpayer identification number (if any) of the customer (or client or member). The address provided for an individual shall be that of his permanent residence; the address provided for a partnership or corporation shall be the address of its principal office; and the address provided for a trust or an estate shall be the address of the permanent residence or principal office of any fiduciary of the trust or estate. The statement may be made, at the option of the customer (or client or member), on a Form W-8 or on a form prepared by the broker (or barter exchange) which is substantially similar to Form W-8. Blank copies of Form W-8 will be supplied to broker upon request to the district director.

(ii) *Who may sign statement.* The statement described in paragraph (g)(3)(i) may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the customer (or client or member) as described in section 6061 and the regulations thereunder.

(iii) *When statement must be received and retention.* Except as otherwise provided in paragraph (g)(3)(v) of this section, the statement must be received by the broker (or barter exchange) in the calendar year in which a sale is effected or in either of the preceding 2 calendar years. The broker (or barter exchange), however, may require the statement from the customer (or client or member) each time it effects a transaction on behalf of the customer (or client or member). The broker (or barter exchange) shall retain the statement for at least 4 years following the end of the last calendar year during which the transaction to which the statement relates is effected. If the information provided on the statement changes during the period to which the statement relates, the customer (or client or member) shall notify the broker (or barter exchange) in writing within 30 days of such change.

(iv) *Joint account.* If a transaction is effected with respect to a joint account with a broker (or barter exchange), the broker (or barter exchange) must receive the statement described in paragraph (g)(3)(i) (or other evidence permitted to be received under § 1.6045-1) from each joint owner. If a joint owner is a United States person, the transaction is not exempt from reporting under paragraph (g)(1). See paragraph (g)(3)(vi) of this section for the statement required from a customer (or client or member) who is a United States person.

(v) *Special rule prior to January 1, 1985.* With respect to a brokerage relationship that is not a post-1983 brokerage account (as described in section 3406 and the regulations thereunder), the broker is not required to obtain the statement described in paragraph (g)(3)(i) of this section before January 1, 1985, if—

(A) The broker sent a separate mailing to the customer on or before December 31, 1983, requesting the statement (or the broker sent a nonseparate mailing on or before December 31, 1983, requesting the statement and sent a separate mailing requesting the statement on or before March 31, 1984),

(B) The broker sent an additional mailing (which may be a nonseparate mailing) during calendar year 1984 requesting the statement, and

(C) The broker has documentary evidence in its records that the customer is an exempt foreign person in accordance with A-1 of § 35a.9999-4T published at 49 FR 33237 on August 22, 1984. [In the final regulations, the text of the rule in A-1 will be inserted in this paragraph.]

The mailing described in paragraph (g)(3)(v) (A) and (B) of this section must be sent by first-class mail, or by airmail if sent to a foreign address, and must contain a notice describing the penalties of perjury statement described in paragraph (g)(3)(i) of this section and advising the customer that backup withholding under section 3406 may commence if the statement is not provided. The broker must also provide a reply envelope and a form on which the customer may make the statement described in paragraph (g)(3)(i) of this section. A separate mailing, for purposes of this paragraph (g)(3)(v), is a mailing that contains only the information described in this paragraph and, at the option of the broker, information relating to the solicitation of a taxpayer identification number. With respect to mail-hold accounts and accounts with respect to which the last-known address of the customer is incorrect, the broker will be considered to have satisfied the requirements of paragraph (g)(3)(v) (A) and (B) of this section if the broker handles the mailings in the same manner that the broker handles other correspondence with the customer. A broker may also satisfy the requirements of this paragraph (g)(3)(v) (A) and (B) if the mailings are delivered to the customer by personal delivery or

intra-office mail, provided they are delivered by the same method used generally by the broker in delivering account information and other correspondence to the customer.

(vi) *Exception.* A broker (or barter exchange) is not required to obtain the statement described in paragraph (g)(3)(i) of this section from a customer (or client or member) if the customer (or client or member) has provided the broker (or barter exchange) with a Form W-9 (or acceptable substitute) or if the broker (or barter exchange) may treat the customer (or client or member) as an exempt recipient without receiving a Form W-9 or an acceptable substitute from the customer.

(4) *Examples.* The application of the provisions of paragraph (g) of this section may be illustrated by the following examples:

Example (1). FC is a foreign corporation that is not engaged in a trade or business in the United States during the calendar year. FC regularly issues and retires its own debt obligations. FP is a foreign corporation that is not a United States-related person under § 1.604-5(f)(2). A is an individual whose residence address is inside the United States. A holds a bond issued by FC in registered form within the meaning of section 163(f) and the regulations thereunder and listed on the New York Stock Exchange. Interest on the bond is paid outside the United States. The bond is retired by FP, the designated paying agent of FC and not the agent of A. FP mails the proceeds to A at A's United States address. The sale would be considered to be effected at an office outside the United States under § 1.6045-1(g)(1) (iii)(B)(*1*) except that the proceeds of the sale are mailed to a United States address. The sale is considered to be effected at an office of the broker inside the United States under § 1.6045-1(g)(1)(iii)(B)(*2*). FC and FP are brokers under § 1.6045-1(a)(1)(i)(A). FC is not required to report the payment because, under § 5f.6045-1(c)(3)(ii) (the multiple broker exception), FC is not the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to such holder's account. Under paragraph (g)(1)(i)(A) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the statement described in paragraph (g)(3) of this section and does not have actual knowledge that A is a United States person.

Example (2). The facts are the same as in Example (1) except that FP mails the proceeds to A at an address outside the United States. Under § 1.6045-1(g)(1)(iii)(B)(*1*), the sale is considered to be effected at an office of the broker outside the United States. Under § 1.6045-1(a)(1)(i)(B), neither FC nor FP is a broker with respect to the retirement of the FC bond. Therefore, neither is required to make an information return under section 6045.

Example (3). The facts are the same in Example (2) except that FP is also the agent of A. The result is the same as in Example (2).

Example (4). The facts are the same as in Example (1) except that the registered bond held by A was issued by DC, a domestic corporation, and FP mails the proceeds to A at an address outside the United States. DC regularly issues and retires its own debt obligations. Interest on the bond is neither portfolio interest on a foreign-targeted registered obligation described in § 1.6049-5(c)(6) nor interest described in § 1.6049-5(e)(2)(ii). The sale is considered to be effected at an office outside the United States under § 1.6045-1(g)(1)(iii)(B)(*1*). DC is a broker under § 1.6045-1(a)(1)(i)(B). DC is not required to report the payment under the multiple broker exception. FP is not required to make an information return under section 6045 because FP is not a broker.

Example (5). The facts are the same as in Example (4) except that FP is also the agent of A. DC is a broker under § 1.6045-1(a)(1)(i)(B). DC is not required to report under the multiple broker exception. FP is not required to make an information return under section 6045 because FP is not a broker.

Example (6). The facts are the same as in Example (4) except that the bond is retired by DP, the designated paying agent of DC and not the agent of A. DP is a United States person or a United States-related person. DC is a broker under § 1.6045-1(a)(1)(i)(B). DC is not required to report under the multiple broker exception. DP is a broker under § 1.6045-1(a)(1)(i)(B) and therefore is required to make an information return under section 6045 unless DP obtains the documentary evidence described in paragraph (g)(1)(iii) of this section and does not have actual knowledge that the customer is a United States person.

Par. 16. Section 1.6049-4 is amended by:

1. Removing the phrase "section 3451" each place it appears and adding in its place the phrase "section 3406";
2. Revising paragraph (b)(1);
3. Adding two new sentences after the last sentence of paragraph (b)(2);
4. Revising paragraph (b)(3);
5. Revising paragraph (c)(1)(i) and (ii), redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv), and adding a new paragraph (c)(1)(iii);
6. Revising the introductory text and the first and second examples of paragraph (c)(1)(iv) as redesignated;
7. Removing the reference to "§ 1.6049-5 (c)" in paragraph (d)(2) and adding in its place the reference to "§ 1.6049-5 (k)";
8. Revising the caption of paragraph (d)(7) and adding a new second sentence to paragraph (d)(7);
9. Removing the reference to "§ 1.6049-5 (b)(1)(ii)" in paragraph (d)(8) and adding in its place the reference to "§ 1.6049-5 (b)(2)";
10. Revising the reference to paragraph (d)(10)(i) in paragraph (d)(9)(ii) to read "(d)(9)(i)";
11. Removing the reference to "paragraph (c)(1)(ii)(K)" in paragraph (f)(4)(i) and adding in its place the reference to "paragraph (c)(1)(ii)(M)", by deleting the last two sentences of paragraph (f)(4)(i), and by adding two new sentences in their place.
12. Revising the last sentence of the *Example* in paragraph (f)(4)(ii).

These revised and added provisions read as follows:

§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraph (b)(3) of this section, in the case of a payment of interest, other than original issue discount treated as interest under § 1.6049-5 (k) and other than amounts described in § 1.6049-5 (e)(2), an information return on form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax detucted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. In the case of interest described in § 1.6049-5 (e)(2), the payor shall make an information return on Form 1042S for the calendar year showing the aggregate amount of the payments, the name, address of the permanent residence, and taxpayer identification number, if any, of the person to whom paid, and such other information as required by the form and shall transmit the information return at the time and in the manner prescribed by § 1.1461-2. the payor shall also furnish to such person a written statement showing the information required by § 1.6049-6(e)(6). An information return is generally required only if the amount of interest aggregates $10 or more and if the payment is made to a person other than an exempt receipient described in § 1.6049 (c)(1)(ii), unless the tax imposed by section 3406 is required to be withheld. In the case of any amount subject to backup withholding under section 3406, however, an information return shall be made unless the amount is refunded by the payor before the due date of the information return in accordance with the requested under section 3406.

* * * * *

(2) Original isue discount. * * * In the case of payments of original issue discount described in § 1.6049-5(e) (2), an information return shall be made on Forms 1042S for the calendar year

showing the aggregate amount of the payments, the name, address of the permanent residence, and taxpayer identification number, if any, of the person to whom paid, and such other information as required by the forms and shall be transmitted as the form and instruction require. The persons to whom the original issue discount is paid shall be furhished with a written statement showing the information required by § 1.6049-6(e)(6).

(3) *Returns made by middleman*—(i) *In general.* Every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return for the calendar year. In the case of interests payments (other than original issue discount and other than interest described in § 1.6049-5(e)(2)), the information return shall be made on Form 1099 and shall show the aggregate amount of the interest, the name, address, and taxpayer identification number of the person on whose behalf received, the amount of tax withheld under section 3406, if any, such other information as required by the forms. In the case of interest described in § 1.6049-5(e)(2), the middleman shall make an information return on Form 1042S for the calendar year showing the aggregate amount of the payments, the name, address of the permanent residence, and taxpayer identification number, if any, of the person on whose behalf received, and such other information as required by the form and shall transmit the information return at the time and in the manner prescribed by § 1.1461-2. The middleman shall also furnish to such person a written statement showing the information required by § 1.6049-6(e)(6). In the case of original issue discount, the information return shal show the information required to be shown for the person on whose behalf received, as described in paragraph (b)(2) of this section. See § 1.6049-5(k) to determine whether a middleman is required to make an information return with respect to original issue discount. A middleman shall make an information return regardless of whether the middleman receives a Form 1099 or Form 1042S. A middleman shall not be required to make an information return if the payment of interest aggregates less than $10 or if the payment is made to an exempt recipient discribed in paragraph (c)(1)(ii) of this section, unless the amounts is withheld upon under section 3406. In the case of any amount subject to backup withholding under section 3406, however, an information return shall be made unless the amount is refunded by the middleman in accordance with the regulations under section 3406 before the due date of the information return.

(ii) *Forwarding of interest coupons and original issue discount obligations.* In the case of a middleman who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States, the middleman shall make an information return on Form 1099 for the calendar year showing, in the case of an interest coupon, the information required under paragraph (b)(3)(i) and, in the case of a discount obligation, information required under paragraph (b)(2). For purposes of paragraph (b)(3)(ii), a middleman is considered to forward an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States if the middleman forwards the coupon or obligations outside the United States on or after the date when the payee is entitled to be paid or at an earlier date if within 90 days of such date or if the middleman has actual knowledge that the coupon or obligation is being forwarded outside the United States for presentation, collection, or payment outside the United States.

Example. Individual F, who is entitled to payment on an interest coupon, instructs an office of Bank M in the United States to forward the coupon to Bank N for collection by Bank N outside the United States. Bank M in the United States forwards the interest coupon to Bank N outside the United States. Bank M is required to make an information return for the calendar year under § 1.6049-4 (b)(3)(ii) showing the aggregate amount of the interest coupon forwarded, the name, address of the permanent residence, and the taxpayer identification number, if any, of Individual F and such other information as the form requires.

* * * * *

(c) *Information returns not required*—(1) *Payment to exempt recipient*—(i) *In general.* No information return is required with respect to any payment made to an exempt recipient described in paragraph (c)(1)(ii) of this section unless such payment is made by a person required to make a return by paragraph (a)(2)(i) of this section (relating to persons who backup withhold under section 3406). Thus, a person who backup withholds under section 3406 and does not refund the amount withheld pursuant to the regulations under section 3406 is required to make an information return regardless of whether the payee is an exempt recipient in paragraph (c)(1)(ii) of this section.

(ii) *Exempt recipient defined.* The term "exempt recipient" means any person described in this paragraph (c)(1)(ii) (A) through (N). An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate. A payor may in any case require a payee not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate as a person who is not an exempt recipient. See section 3406 and the regulations thereunder for the provisions relating to the certificate a payee may file to claim exempt status and the requirement that a payee described in this paragraph (c)(1)(ii) include such payee's taxpayer identification number on the certificate in order to make the certificarte effective.

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, the term "corporation" includes a pool, syndicate, partnership, or unincorporated association, any of which is composed exclusively of corporations described in this paragraph, but only if the pool, syndicate, partnership, or unincorporated association files a certificate with the payor claiming exempt status because it is composed exclusively of corporations. Except for the preceding sentence, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) without requiring a certificate provided that—

(*1*) The name of the payee contains one of the following unambiguous expressions of corporate status: Incorporated, Inc., Corporation, Corp., or P.C., but not Company or Co.,

(*2*) The name of the payee contains the term "insurance company", "indemnity company", "reinsurance company", or "assurance company".

(*3*) The payee is a foreign entity whose name contains any unambiguous expression of corporate status that the Commissioner so designates by ruling, or

(*4*) The payee is known to the payor to be a corporation through a corporate resolution or similar document on file with the payor clearly indicating corporate status.

(B) *Tax exempt organization*—(*1*) *In general.* Any organization which is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A payor may treat an organization as an exempt

recipient under this paragraph without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax exempt organization, or if the organization is known to the payor to be a tax exemption organization.

(*2*) *Examples.* The application of the provisions of paragraph (c)(1)(ii)(B) of this section may be illustrated by the following examples:

Example (1). The following persons maintain accounts at M Bank: N College, O University, P Church. M may treat N, O, and P as exempt recipients without requiring a certificate because the names of the organizations contain an unambiguous indication that they are tax exempt organizations.

Example (2). Q is listed in the current edition of Internal Revenue Service publication 78 as an organization for which deductions are permitted for charitable contributions under section 170(c). Such listing has not been revoked by an announcement published in the Internal Revenue Bulletin. A payor may treat Q as an exempt recipient.

Example (3). Employer R maintains a section 403(b)(7) custodial account with Regulated Investment Company S on behalf of R's employees. S may treat the account as an exempt recipient.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A payor may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph.

(E) *State*—(*1*) *In general.* A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision of a wholly-owned agency or instrumentality of any one or more of the foregoing.

(*2*) *Example.* The application of the provisions of paragraph (c)(1)(ii)(E) of this section may be illustrated by the following example:

Example. The following persons maintain an account at R Bank: Town of S and County of T. R may treat S and T as exempt recipients.

(F) *Foreign government*—(*1*) *In general.* A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A payor may treat a foreign government or a political subdivisions thereof as an exempt recipient under this paragraph without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof.

(*2*) *Example.* The application of the provisions of paragraph (c)(1)(ii)(F) of this section may be illustrated by the following example:

Example. The Government of V maintains an account of U Bank. U may treat V as an exempt recipient.

(G) *International organization.* An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term "international organization" shall have the meaning ascribed to it in section 7701(a)(18) and includes the following organizations:

(*1*) African Development Fund,
(*2*) Asian Development Bank,
(*3*) Caribbean Commission,
(*4*) Caribbean Organization,
(*5*) Customs Cooperation Council,
(*6*) European Space Research Organization,
(*7*) Food and Agriculture Organization,
(*8*) Great Lakes Fishery Commission,
(*9*) Inter-American Defense Board,
(*10*) Inter-American Development Bank,
(*11*) Inter-American Institute of Agriculture Sciences,
(*12*) Inter-American Statistical Institute,
(*13*) Inter-American Tropical Tuna Commission,
(*14*) Intergovernmental Committee for European Migration,
(*15*) Intergovernmental Maritime Consultative Organization,
(*16*) International Atomic Energy Agency,
(*17*) International Bank for Reconstruction and Development (World Bank),
(*18*) International Boundary and Water Commission,
(*19*) International Centre for Settlement of Investment Disputes,
(*20*) International Civil Aviation Organization,
(*21*) International Coffee Organization,
(*22*) International Cotton Advisory Committee,
(*23*) International Cotton Institute,
(*24*) International Criminal Police Organization,
(*25*) International Development Association,
(*26*) International Fertilizer Development Center,
(*27*) International Finance Corporation,
(*28*) International Food Policy Research Institute,
(*29*) International Hydrographic Bureau,
(*30*) International Joint Commission—United States and Canada,
(*31*) International Labor Organization,
(*32*) International Maritime Satellite Organization,
(*33*) International Monetary Fund,
(*34*) International Pacific Halibut Commission,
(*35*) International Secretariat for Volunteer Service,
(*36*) International Telecommunication Union,
(*37*) International Telecommunication Satellite Organization,
(*38*) International Wheat Advisory Committee (International Wheat Council),
(*39*) Lake Ontario Claims Tribunal,
(*40*) Multinational Force and Observers,
(*41*) North Atlantic Treaty Organization,
(*42*) Organization for Economic Cooperation and Development,
(*43*) Organization of American States (including Pan American Union),
(*45*) Pan American Health Organization,
(*46*) Pan American Sanitary Bureau,
(*47*) Preparatory Commission of the International Atomic Energy Agency,
(*48*) South Pacific Commission,
(*49*) Southeast Asian Treaty Organization,
(*50*) United International Bureaux for the Protection of Intellectual Property,
(*51*) United Nations,
(*52*) United Nations Educational, Scientific, and Cultural Organization,
(*53*) Universal Postal Union,
(*54*) World Health Organization,

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(*55*) World Intellectual Property Organization,

(*56*) World Meteorological Organization, and

(*57*) World Tourism Organization.

A payor may treat any of the foregoing and any other organization designated as an international organization by executive order (pursuant to 22 U.S.C. section 288 to 288f) as an exempt recipient without requiring a certificate.

(H) *Foreign central bank of issue.* A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See § 1.895-1(b)(1). a payor may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue.

(I) *Securities or commodities dealer*—(*1*) *In general.* A dealer in securities or commodities registered as such under the laws of the United States or a State is an exempt recipient. A payor may treat a dealer as an exempt recipient under this paragraph without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in the paragraph.

(*2*) *Examples.* The application of the provisions of paragraph (c)(1)(ii)(I) of this section may be illustrated by the following examples:

Example (1). X advertises that purchases of securities may be made through it and is known generally in the investment community as a registered broker-dealer. A payor may treat X as an exempt recipient.

Example (2). Z is listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc. A payor may rely on such listing in treating Z as an exempt recipient.

(J) *Real estate investment trust.* A real estate investment trust, as defined in section 856 and § 1.856-1, is an exempt recipient. A payor may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940.* An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 to 89a-52), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence. A payor may treat such an entity as an exempt recipient under this paragraph without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund.* A common trust fund, as defined in section 584(a), is an exempt recipient. A payor may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the payor to be a common trust fund.

(M) *Financial institution.* A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization is an exempt recipient. A payor may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name reasonably indicates it is decribed in the preceding sentence.

(N) *Trust.* A trust which is exempt from tax under section 664 (c) (*i.e.*, a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947 (a)(1) (relating to certain charitable trusts) is an exempt recipient. A payor which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(iii) *Exempt recipient no longer exempt.* Any person who ceases to be an exempt recipient, shall no later than 10 days after such cessation, notify the payor when it ceases to be an exempt recipient unless it reasonably appears that the person formerly qualifying as an exempt recipient will not thereafter receive a reportable payment from the payor. If a payor treats a person as an exempt recipient by requiring the exempt recipient to file a certificate claiming exempt status, that person shall revoke the certificate as provided in the preceding sentence. A person notifies a payor that it no longer qualifies as an exempt recipient by delivering to the payor a written statement to that effect. If the exempt recipient terminates its relationship with the payor, the exempt recipient is not required to notify the payor. If, however, the person who formerly qualified as an exempt recipient later reinstates the relationship with the payor, the person must notify the payor that it no longer qualifies as an exempt recipient in case the payor relies upon the previous treatment.

(iv) *Examples.* The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). In 1980, Corporation Y issued 10-year debentures with 9 percent interest coupons payable semiannually on June 30 and December 31. Individual F presents a coupon for payment at Bank M on the interest payment date. Bank M transmits the coupon to Bank N, which in turn presents the coupon to Corporation Y for payment. Bank M is required to make an information return with respect to the payment to Individual F under § 1.6049-4(a)(2)(iii). Bank N is not required to make an information return with respect to the payment to Bank N because Banks M and N are exempt recipients described in § 1.6049-4(c)(1)(ii)(M).

Example (2). Broker E acquires a bond issued in 1980 by the United States Treasury through the Bureau of Public Debt. Broker E sells interests in the bond to the public after December 31, 1982. A purchaser may acquire an interest in any interest payment falling due under the bond or an interest in the principal of the bond. The bond is held by Custodian H for the benefit of the persons acquiring these interests. Custodian H is known generally in the investment community as a nominee. On receipt of interest and principal payments under the bond, Custodian H transfers the amount received to the person whose ownership interest corresponds to the component giving rise to the payment. Under either section 1232B or section 1286, each bond component is treated as a bond issued with original issue discount equal to the excess of the stated redemption price at maturity over the purchase price of the bond component. Accordingly, H is required to make an information return setting forth the information required in § 1.6049-4(b)(2) with respect to each holder of an interest in the bond. The Bureau of Public Debt is required to make an information return since it made payment to Custodian H who is not an exempt recipient.

* * * * *

(d) *Special rules*—* * *

(7) *Magnetic media requirement.** * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011-2 of this chapter (Regulations on Procedure and Administration).

* * * * *

(f) *Definitions.* * * *

(4) *Middleman*—(i) *In general.* * * * A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the othe.

person's name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) *Example.* * * * Broker B is required to make an information return showing the amount of original issue discount treated as paid to A during 1984 under § 1.6049-5(k).

* * * * *

Par. 17. Section § 1.6049-5 is amended by—

1. Removing the phrase "section 3451" each place it appears in paragraph (a) and adding the phrase "section 3406";
2. Removing the last sentence of paragraph (a)(6);
3. Revising paragraph (b);
4. Redesignating paragraph (c) as paragraph (k) and revising the last sentence in paragraph (k); and
5. Adding new paragraph (c) through (j) and (l). These revised and added provisions read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) *Interest excluded from reporting requirement.* The term "interest" does not include—

(1) Interest on any obligation issued by a natural person or defined in § 1.6049-4(f)(2) irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation must provide written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or "shell" commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See § 1.6049-4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a) (2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company.

However, interest on deposits posted for security with a person described in paragraph (a) (2) or (3) of this section is interest subject to reporting under section 6049.

(6) For obligations issued in taxable years beginning on or before December 31, 1983, any amount on which the person making the payment is required to deduct and withhold a tax under section 1451 (relating to tax free convenant bonds), or would be so required but for section 1451(d) (relating to benefit of personal exemptions).

(7) Any amount in paragraph (c) of this section (relating to amounts paid to a person who is not a United States person).

(8) Any amount described in paragraph (d) of this section (relating to amounts paid with respect to obligation of, or deposits with, certain persons who are not United States persons, that is income from sources outside the United States, or that is paid by certain payee agents).

(9) Any amount paid by an international organization described in § 1.6049-4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer, provided the international organization is an organization of which the United States is a member and which enjoys immunity with respect to the inviolability of its archives pursuant to an international agreement having full force and effect in the United States.

(c) *Amount paid to persons who are not United States persons.* An amount is described in this paragraph (c) and is thus considered to be an amount paid to a person who is not a United States person and an amount not subject to information reporting under section 6049 if paragraph (c) (1), (2), (3), (4), (5), or (6), of this paragraph (c) applies. For the rule regarding reporting of an amount paid to joint payees where any of the payees is other than a person who is not a United States person, see § 1.6049-6(l).

(1) This paragraph (c)(1) applies if, the payor or middleman receives from the payee the penalties of perjury statement described in paragraph (g) of this section in accordance with the provisions of that paragraph or the amount is described in section 871(i)(2)(A) and paragraph (e)(2) (i) or (ii). However, this paragraph (1) does not apply if the payor or middleman has actual knowledge that the payee is a United States person or the amount is described in paragraph (e)(2) (other than paragraph (e)(2) (i) or (ii)).

(2) This paragraph (c)(2) applies if the amount paid is subject to withholding of tax under subchapter A of chapter 3 of the Code by the person paying such amount. A payor or middleman may treat an amount as subject to withholding under subchapter A of chapter 3 of the Code for purposes of this paragraph (c)(2) if such person, or another payor or middleman from whom such person collects the amount, in fact withholds tax on such amount under subchapter A of chapter 3 in accordance with the provisions of chapter 3.

(3) This paragraph (c)(3) applies if the amount would be subject to withholding of tax under subchapter A of chapter 3 of the Code by the person paying such amount but for the fact that it is exempt from withholding of tax under section 1441 (a) or 1442 (a) by reason of the provisions of a tax treaty. Unless it has actual knowledge that the payee of an amount is a United States person, a payor or middleman may treat such amount as an amount described in this subparagraph (3) if with respect to such amount the payor or middleman receives for the payee a Form 1001 in accordance with § 1.1441-6 (b) or (c) and completed under penalties of perjury.

(4) This paragraph (c)(4) applies if the amount would be subject to withholding of tax under subchapter A of chapter 3 of the Code by the person paying such amount but for the fact that it is exempt from withholding of tax under section 1441 (a) or 1442 (a) by reason of the application or section 1441 (c) and paragraph (a) or (f) of § 1.1441-4. Unless it has actual knowledge that the payee of an amount is a United States person, a payor or middleman may treat such amount as an amount described in this subparagraph (4) if with respect to such amount it has received a Form 4224 from the payee in accordance with § 1.1441-4

(a) and completed under penalties of perjury or has on file with respect to such amount a notice described in § 1.441-4 (f)(2)(ii).

(5) This paragraph (c)(5) applies if the amount would be subject to withholding of tax under subchapter A of chapter 3 of the Code by the person paying such amount but for the fact that the amount is original issue discount. Unless it has actual knowledge that the payee of an amount is a United States person, a payor or middleman may treat such an amount as an amount described in this paragraph (c)(5) if—

(i) With respect to any amount that is or may be paid to the payee during the calendar year the payor or middleman has received the documentation described in subparagraph (3) or (4) of this paragraph (c) in accordance with the provisions of § 1.1441-4 or § 1.1441-6; or

(ii) Except as provided in paragraph (f) of this section, the amount is paid by the issuer or its agent outside the United States with respect to an obligation that—

(A) Has a face amount of not less than $500,000;

(B) Has a maturity (at issue) of 183 days or less;

(C) Satisfies the requirements of section 163(f)(2)(B) (i) and (ii) (I) and the regulations thereunder (as if it would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A));

(D) If in registered form, is registered in the name of an exempt recipient described in § 1.6049-4(c)(1)(ii); and

(E) Has on its face the following statement (or a similar statement having the same effect): "By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Intenal Revenue Code and the regulations thereunder)".

Unless it has actual knowledge to the contrary, a middleman may treat an obligation as satisfying the requirements of section 163(f)(2)(B) (i) and (ii) (I) and the regulations thereunder if the obligation contains the statement in the proceeding sentence.

(6) This subparagraph (6) applies, unless a payor or middleman has actual knowledge that the payee is a United States person or unless paragraph (f) of this section applies, if the amount is portfolio interest described in section 871(h)(2) (A) or (B) or 881(c)(2) (A) or (B) and the regulations thereunder that is exempt from withholding of tax under sections 1441(a) or 1442((a) by reason of the application of section 1441(c)(9) and the amount is paid outside the United States.

(d) *Amounts from sources outside the United States and amounts paid with respect to obligations of certain foreign persons*—(1) *In general.* An amount is described in paragraph (d) of this section and thus is not subject to information reporting under section 6049 if paragraph (d)(2) or (d)(3) of this section applies to such amount.

(2) *Amounts from sources outside the United States paid inside the United States.* This paragraph (d)(2) applies, unless a payor or middleman has actual knowledge that a payee of an amounts is a United States person, if an amount is from sources outside the United States within the meaning of section 862 (a)(1) that is paid inside the United States and the payor or middleman receives from the payee the penalties of perjury statement described in paragraph (g) of this section or, with respect to any amount that is or may be paid to the payee during the calendar year, the payor or middleman has received the documentation described in paragraph (c) (3) or (4) of this section in accordance with the provisions of §1.1441-4 or §1.1441-6.

(3) *Certain amount paid outside the United States.* This paragraph (d)(3) applies, unless paragraph (e) or (f) of this section applies, if an amount is paid outside the United States and the amount is described in paragraph (d)(3) (i), (ii), or (iii).

(i) An amount is described in this subdivision (i) if it is paid or collected with respect to an obligation of, or deposit with, or an amount an issuer or other obligor that is—

(A) A foreign government or international organization or any agency or instrumentality thereof;

(B) A foreign central bank of issue;

(C) A foreign corporation not engaged in a trade or business in the United States within the calendar year of the payment; or

(D) A partnership that is not engaged in a trade or business in the United States within the calendar year of the payment and that is composed in whole of nonresident alien individuals or persons described in paragraph (d)(3)(i) (A), (B) or (C) of this section.

(ii) An amount is described in this subdivision (ii) if it is income not otherwise described in subdivision (i) of this paragraph (d)(3) that is from sources outside the United States within the meaning of section 862(a)(1).

(iii) An amount is described in this subdivision (iii) if it is paid by a middleman (other than a United States person or a United States-related person as described in § 1.6049-5(f)(2)) that, as a custodian or nominee or other agent of a payee (and not as the agent of the issuer), collects the amount for or on behalf of the payee.

(4) *Determination by a paying agent or middleman that an amount is described in paragraph (d)(3) of this section.* The provisions of this paragraph (d)(4) apply with respect to determinations made by paying agents and middlemen as to whether an amount is paid with respect to an obligation or deposit of an entity described in paragraph (d)(3)(i) of this section and as to whether an amount is income from sources outside the United States for purposes of paragraph (d)(3)(ii).

(i) *With respect to a foreign government, an international organization, or a foreign central bank of issue.* Absent actual knowledge to the contrary, a paying agent or middleman may treat an entity as a foreign government, an international organization, or a foreign central bank of issue if the paying agent or middleman could treat such entity under § 1.6049-4(c)(1)(ii) as an exempt recipient without the receipt of a Form W-9 or an acceptance substitute.

(ii) *With respect to a foreign corporation.* Absent actual knowledge to the contrary, a middleman generally may treat a corporation as a foreign corporation if its name reasonably so indicates and, if so, may treat it as a foreign corporation described in paragraph (d)(3)(i)(C) of this section. A payment agent of, or middleman having a contractual relationship with, the corporation with respect to the paying of an amount may treat it as a corporation described in paragraph (d)(3)(i)(C) of this section unless the paying agent or middlemen has reason to believe to the contrary. Absent actual knowledge to the contrary, a paying agent will not be considered to have reason to believe that a corporation is not described in paragraph (d)(3)(i)(C) of this section if the paying agent receives a statement signed under penalties of perjury from a corporate officer who would be authorized by section 6062 to sign returns on behalf of the corporation either that the corporation is not, or does not expect during the calendar year of payment to be, engaged in trade or business in the United States. However, failure to obtain this statement will not in itself be considered evidence that the paying agent has

reason to believe that the corporation is not described in paragraph (d)(3)(i)(C) of this section.

(iii) *With respect to domestic corporations.* Absent actual knowledge to the contrary, a middleman generally may treat a domestic corporation as a corporation the interest payments of which would not be subject to withholding under subchapter A of chapter 3 of the Code if such payments were made to a person who is not a United States person if an annual report, offering circular, or other standard source of financial information published by the corporation reasonably so indicates. However, a paying agent of, or a middleman having a contractual relationship with, a domestic corporation with respect to the payment or collection of an amount may, absent actual knowledge to the contrary, treat a domestic corporation as such a corporation only if a corporate officer authorized by section 6062 to sign returns on behalf of the corporation provides the paying agent or middleman with a statement signed by the officer under penalties of perjury that interest paid by such corporation would be income from sources outside the United States.

(iv) *With respect to partnership.* A paying agent or middleman may, absent actual knowledge to the contrary, treat a partnership as a partnership that is not engaged in a trade or business in the United States during the calendar year of payment and that is composed in whole of nonresident alien individuals or persons described in paragraph (d)(3)(i) (A), (B), or (C) of this section if it receives a statement, signed under penalties of perjury, by any partner of the partnership authorized by section 6063 to sign returns on behalf of the partnership, that the partnership is not, and is not expected during the calendar year of the payment to be, engaged in a trade or business in the United States and that all of its partners are, and are expected during the calendar year of payment to be, nonresident alien individuals or persons described in paragraph (d)(3)(i) (A), (B) or (C) of this section.

(v) *When to receive statement and retention.* A paying agent or middleman must receive the statement described in paragraph (d)(4) of this section in the calendar year in which a payment is made or collected or in either of the 2 preceding calendar years. The paying agent or middleman may, however, require such a statement from the corporation or partnership each time it makes a payment for the corporation or partnership The paying agent or middleman shall retain the statement for at least 4 years following the end of the last calendar year during which an amount to which the statement relates is paid or collected. If after providing such statement the status of the corporation or partnership changes from that reflected in the statement, the corporation or partnership shall notify the paying agent or middleman within 30 days of such change in status.

(e) *Exception for certain amounts.* Notwithstanding paragraph (c) or (d) of this section, an amount will be considered to be interest for purposes of reporting under section 6049 and this section if the payment is either—

(1) Made to, or collected on behalf of, a United States person (as determined in accordance with paragraph (e)(3) of this section) by either a United States person or a United States-related person under § 1.6049-5 (f)(2) that is in the commecical banking business with respect to an account or deposit maintained at an office of such person outside the United States (other than a deposit evidenced either by a foreign-targeted registered obligation as defined in § 1.6049-5(j)(4) or by a bearer obligation that such person has issued in accordance with the procedures of § 1.163-1 (c)(2)(i)(B), provided that such person does not act in the capacity of a custodian, nominee or other agent of the payee with respect to the obligation); or

(2) Made to a nonresident alien individual who is a resident of Canada and the amount is described in section 871 (i)(2)(A) with respect to a deposit maintained at an office within the United States. Amounts described in this paragraph (e)(2) are exempt from backup withholding under section 3406. However, this paragraph (e)(2) shall not apply to either—

(i) Except as provided in paragraph (f) of this section, an amount described in section 871 (i)(2)(A) that is paid by the issuer or its agent outside the United States with respect to an obligation that—

(A) Is not in registered form (within the meaning of section 163(f) and the regulations thereunder);

(B) Is described in section 163(f)(2)(B); and

(C) Is part of a larger single public offering of securities; or

(ii) Except as provided in paragraph (f) of this section, an amount described in section 871(i)(2)(A) that is paid by the issuer or its agent outside the United States with respect to an obligation that—

(A) Has a principal amount of not less than $500,000;

(B) Satisfies the requirements of section 163(f)(2)(B) (i) and (ii) (I) and the regulations thereunder (as if it were a registration-required obligation within the meaning of section 163 (f)(2)(A));

(C) If in registered form, is registered in the name of an exempt recipient described in § 1.6049-4 (c)(1)(ii); and

(D) Has on its face, and on any detachable coupons the following statement (or a similar statement having the same effect): "By accepting this obligation or coupon, the holder represents and warrants that it is not a United States person (other than an exempt receipient described in the regulations under section 6049 (b)(4) of the Internal Revenue Code and the regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in the regulations under section 6049 (b)(4) of the Internal Revenue Code and the regulations thereunder)".

For purposes of paragraph (e)(2)(i), unless it has actual knowledge to the contrary, a middleman may treat an obligation as if it is described in section 163(f)(2)(B) if the obligation or coupon therefrom, whichever is presented for payment, contains the statement described in section 163(f)(2)(B)(ii) (II) and the regulations thereunder. For purposes of paragraph (e)(2)(ii), unless it has actual knowledge to the contrary, a middleman may treat an obligation as satisfying the requirements of section 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder if the obligation or a coupon therefrom, whichever is presented for payment, contains the statement described in paragraph (e)(2)(ii).

(3) *United States person for purposes of paragraph (e)(1) of this section.* Paragraph (h) of this section applies in determining whether a person is a United States person for purposes of paragraph (e)(1) of this section.

(4) *Nonresident alien individual for purposes of paragraph (e)(2) of this section.* Paragraph (g) of this section applies in determining whether a person is a nonresident alien individual for purposes of paragraph (e)(2) of this section. The country contained in the address required to be provided under paragraph (g) is considered the country of residence of a nonresident alien individual for purposes of paragraph (e)(2).

(f) *Payments by middleman outside the United States*—(1) Notwithstanding the provisions of paragraph (c)(5)(ii) and (6), paragraph (d)(3), and paragraph (e)(2) (i) and (ii) of this section, an

amount paid outside the United States by a middleman that is either a United States person or a United States-related person (as described in subparagraph (f)(2) and that, as a custodian or nominee or other agent of a payee, collects the amount for or on behalf of the payee shall be treated as interest for purposes of section 6049 and this section unless the middleman may treat the payee as a person who is not a United States person in accordance with the provisions of paragraph (h) of this section. For purposes of this paragraph (f), a middleman is considered to collect an amount as an agent of a payee if the payee has an account with the middleman's office that makes the payment. Also, this paragraph (f) applies to a middleman that is also a paying, transfer, or other agent of the payor.

(2) A United States-related person is either a controlled foreign corporation within the meaning of section 957(a) or a foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of a trade or business within the United States.

(g) *Penalties of perjury statement*—(1) *In general.* The statement described in this paragraph is a statement, signed by the payee under penalties of perjury, certifying that the payee is not a United States person, or in the case that the payee is an individual, that he is neither a citizen nor a resident of the United States. The statement must also contain the name of the payee, the address of the payee, and the taxpayer identification number (if any) of the payee. The address provided for an individual shall be that of his permanent residence; the address provided for a partnership or corporation shall be the address of its principal office; and the address provided for a trust or estate shall be the address of the permanent residence or principal office of any fiduciary of the trust or estate. The statement may be made, at the option of the payor or middleman, on a form W-8 or on a substitute form prepared by the payor or middleman that is substantially similar to Form W-8.

(2) *Who may sign the statement.* The statement may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the payee as described in section 6061 and the regulations thereunder.

(3) *When statement must be received and retention.* Except as otherwise provided in paragraph (g)(5) of this section the statement must be received by the payor or middleman in the calendar year in which the payment is made or collected or in either of the preceding 2 calendar years. The payor or middleman, however, may require the statement from the payee each time it makes a payment to, or collects an amount on behalf of, the payee. The payor or middleman shall retain the statement for at least 4 years following the end of the last calendar year during which the amount to which the statement relates is paid or collected. If the person providing the statement becomes a United States citizen or resident during the period to which the statement relates, such person shall notify the payor in writing within 30 days of the change in status.

(4) *Joint payees.* If interest is paid with respect to a joint account with a payor or middleman, the payor or middleman must receive the statement from each joint owner. If a joint owner is a United States person, see paragraph (l) of this section.

(5) *Special rule prior to January 1, 1985.* With respect to a pre-1984 account (as described in the regulations under section 3406) or a brokerage relationship that is not a post-1983 brokerage account (as described in the regulations under section 3406), the payor or middleman is not required to obtain the statement before January 1, 1985, if—

(i) The payor or middleman sent an additional separate mailing to the payor on or before December 31, 1983, requesting the statement (or the payor or middleman sent a nonseparate mailing on or before December 31, 1983, requesting the statement and sent a separate mailing requesting the statement on or before March 31, 1984),

(ii) The payor or middleman sent a mailing (which may be a nonseparate mailing during the calendar year 1984) requesting the statement, and

(iii) The payor or middleman has documentary evidence in its records that the customer is an exempt foreign person in accordance with A-34 of § 35a.9999-3 published at 49 FR 33236 on August 22, 1984. [In the final regulations, the text of the rule in A-34 will be inserted in this paragraph.]

The mailings described in paragraph (g)(5) (i) and (ii) of this section must have been sent by first-class mail, or by airmail if sent to a foreign address, and must have contained a notice describing the penalties of perjury statement described in paragraph (g)(1) of this section and advising the payee that backup withholding under section 3406 may commence if the statement is not provided. The payor or middleman must also have provided a reply envelope and a form on which the payee might make the statement described in paragraph (g)(1) of this section. A separate mailing, for purposes of this paragraph (g)(5), is a mailing that contains only the information described in this paragraph and, at the option of the payor or middleman, information relating to the solicitation of a taxpayer identification number. With respect to mail-hold accounts and accounts with respect to which the last-known address of the payee is incorrect, the payor middleman will be considered to have satisfied the requirements of paragraph (g)(5) (i) and (ii) of this section if the payor or middleman handled the mailings in the same manner that it handled other correspondence with the payee. A payor or middleman may also satisfy the requirements of this paragraph (g)(5) (i) and (ii) if the mailings were delivered to the payee by personal delivery or intra-office mail, provided they were delivered by the same method used generally by the payor or middleman in delivering account information and other correspondence to the payee.

(6) *Exception.* A payor or middleman is not required to obtain the statement described in paragraph (g)(1) of this section from a payee if the payee has provided the payor or middleman with Form W-9 (or acceptable substitute form) or if the payor or middleman may treat the payee as an exempt recipient under § 1.6049-4(c)(1)(ii) without receiving a Form W-9 (or acceptable substitute form) from the payee.

(h) *Information indicated that a payee is a foreign person.* A payor or middleman may treat a payee as a person who is not a United States person in accordance with paragraph (h) of this section if the payor has documentary evidence in its records that the payee is not a United States person (provided that the payor does not have actual knowledge that the evidence is false). A payor or middleman has documentary evidence in its records that the customer is not a United States person if (1) the payor or middleman obtains and has in its records the statement described in paragraph (g) of this section, Form 1001 completed under penalties of perjury, or Form 4224 completed under penalties of perjury, or (2) the payor or middleman has been provided with documentary evidence (such as a passport, identity credential, or other similar evidence of citizenship and residence) on the basis of which a reasonable person would conclude that the customer is not a United States person, and the employee of the payor or middleman who has been provided with such evidence signs

a separate written statement as part of the records of the account which states that such evidence has been provided and specifies the nature and details of the evidence. The mere fact, however, that the payee has provided an address outside the United States is insufficient evidence to establish for this purpose that the payee is not a United States person.

(i) *Examples.* The application of the provisions of paragraphs (c), (d), (e) and (f) of this section may be illustrated by the following examples.

Example (1). DB, a domestic corporation engaged in a commercial banking business, pays interest on a deposit with an account maintained by A, a non-resident alien individual, at a branch of DB in the United States. A has signed and provided DB with a Form W-8 during the current calendar year. DB is required to make an information return by reason of the application of paragraph (e)(2) of this section with respect to interest paid to A. However, the payment is not subject to backup withholding under section 3406.

Example (2). B, an individual, holds a bearer certificate of deposit issued in 1984 by SL, a federally-chartered savings and loan institution, as part of a larger single public offering of securities. The certificate of deposit has a maturity at issue of one year. It was issued by SL under arrangements satisfying the provisions of section 163(f)(2)(B)(i) and the regulations thereunder and contains on its face and on each detachable interest coupon the statement described in section 163(f)(2)(B)(ii)(II) and the regulations thereunder. Interest is payable on the obligation only by presentation of a coupon at a foreign office of DC, a domestic corporation that is the designated paying agent of SL with respect to the obligation. B does not have an account with the office of DC that pays the interest. DC does not have actual knowledge that B is a United States person. B presents a coupon for payment to DC at its foreign office, and DC pays the obligation in cash. Because the coupon contains the statement described in section 163(f)(2)(B) (ii)(II), DC may treat the obligation as an obligation described in paragraph (e)(2)(ii) of this section. Therefore, the payment by DC to B is considered not to be interest for purposes of section 6049 under paragraph (e)(2)(i) of this section, and DC is not required to make an information return with respect to the payment.

Example (3). The facts are the same as in Example (2) except that the certificate of deposit is held on B's behalf in a custodial account by FC, a wholly-owned foreign country X subsidiary of a domestic financial institution. FC presents the coupon for payment to the foreign office of DC. By reason of the application of paragraph (f) of this section, FC is required to treat the amount collected on behalf of A as interest subject to information reporting under section 6049 unless FC can establish under paragraph (h) of this section that B is not a United States person.

Example (4). FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, the designated paying agent of FC. D does not have an account with DC. Although FC is a corporation described in paragraph (d)(3)(i) of this section, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 since it is paid in the United States.

Example (5). The facts are the same as in Example (4) except that D is a nonresident alien individual who has signed and provided DC with a Form W-8 in accordance with paragraph (g) of this section. By reason of paragraph (c)(1) or (d)(2) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example (6). The facts are the same as in Example (4) except that DC pays interest on the obligation at its branch outside the United States. The payment of interest by DC to D is not considered to be payment of interest for purposes of information reporting under section 6049 because the amount is described in paragraph (d)(3)(i). Therefore, DC is not required to make an information return under section 6049.

Example (7). The facts are the same as in Example (6) except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a domestic financial institution. By reason of paragraph (f) of this section, FB is considered to have collected interest on behalf of D for purposes of section 6049. Therefore, FB is required to make an information return unless FB may treat D as a person who is not a United States person in accordance with the provisions of paragraph (h) of this section.

Example (8). The facts are the same as in Example (7) except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is not a United States-related person as described in paragraph (f) (2) on the New York Stock Exchange. Under paragraph (d) (3) (iii), the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

Example (9). FB, a foreign country X branch of a domestic corporation, engages in the commercial banking business in foreign country X. FB pays interest to E, a United States citizen residing in foreign country X, on a deposit in an account maintained by E with FB. Although the records of FB show a foreign country X address of residence for E, FB does not have sufficient information in its files to establish under paragraph (h) of this section that E is not a United States person. The payment by FB to E is considered to be a payment of interest for purposes of section 6049 under paragraph (e) (1) Of this section. Therefore, FB is required to make an information return under section 6049.

Example (10). The facts are the same as in example (9) except that FB is a wholly-owned foreign subsidiary of a domestic corporation. The payment by FB to E is considered to be a payment of interest for purposes of section 6049 under paragraph (e) (1) of this section. Therefore, FB is required to make an information return under section 6049.

(j) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. A payment shall not be considered to be made within the United States for purposes of section 6049 by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location of the account from which the amount is drawn, an amount that is described in subdivision (i) or (ii) of this paragraph (j) (1) and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is considered to be paid within the United States.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a United States person, or by a United States-related person under § 1.6049-5 (f) (2);

(B) Registered under the Securities Act of 1933; or

(C) Listed on an exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a middleman that, as a custodian, nominee, or other agent of the payee, collects the amount for or on behalf of the payer if the middleman in a United States person or United States-related person under § 1.6049-5 (f) (2).

(2) *Amounts paid with respect to deposits or account with banks and other financial institutions.* Notwithstanding paragraph (j) (1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered to be paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless—

(i) The branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business;

(ii) The business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and

(iii) The branch or office receives deposits and engages in one or more of the other activities described in § 1.864-4 (c) (5) (i).

In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered to be paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (j)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to United States if the payment is described in subdivision (i) and (ii) of this paragraph (j)(3).

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a United States person or a United States-related person under § 1.6049-5(f)(2);

(B) Registered under the Securities Act of 1933; or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in a interdealer quotation system in the United States.

(ii) The amount is paid by a middleman that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee if the middleman is a United States person or a United States-related person under § 1.6049-5(f)(2).

(4) *Foreign-targeted registered obligations.* Notwithholding paragraph (j)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation if the conditions of either subdivision (i) or (ii) of this paragraph (j)(4) are met. (A foreign-targeted registered obligation is an obligation that is issued in registered form under section 163(f) and the regulations thereunder and that is described in Q & A's 12 and 13 of § 35a.9999-5. These questions and answers refer to obligations with respect to which interest is paid to a registered owner that is a financial institution at an address outside the United States if the obligation is targeted to foreign markets.)

(i) The amount is paid by transfer to an account maintained by the registered owner outside the United States or by mail to an address of the registered owner outside the United States.

(ii) The amount is paid by credit to an international account.

For purposes of subdivision (ii) of this paragraph (j)(4), an international account is the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) that is either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member that is characterized as a foreign corporation for United States federal income tax purposes to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from United States federal income tax section 892 or 895 of the Internal Revenue Code.

(5) *Examples.* The application of the provisions of paragraph (j) of this section may be illustrated by the following examples:

Example (1). FC is a foreign corporation that is not a United States-related person under § 1.6049-5(f)(2). A holds bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933, and that are, neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a domestic corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For pruposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (j)(3) of this section.

Example (2). The facts are the same as in example (1) except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (j)(3) of this section since the coupon is presented for payment outside the United States, since FC is a foreign person that is not a United States-related person under § 1.6049-5(f)(2), since FB is not acting as A's agent, and since the obligation is not registered under the Securities Act of 1933, listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example (3). FC is a foreign corporation that is not a United States-related person. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933. The bond is not a foreign-targeted registered obligation as defined in paragraph (j)(3). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (j)(1)(i)(B). The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (j)(1) of this section.

Example (4). The facts are the same as in example (3) except that the checks are prepared and mailed in the United States by DC, a domestic corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment of DC of the interest on the FC

bonds is considered to be within the United States under paragraph (j)(1) of this section.

Example (5). Individual C deposits funds in account with FB, a foreign country X branch of domestic bank DB. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (j)(2) of is section, FB is considered to have paid the interest on C's deposit outside the United States. For the requirement to report on the interest payment, see § 1.6049–5(e)(1).

Example (6). The facts are the same as in example (5) except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to A's account outside the United States under paragraph (j)(2) of this section. For the requirement to report on the interest payment, see § 1.6049–5(e)(1).

Example (7). DC, a domestic corporation engaged in the commercial banking business, maintains a branch in foreign country X. The branch has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by the foreign country X branch. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable to six-month intervals. D presents more of the coupons at the United States office of DC and receives payment in cash. Because the coupon is presented to DC for payment with the United States, DC is considered to have made the payment within the United States under paragraph (j)(3) of this section.

Example (8). FB is recognized by both foreign country X and by the Federal Reserve Bank as a Foreign country X branch of DC, a domestic corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (j)(1) and (j)(2) of this section.

Example (9). DC is a domestic corporation. A holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in paragraph (j)(4) of this section. DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DB bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (j)(4)(i) of this section.

(k) *Original issue discount treated as payment of interest.* * * * Original issue discount (including an obligation with a maturity of not more than 6 months from the date of original issue) described in § 1.6049–5 (c) or (d) is not interest subject to reporting under section 6049 unless it is described in § 1.6049–5 (e) or (f).

(l) *Joint Payees.* Unless each joint payee of an account or instrument is a person other than a United States person as determined under § 1.6049–5 (c), the exemption from reporting under that section does not apply. In order to avoid backup withholding on the payment, any one of the joint payees who has not established such payee's foreign status must provide a taxpayer identification number to the payor in the manner described in section 3406 and the regulations thereunder and the payor must show such payee as the first person on the account on the information return. See section 3406 and the regulations thereunder for backup withholding rules applicable to joint payees where not all such payees have established foreign status.

Par. 18. Section 1.6049–6 is amended by:

1. Removing the phrase "section 3451" each place it appears and adding in its place the phrase "section 3406",

2. Adding the following new sentence at the end of paragraph (a) to read as follows: "See paragraph (e) of this section for the requirement to furnish an official 1099 to the recipient and the manner of furnishing the statement for payments made after December 31, 1983"., and

3. Adding a new paragraph (e) to read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations as to which there is attributed original issue discount after December 31, 1983.

* * * * *

(e) *Official statement to recipient for payments made after December 31, 1983*—(1) *In general.* Section 6049 (c) and this section require any person who makes an information return under section 6049 (a) and § 1.6049–4 to furnish a statement to the person whose identifying number is required to be shown on the form. Except as provided in paragraph (e)(3) of this section, this requirement shall be met by furnishing to the recipient the official Form 1099 for payments of interest or original issue discount made after December 31, 1983.

(2) *Form of the statement.* The official Form 1099 shall be the form prescribed by the Internal Revenue Service for the respective calendar year.

(i) *Interest.* With respect to payments of interest (other than original issue discount) to any person during a calendar year, the statement shall show—

(A) The name, address and the taxpayer identification number of the recipient,

(B) The aggregate amount of payments made to (or received on behalf of) the person during the calendar year,

(C) The amount of the tax withheld under section 3406, if any,

(D) The name, address, and the taxpayer identification number of the person filing the form,

(E) A statement, in bold and conspicuous type, informing the recipient that the form contains important tax information that is being furnished to the Internal Revenue Service and that, if the recipient is required to file an income tax return, the recipient may be subject to a negligence penalty (as described in section 6653 (g)) or other sanction in the event that the income is taxable on the recipient's tax return and the Internal Revenue Service determines that the recipient has not included the income on the recipient's tax return, and

(F) Any other information required by the form.

(ii) *Original issue discount.* With respect to original issue discount includible in the gross income of a holder of an obligation during a calendar year, the statement shall show—

(A) The name, address, and the taxpayer identification number of the recipient,

(B) The aggregate amount of original issue discount includible in the gross income by (or on behalf of) such person for the calendar year with respect to the obligation (determined by applying the rules of paragraph (b)(2) of § 1.6049–4),

(C) The amount of tax withheld under section 3406, if any,

(D) The name, address, and taxpayer identification number of the person filing the form,

(E) The amount, serial, or other identifying number of each obligation with respect to which a return is being made,

(F) A statement, in bold and conspicuous type, informing the recipient that the form contains important tax information that is being furnished to the Internal Revenue Service and that, if the recipient is required to file an income tax return, the recipient may be subject to a negligence penalty (as described in section 6653 (g)) or other sanction in the event that the income is taxable on the recipient's tax return and the Internal Revenue Service determines that the recipient has not included the income on the recipient's tax return, and

(G) Any other information required by the form.

(3) *Substitute Forms 1099.* No reasonable facsimile (as described in paragraph (d) of this section) of the official Form 1099 will satisfy the requirement under this paragraph to furnish a statement to any recipient. A payor, however, may use a form that contains provisions that are substantially similar to those of the official Form 1099 if the payor complies with all applicable revenue procedures relating to substitute Forms 1099.

(4) *Aggregation of payments.* A payor may aggregate all payments of interest or original issue discount made to a recipient during a calendar year on one Form 1099.

(5) *Manner and time of providing the official statement to the recipient.* The official Form 1099 shall be provided to the recipient either in person or by first class mail at the time provided in paragraph (c). The Form 1099 shall be sent by first-class mail to the recipient at his last known address or personally delivered to the recipient.

(i) *Separate mailing requirement for forms to be filed after December 31, 1984, and on or before October 22, 1986.* With respect to a Form 1099 which is required to be filed after December 31, 1984 and on or before October 22, 1986 (without regard to extensions), a Form 1099 that is mailed to the recipient, generally must be furnished separately from any other mail (including the payment subject to reporting) that the payor mails to the recipient. The only items that may be mailed to the recipient with the Form 1099 are—

(A) Statements related to other Forms 1099, Forms 1098, and Forms 5498 (or the account balance on a Form 5498), and

(C) Any documents relating to a solicitation of the recipient's correct taxpayer identification number (Form W–9) or solicitation of a Form W–8 or a substitute form (as described in § 1.6049–5 (g)(1)).

If a payor does not either personally deliver the Form 1099 to the recipient or mail the Form 1099 in a separate first-class mailing to the recipient, the payor shall be considered to have failed to make the statement required under section 6049(c) and will be subject to the penalty under section 6678.

(ii) *Statement mailing requirement for forms to be filed after October 22, 1986.* [Reserved]

(6) *Special rule for amounts described in § 1.6049–5(e)(2).* In the case of amounts described in § 1.6049–5(e)(2), any person who makes a Form 1042S under section 6049(a) and § 1.6049–4 (b)(1), (b)(2), or (b)(3) shall furnish a statement to the recipient at the time and in the manner prescribed by § 1.1461–2. The statement shall include the aggregate amount of the payments, the amount of tax withheld under section 3406, if any, and the name, address, and taxpayer identification number of the person filing Form 1042S. The statement shall include a legend to the effect that information is being furnished to the United States Internal Revenue Service and may be furnished to the foreign country of legal residence. There is no requirement that the statement with respect to Form 1042S be personnally delivered or mailed separately to the recipient.

§ 1.6050A–1 [Amended]

Par. 19. Section 1.6060A–1 is amended by removing the phrase "Form 1099F" each place it appears and adding in its place the phrase "Form 1099".

PART 31—WITHHOLDING TAXES

Par. 20. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 31.3406 (a)–3 also issued under 26 U.S.C. 3406(a), (b), (g) and (h), and sec. 6109.

Par. 21. Immediately after § 31.3404–1, § 31.3406(a)–1 and § 31.3406(a)–2 are added and reserved and § 31.3406(a)–3 is added to read as follows:

§ 31.3406(a)–1 Withholding requirement on reportable payments made after December 31, 1983. [Reserved]

§ 31.3406(a)–2 The obligation of payors to backup withholding. [Reserved]

§ 31.3406(a)–3 Accounts subject to backup withholding.

(a) *Application of backup withholding to certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* [Reserved]

(b) *Exemptions from backup withholding.* The following payments are exempt from backup withholding under section 3406(a);

(1) A payment of interest or original issue disccount described in § 1.6049–5(e)(2);

(2) A transfer by a middleman (as defined by § 1.6049–4(f)(4)(i)) from within the United States of an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States; and

(3) A payment of interest or prinicpal by an international organization (as described in § 1.6049–4(c)(1)(ii)(G) with respect to an obligation of which it is the issuer provided the organization is an organization of which the United States is a member and which enjoys immunity or exemption from any liability or obligation to pay, withhold or collect tax pursuant to an international agreement having full force and effect in the United States (or its paying, transfer, or other agent that is not also a payee's agent).

(c) *Application of backup withholding to joint foreign payees.* Although generally any payment made to joint payees shall be treated as if the entire payment were to the first person listed on the account or instrument giving rise to the payment, this general rule does not apply if the first payee listed on an account or instrument provides the penalties of perjury statement as to its foreign status (as described in § 1.6049–5(g) with respect to interest and original issue discount and § 1.6045–1(g)(3)(i) with respect to broker transactions). In such a case, backup withholding shall apply unless—

(1) Every joint payee provides the statement as to foreign status, or

(2) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in regulations under section 3406.

If any one of the joint payees who has not established foreign status provides a taxpayer identification number in the manner required in regulations under section 3406, such number is the taxpayer identification number that is required to be furnished for purposes of information reporting and backup withholding.

* * * * *

PART 35a—TEMPORARY REGS. CONCERNING BACKUP WITHHOLDING

Par. 22. The authority for Part 35a continues to read as follows:

Authority: 26 U.S.C. 7805; § 35a.9999-3 also issued under 26 U.S.C. 3406(a), (b), (c), (e), (g), (h), and (i) and sec. 6045; § 35a.9999-3A also issued under 26 U.S.C. 3406(b), (g), (h), and (i) and sec. 6045; § 35a.9999-4T also issued under 26 U.S.C. 3406 and secs. 6041, 6045, 6049; § 35a.9999-5 also issued under 26 U.S.C. 871 and secs. 881, 1441, 1442, 3406, 6041, 6045, 6049.

Par. 23. Part 35a is amended by—

§ 35a.9999-3 [Amended]

1. Removing and reserving Question and Answers 31, 33, 34, 35, 36, and 37 of § 35a.9999-3.

§ 35a.9999-3A [Reserved]

2. Removing and reserving § 35a.9999-3A

§ 35a.9999-4T [Amended]

3. Removing and reserving Question and Answers 1, 2, 4, and 5 of § 35a.9999-4T, and

§ 35a.9999-5 [Amended]

4. Removing and reserving Question and Answers 2, 3, 4, 5, 6, 11, and 17 of § 35a.9999-5.

* * * * *

Lawrence B. Gibbs,

Commissioner of the Internal Revenue.

[FR Doc. 88-4140 Filed 2-26-88; 8:45 am]

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Office of the Secretary

31 CFR Part 103

Withdrawal of Proposed Amendment To The Bank Secrecy Act Regarding Reporting and Recordkeeping of Certain Cash Transactions Under $10,000

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Withdrawal of regulatory proposal.

SUMMARY: On August 25, 1986, Treasury published a Notice of Proposed Rulemaking concerning proposed amendments to 31 CFR Part 103, the regulations under the Bank Secrecy Act (51 FR 30233). Two of the proposed amendments would have required reporting and recordkeeping requirements on certain cash purchases under $10,000. Treasury received an overwhelming number of responses to these two proposed amendments, and to provide more time to study them, these proposals were reserved from the April 8, 1987 final rule (52 FR 11436). After further study and review of the proposals, Treasury has decided to formally withdraw them from consideration at this time.

FOR FURTHER INFORMATION CONTACT: Kathleen Scott, Attorney-Advisor, Office of General Counsel, Room 2000, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-9947.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91-508, as amended (codified at 31 U.S.C. 5311-5324, 12 U.S.C. 1829(b), and 12 U.S.C. 1951-1959), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. *See* 31 U.S.C. 5311. Treasury regulations implementing the Act are found at 31 CFR Part 103.

On August 25, 1986, as part of a Notice of Proposed Rulemaking to amend various sections of 31 CFR Part 103, Treasury proposed that financial institutions be required to obtain a report from persons who purchased more than $3,000 of cashier's checks, money orders, traveler's checks, or official bank checks. 51 FR 30233, August 25, 1986. The report would be signed by the customer and would certify whether or not the customer, or person on whose behalf the puschase was made, had purchased more than $10,000 of these instruments in one day. An affirmative certification, or refusal to certify, would have required the bank to file a Form 4789. Another proposal would have added new recordkeeping requirements relating to this new reporting reqirement. The purpose of the proposals was to curb the practice of money laundering through the cash purchase of such monetary instruments below the $10,000 cash reporting requirements.

The response to these proposals from the commenters was overwhelmingly negative. Of the 300 comments submitted on the August 1986 notice, two hundred twenty one addressed these proposals in some way. Some of the major problems noted included the burden of the law $3,000 reporting threshold; the usefulness of the information in relation to the costs of implementation; and the difficulty of aggregation across types of monetary instruments.

Despite the fact that many of the negative comments stemmed from a misunderstanding of the proposals, Treasury felt it needed more time to study the issue. Therefore, it reserved these proposals from the final rule implementing the bulk of the August 25, 1986 proposals. 52 FR 11436, April 8, 1987.

Assistant Secretary of the Treasury for Enforcement Francis A. Keating, who is responsible for the overall enforcement of the Bank Secrecy Act, testified on May 6, 1987, before a Congressional Committee that the focus of this further study was to weigh the benefits of these proposals to law enforcement against their costs to the financial community. After a thorough review, Treasury has concluded that the proposals are not advisable at this time.

Treasury continues to study the question of money laundering through structuring to avoid the reporting requirements of the Bank Secrecy Act. As always, Treasury welcomes any comments and suggestions by the financial community on ways to fight money laundering and circumvention of the Bank Secrecy Act.

Treasury wants financial institutions to act as partners with Treasury in the fight against money laundering. This requires more than mere mechanical compliance with the Bank Secrecy Act. Financial institutions should always be aware of the possibility that their institutions are being misused by those who intentionally structure transactions to avoid the $10,000 reporting requirement. Financial institutions also are reminded of the requirement in 31 CFR 103.22(a)(1) that multiple transactions are to be treated as a single transaction if the financial institution has knowledge that they are by or on behalf on any one person during any business day (or twenty-four hour period for casinos). Additionally, financial institutions should remember that they may be penalized both criminally and civilly for taking part in structuring transactions to avoid Bank Secrecy Act reporting requirements. *See* 31 U.S.C. 5324, 31 CFR 103.47, 103.49, and 103.53.

Finally, Treasury encourages all financial institutions to be attentive to suspected illegal activity and to report information which may be relevant to a possible violation of any statute or regulation to special agents at their local Internal Revenue Service office or other appropriate law enforcement agency. Such notice may be given in accordance with the provisions of the Right to Financial Privacy Act as set forth in 12 U.S.C. 3403. In this way, Treasury and the financial community can work together to assure that financial institutions do not become the victims of money laundering.

Dated: January 14, 1988.

Francis A. Keating, II

Assistant Secretary (Enforcement).

[FR Doc. 88-4234 Filed 2-26-88; 8:45 am]

BILLING CODE 4810-25-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 902

Executive Order 12600; Predisclosure Notification Procedures for Confidential Commercial Information Under the Freedom of Information Act

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule implements Executive Order 12600 which requires Federal agencies to establish predisclosure notification procedures governing compliance with Freedom of Information Act requests for release of records containing commercial or financial information that is privileged or confidential disclosure of which can reasonably be expected to result in substantial competitive harm to the person who submitted the information. The procedures substantially conform to Executive Order 12600, 52 FR 23781 (June 25, 1987).

DATE: Comments must be received on or before March 30, 1988.

ADDRESS: Written comments should be submitted to Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue NW., Washington, DC 20004-1703.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, (202) 724-9088.

SUPPLEMENTARY INFORMATION: Federal agencies are required to implement procedures to carry out the guidelines of Executive Order 12600. The proposed rule is based substantially upon Department of Justice procedures, 28 CFR 16.7. The definition of confidential commercial information is incorporated in the proposed revision of § 902.54(a)(1). A final rule will be issued after consideration of comments received.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, et seq.), I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule does not constitute a "major rule" under Executive Order 12291.

List of Subjects in 36 CFR Part 902

Freedom of Information, Confidential Business Information.

For the reasons set out in the preamble, 36 CFR Part 902 is proposed to be amended as follows:

PART 902—FREEDOM OF INFORMATION ACT

1. The authority citation for 36 CFR Part 902 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012-10019 (March 27, 1987); E.O. 12600, 52 FR 23781 (June 25, 1987).

2. Section 902.03 is proposed to be amended by adding the following definition to read as follows:

§ 902.03 Definitions.

"Submitter" means any person or entity that provides or has provided information to the Corporation or about which the Corporation possesses records subject to Exemption 4 of the Freedom of Information Act.

3. Section 902.54 is proposed to be amended by revising paragraph (a)(1) and by adding paragraph (c) to read as follows:

§ 902.54 Trade secrets and commercial or financial information that is privileged or confidential.

* * * * *

(a) * * *

(1) Commercial or financial information not customarily released to the public, furnished and accepted in confidence or disclosure of which could reasonably be expected to cause substantial competitive harm, or both;

* * * * *

(c) (1) *In general.* For comercial or financial information furnished to the Corporation on or after March 30, 1988, the Corporation shall require the submitter to designate, at the time the information is furnished or within a reasonable time thereafter, any information the submitter considers confidential or privileged. Commercial or financial information provided to the Corporation shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Notice to submitters.* The Corporation shall provide a submitter with prompt written notice of a request encompassing its commercial or financial information whenever required under paragraph (c)(3) of this section, and except as is provided in paragraph (c)(7) of this section. Such written notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the information. Concurrently with its notice to a submitter, the Corporation shall inform a requestor in writing that the submitter is afforded a reasonable period within which to object to disclosure and that the 10 workday initial determination period provided for in 36 CFR 902.60 may therefore be extended.

(3) *When notice is required.* (i) For information submitted to the Corporation prior to March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever: (A) The information is less than ten years old; (B) the information is subject to prior express commitment of confidentiality given by the Corporation to the submitter; or (C) the Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

(ii) For information submitted to the Corporation on or after March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever: (A) The submitter has in good faith designated the information as confidential, or (B) the Corporation has reason to believe that disclosure of the information may result in substasntial competitive harm to the submitter. Notice of a request for information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration. The submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative that the information in question is in fact confidential and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (c)(2) of this section, the Corporation shall afford a submitter a reasonable period within which to provide the Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(5) *Notice of intent to disclose.* The Corporation shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose information. Whenever the Corporation decides to disclose information over the objection of a submitter, the Corporation shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A discription of the information to be disclosed; and

(iii) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(6) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information covered by paragraph (c) of this section, the Corporation shall promptly notify the submitter.

(7) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(i) The Corporation determines that the information should not be disclosed.

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

Date: February 19, 1988.

J.J. Brodie,

Executive Director.

[FR Doc. 88-4186 Filed 2-26-88; 8:45 am]

BILLING CODE 7630-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100 and 3120

[AA-620-08-4111-01]

Oil and Gas Leasing and Competitive Leases; Implementation of Provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Action to Implement Through Regulations the Provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

SUMMARY: The Bureau of Land Management will publish a proposed rulemaking to implement the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and at the same time conduct test oil and gas lease sales to determine the effectiveness of the procedures proposed in the rulemaking and to give the public an opportunity to see the procedures applied and to comment on both the procedures and the proposed regulations.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: In the closing days of the First Session of the 100th Congress, the Congress added the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Act) to the Omnibus Budget Reconciliation Act of 1987. The Federal Onshore Oil and Gas Reform Act requires a final rulemaking implementing its provisions to be issued within 180 days of the Act's enactment. In order to meet this legislatively imposed deadline, the Bureau of Land Management intends to publish a proposed rulemaking about the middle of March, allowing only a 30-day comment period. Even though the provisions of the proposed rulemaking will be complex, a comment period longer than 30-days will make it virtually impossible to complete the issuance of the final rulemaking within the 180 days set by Congress. The Bureau therefore urges the interested public to obtain copies of the Federal Onshore Oil and Gas Reform Act and become acquainted with its provisions so as to be able to respond quickly to the request for comments on the proposed rulemaking. The public is not expected to comment on this notice and any comments received will not be considered until the preparation of the final rulemaking.

At the time the proposed rulemaking is published, the Bureau of Land Management will also conduct competitive onshore oil and gas lease sales on a test basis, as authorized by the Act, and invite comments from the public on the efficacy of the procedures proposed in the rulemaking and employed in the sales. Two methods will be used for the test sales. In New Mexico, Utah, and the Eastern States, a confidential nomination system will be used. The lists of lands available for nomination were posted on February 1, 1988, with the nomination period closing February 22, 1988. Sale lists composed of nominated parcels will be posted on March 14, and the sales will be held between April 13, and April 20, 1988.

In Wyoming, Montana, and Colorado, lands available for leasing will be included in competitive sales scheduled to be held between March 24 and April 1, 1988. No nomination phase will be used in these States. Sale lists were posted on February 8, 1988.

As required by the Act, all sales will be conducted as oral auctions, with the minimum bid set at $2.00 per acre. Sale lists will be available from each State, and dates and locations for the sales will be announced by the respective State offices of the Bureau of Land Management.

February 23, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-4236 Filed 2-26-88; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Parts 5400 and 5450

[AA-230-07-6310-02]

Sales of Forest Products and Award of Contract; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5400, Sales of Forest Products; General, and Part 5450, Award of Contract; General. The Department of the Interior has determined that it is necessary to amend existing regulations concerning timber sale contract performance bonds to encourage responsible bidding at such a rate that the bidder, if awarded the contract, would be more able to perform the obligations under the contract.

DATE: Comment period expires April 29, 1988. Comments received or postmarked after this date may not be considered in the decision making process on the rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Estola, (503) 231-6873

or

Gary Ryan, (202) 653-8864

SUPPLEMENTARY INFORMATION: The Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98-478) requires the Secretary of

the Interior to take action to encourage responsible bidding. Bidding is considered responsible if it is at such a level that the bidder, if awarded the contract, would be able to perform the obligation required by its provisions. Further, the Act requires the Secretary to take action to reduce speculative bidding. The major action taken by the Secretary to address speculative bidding has been greater use of short-term contracts. Bids on short-term contracts reflect the current value of timber, whereas bidders on long-term contracts are more at the mercy of unanticipated unfavorable market conditions. Contracts bid since the 1984 Act are being completed on a timely basis.

Timber markets have improved with no commensurate increase in available timber, thus generating speculation. The proposed rulemaking would dampen speculative bidding and encourage the completion of future timber contracts by requiring an increase in the minimum performance bond for timber sale contracts having a bid ratio exceeding 1.25. Expressed as a decimal, the bid ratio is the quotient of the total bid price divided by the total appraised price. The amount of the increase in the required performance bond would be the difference between the total bid price and 1.25 times the total appraised price. The existing $500,000 cap on performance bonds would be removed to facilitate the implementation of this proposed rulemaking.

The proposed rulemaking would remove a personal surety as a type of acceptable performance bond because of (1) difficulty in establishing the current market value of personal and real property, (2) the tendency of property to change ownership as time passes (3) the difficulty of establishing Government liens on property, and (4) the tendency of property to be encumbered by new liens as time passes.

The use of bid ratios as a measure of speculative bidding is only acceptable where timber sale appraisals reflect actual market conditions. Only in States having access to a sufficient data base of appropriate timber sales would appraised prices be established by the transaction evidence appraisal method, under which appraisals would be based on recent sales that are similar in timber type, quantity, and location. In these circumstances transaction evidence appraisals would generally be used to establish the minimum acceptable bid price and provide appraised prices for computing bid ratios on a standardized basis. However, other suitable market value appraised price determinations might be used where timber sale transactions are not sufficient to enable use of a transaction evidence appraised system. In these situations, additional bonding would not be considered if bid ratios exceed 1.50.

The principal author of the proposed rulemaking is David Estola, Oregon State Office, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking 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 National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Parts 5400 and 5450

Forest and forest products, Government contracts, performance bonds, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5400—[AMENDED]

1. The Authority Citation for Part 5400 continues to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 423, 1181a.

2. Section 5400-0.5 is amended by adding a new paragraph (p) at the end thereof to read:

§ 5400.0-5 Definitions.

* * * * *

(p) "Bid ratio" means the mathematical relationship between the bid price and the appraised price of a timber sale computed by dividing the total bid price by the total appraised price and expressing the quotient as a decimal.

PART 5450—[AMENDED]

1. The Authority Citation for Part 5450 continues to read as follows:

Authority: Sec. 5., 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5451.1 is revised to read as follows:

§ 5451.1 Minimum performance bond requirements; types.

(a) A minimum performance bond of not less than 20 percent of the total contract price shall be required for all contracts of $2,500 or more, except when the purchaser is required to provide a larger performance bond under § 5451.2(a) of this title. A minimum performance bond of not less than $500 shall be required for all installment contracts less than $2,500. For cash sales less than $2,500, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on a approved standard form; or

(2) Cash Bond; or

(3) Negotiable securities of the United States; or

(4) Any guaranteed remittance approved by the authorized officer.

3. Section 5451.2 is revised to read as follows:

§ 5451.2 Performance bonds in excess of minimum.

(a) A performance bond in excess of the minimum required in § 5451.1(a) of this title shall be required for all contracts having a bid ratio exceeding 1.50 where the bid ratio was determined by using a market-based appraisal method such as the transactional evidence appraisal system. The amount of the bond increase will be the difference between the total bid price and 1.50 times the total appraised price.

(b) The purchaser may cut timber before payment of any installment required by § 5461.2(a) of this title by increasing the minimum bond required by §§ 5451.1 and 5451.2(a) of this title by an amount equal to 1 or more installment payments: Provided however, That the authorized officer may grant permission to cut timber under this section only when the value of the timber to be cut does not exceed the amount by which the minimum bond has been increased. The purchaser shall secure written approval of the adjusted bond by the authorized officer before

cutting any timber under the adjusted bond.

James C. Cason,
Acting Assistant Secretary of the Interior.
January 26, 1988.

[FR Doc. 88-4235 Filed 2-26-88; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DAR Case 87-305]

Department of Defense Federal Acquisition Regulation Supplement; Special Tooling and Special Test Equipment

AGENCY: Department of Defense (DoD).

ACTION: Proposed Rule and request for comment.

SUMMARY: The Defense Acquisiton Regulatory Council is considering revisions to DFARS 215.873 to implement Section 810 of Pub. L. 100-180, the FY 88 Defense Authorization Act.

DATES: Comments must be received by the DAR Council at the address shown below on or before March 30, 1988 to be considered in developing a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P) / DARS, c/o OASD (A&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-305 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, 202/697-7267.

SUPPLEMENTARY INFORMATION:

A. Background

A portion of Section 9105, Pub. L. 99-500, the FY 87 Defense Appropriations Act, contained restrictions on reimbursement of defense contractors for the costs of production special tooling (PST) and production special test equipment (PSTE). These restrictions were implemented, on an interim basis, at 52 FR 1914 *et seq.* effective January 16, 1987. Section 810, Pub. 100-180, the FY 88 Defense Authorization Act, amended title 10, United States Code, by adding Section 2339, which directs the issuance of regulations containing new restrictions on reimbursing defense contractors for the cost of PST and PSTE. This proposed rule is being considered for the purpose of implementing 10 U.S.C. 2329. Comments received on this propsed rule will be considered in formulating the final rule.

B. Regulatory Flexibility Act

The new coverage at DFARS 215.873 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because small entities are not usually involved with Government prime contracts which require PST or PSTE with a cost in excess of $1,000,000.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 215

Government procurement.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 215 be amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is revised to read as follows:

215.873 Production special tooling and production special test equipment (PST and PSTE).

(a) *General.* When a contractor, to perform a production contract, is required to acquire or fabricate production special tooling (PST) and production special test equipment (PSTE), at a total cost to the contractor of $1 million or more, the contracting officer shall comply with the procedures in paragraph (c) below unless one of the exceptions in paragraph (d) below, apply.

(b) *Definitions.* "Production special tooling" and "production special test equipment" are those subsets of "special tooling" and "special test equipment" (as defined in FAR 45.101) that support production rates and quantities.

(c) *Procedures.* (1) When the criteria specified in paragraph (a) above apply, the contract shall, as a minimum, include a special provision which specifies the following:

(i) A listing of, or reference to a listing of, the PST and PSTE which the contractor will acquire or fabricate to perform the contract;

(ii) The total dollar amount to be paid to the contractor on the instant contract for the PST and PSTE being acquired or fabricated;

(iii) The maximum amount the contractor may be paid on the instant and future contracts for the PST and PSTE (which can be a specific dollar amount or dollar ceiling);

(iv) An amortization schedule for the payment, subject to availability of funds, of the balance of the maximum amount specified in (c)(1)(iii) above (see also paragraph (c)(3) below;

(v) That, in the event the contract or program is terminated before the maximum amount specified for the PST and PSTE has been paid, for reasons other than the contractor's failure to perform, the contractor shall be paid the balance of the maximum amount or the actual amount incurred, whichever is less, subject to availability of appropriated funds;

(vi) That costs incurred by the contractor for the acquisition and fabrication of the PST and PSTE shall be direct charges to the instant contract. If the instant contract does not provide for payment of the maximum amount specified for the PST and PSTE, the balance of these costs shall not be shifted, assigned to other programs, or charged to indirect cost pools.

(2) The Government's right to title to PST and PSTE shall determined in accordance with FAR 45.3.

(3) Where it is anticipated that future contracts will be awarded to the same contractor for the same or similar items for which the contractor will be able to use the PST and PSTE, the instant contract will provide for payment of at least 50 percent of the maximum amount specified for the PST and PSTE, except when the Service Secretary determines, in advance of contract award, that the use of a lower percentage is in the best interests of the Government and the use of a lower percentage will not cause an undue financial burden on the contractor. The authority to make the determination may be delegated to a level not lower than the Head of the Contracting Activity.

(4) When it is anticipated that no future contracts will be awarded as provided in (c)(3) above, the instant contract will provide for full payment of the maximum amount specified for the PST and PSTE.

(5) When a contract does not provide for payment of the maximum amount specified for the PST and PSTE under the instant contract, and an amortization schedule is established in accordance with paragraph (c)(1)(iv), the contracting officer shall make the

following adjustments for calculating profit objectives and facilities capital cost of money:

(i) Since cost of money for PST and PSTE will be reimbursed directly on the instant contract, the contracting officer shall calculate a separate facilities capital cost of money amount for the unamortized portion of PST and PSTE costs. This amount shall be calculated by multiplying the average annual unamortized portion of the PST and PSTE costs by the current cost of money rate. This separate cost of money for PST and PSTE shall not be included on the DD Form 1861. However, this amount is to be added to the cost of money on company-wide facilities capital. When the weighted guidelines method is used, this amount will be added to Line 32 of DD Form 1547. Cost of money for PST and PSTE shall not be included in the cost base for establishing a profit objective.

(ii) When establishing a profit objective using DFARS Subpart 215.9, only those PST and PSTE costs being charged directly under the instant contract action will be profit-bearing. These costs shall be included as part of the cost base for performance risk and contract type risk (including working capital adjustment). The unamortized balance of the PST and PSTE costs shall not be profit-bearing on the instant contract, nor shall they be included in the facilities capital employed base.

(iii) For future contract actions on which the unamortized balance of the PST and PSTE costs (or portions thereof) will be charged directly, the procedures in (c)(5)(i) and (ii) above will apply.

(d) *Exceptions.* The procedures set forth above do not apply to contracts:

(1) Where the PST and PSTE will be used by the contractor solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding procedures contained in FAR Part 14;

(3) Where prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public;

(4) Where price is set by law or regulation.

(e) *Subcontracts.* The procedures specified in paragraph (c) above are only required at the prime contract level. However, the contracting officer may apply these procedures at the subcontract level, if doing so would be in the best interests of the Government.

[FR Doc. 88-4320 Filed 2-26-88; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Part 217

[DAR Case 87-32]

Department of Defense Federal Acquisition Regulation Supplement; Spares Acquisition Integrated With Production

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory Council is considering the addition of 217.7205 to the Defense Federal Acquisition Regulation Supplement to implement DoD Instruction 4245-12, "Spares Acquisition Integrated with Production (SAIP)."

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before April 29, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87-32 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Spares Acquisition Integrated with Production is a technique which permits concurrent acquisition of spare parts with identical items included in the production acquisition of an end item. It exploits the economics associated with combining material orders and manufacturing actions for like requirements.

B. Regulatory Flexibility Act Information

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 small entities generally do not receive awards for full scale development contracts and associated spare parts orders. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 217

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 217 be amended as follows:

PART 217—[AMENDED]

1. The authority citation for 48 CFR Part 217 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 500.35, and DoD FAR Supplement 201.301.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.7205 and sections 217.7205-1 through 217.7205-4 are added to read as follows:

217.7205 Spares Acquisition Integrated with Production (SIAP).

217.7205-1 Scope.

This section prescribes policy and procedures for implementing SIAP in selected acquisitions.

217.7205-2 Definition.

"Spares Acquisition Integrated with Production" (SAIP) is a technique used to acquire spare parts combined with procurement of identical items produced for the primary system, subsystem, or equipment.

217.7205-3 Policy.

SAIP shall be considered for the acquisition of spares when the end item will be or is in production. DoDI 4245.12, Spares Acquisition Integrated with Production (SAIP), explains the criteria to be considered by DoD acquisition managers in selecting items for SAIP application.

217.7205-4 Procedures.

When SAIP applies, it shall be included in the contract and subcontracts as deemed appropriate along with any special provisions needed to tailor the acquisition for administering the SAIP program.

(a) Full scale development solicitations and contracts, may require the contractor to:

(1) Recommend SAIP candidates by preparing and submitting a Recommended Spare Parts List (RSPL) for SAIP. This list must be submitted in sufficient time to allow the Government to process and integrate orders;

(2) Submit a plan for production rate tooling and associated costs required for optimum production rates; and

(3) When submitting the RSPL, identify those items that can be ordered directly from the actual manufacturer.

(b) Production solicitations and contracts may require the contractor to:

(1) Update or submit information in paragraph (a) above;

(2) Identify the order need dates by submitting the contractor's procurement schedule.

(3) Combine material orders and manufacturing actions for SAIP items with material orders and manufacturing actions for identical items used in the production of a system or subsystem when a firm order for SAIP items is received.

[FR Doc. 88-4213 Filed 2-26-88; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1988 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1988 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before March 30, 1988 in order to be assured of consideration.

ADDRESS: Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3758, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475-4645. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

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

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

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended (the "Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act that the level of support for shown wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1988 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1984-1986:	
1984-1132	
1985-1120	
1986-1097	
3349/3	1116.3
(2) Average parity index, calendar years 1958-1960	297.3
(3) Ratio of 1116.3 to 297.3	3.7548
(4) 3.7548 x 62 cents per pound (1965 support price)	$2.3280
(5) 76.4% x 2.3280	$1.7786
(6) 1.7786 rounded to nearest full cent	$1.78

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a rane of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year. Accordingly, the following method for calculating the support prices for pulled wool and mohair for the 1988 marketing year are being proposed.

Proposed Determinations

A. Support Price—Pulled Wool

The support price for pulled wool for the 1988 marketing year cannot be

determined until the 1988 average market price for shorn wool is calculated, which should occur by April 1989. It is proposed that the method for calculating the support price for pulled wool shall be as follows: Once the average market price for shorn wool is known, the support price for pulled wool will be determined by subtracting the 1988 average market price for shorn wool from the 1988 support price of shorn wool and multiplying that number by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The product is then multiplied by 80 percent, which is a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

B. Support Price—Mohair

It is proposed that the support price for mohair for the 1988 marketing year shall be determined based on the October 1987 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair support price:

(1) 85 percent of the percent of parity at which shorn wool is supported.

(2) A percentage equal to the percent of parity at which shorn wool is supported.

(3) 115 percent of the percent of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed levels of price support for mohair. Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702-708, 68 Stat. 901-912, as amended (7 U.S.C. 1781-1787).

Signed at Washington, DC on February 24, 1988.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation

[FR Doc. 88-4227 Filed 2-26-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Management of Las Huertas Canyon, Cibola National Forest, Bernalillo and Sandoval Counties, NM; Revised Notice of Intent To Issue Environment Impact Statement

The Department of Agriculture, Forest Service, issued a Notice of Intent to complete an analysis of Las Huertas Canyon to determine the management objectives desired, the degree of development or non-development of the area, and the types of mitigation that will be required under each alternative management proposal. A draft environmental impact statement was to be available for public review August, 1987 and a final impact statement was scheduled for public review by March, 1988. Due to unforseen circumstances, the draft environmental impact statement will be available for public review in June, 1988 and the final impact statement is scheduled for public review by September, 1988.

The Notice of Intent, published in the **Federal Register** of December 16, 1986, is hereby revised (40 CFR 1501.7 and 1507.3(e)).

For further information contact: Jimmy E. Hibbetts, Project Management, Cibola National Forest, 10308 Candelaria NE., Albuquerque, NM 87112; telephone 505-275-5207 or 8-474-5207.

Date: February 19, 1988.

C. Phil Smith,

Forest Supervisor.

[FR Doc. 88-4221 Filed 2-26-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Michigan Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on March 2, 1988, at the Sheraton Detroit Airport Hotel, 8600 Merriman Road, Romulus, Michigan. The purpose of the meeting is to plan projects and activities.

Persons desiring additional information or planning a presentation to the Committee, should contact Committee Chairperson, Dennis L. Gibson, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-4185 Filed 2-26-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance for following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Adminstration.

Title: Certificate of Origin

Form Number: Agency—SF 370-1; OMB—0648-0040

Type of Request: Revision of a currently approved collection

Burden: 32 respondents; 145 reporting hours

Needs and Uses: The Marine Mammal Act, as amended, requires the banning of importation of certain fish unless the nation of origin meets U.S. standards for mammal protection. Imports of such fish (yellowfin tuna, salmon, and/halibut) must be accompanied by documentation on the country of origin, and serves as a basis for allowing importation.

Affected Public: Business or other for-profit institutions; small businesses or organizations.

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: John Griffen 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recomendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 19, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88-4242 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-CW-M

[Docket No. 80216-8016]

1988 Directory of Japanese Technical Resources

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice; request for information.

SUMMARY: As required by subsection 5(d)(4) of the Stevenson-Wydler Technology Act of 1980, the Secretary of Commerce is directed to compile, publish, and disseminate an annual directory which lists all programs and services in the United States which collect, abstract, translate and distribute Japanese scientific and technical information. The Secretary has delegated authority for this activity to the Under Secretary for Economic Affairs.

The National Technical Information Service (NTIS) plans to update the Directory of Japanese Technical Resources—1987 which it published last year to meet this requirement. Organizations which were left out of the 1987 version that wish to be included in the update are invited to contact David Shonyo at the address given below to provide him with name, address, and the name of a contact person.

DATE: In order to be included in this year's annual directory, interested parties must respond to this notice no later than April 29, 1988.

ADDRESS: Organizations that wish to be included in the directory should contact David Shonyo, Director, Office of International Affairs, National Technical Information Service, 5284 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487-4819.

Date: February 23, 1988.

Barry C. Beringer,

Associate Under Secretary for Economic Affairs.

[FR Doc. 88-4243 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-EA-M

Foreign-Trade Zones Board

[Docket No. 10-88]

Foreign-Trade Zone 70, Detroit, MI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), grantee of FTZ 70, requesting authority to expand the zone to include two additional general-purpose zone sites in Detroit, within the Detroit, Michigan, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 16, 1988.

The Detroit zone was approved in July 1981, and reorganized in April 1985. Since then, there have also been two boundary modifications. The zone project presently consists of five general-purpose zone sites (total area, 16 acres, with some 350,000 sq. ft. of warehouse space) in Detroit. The change requested in this application involves the addition of two 32-acre general-purpose sites, one of which contains warehousing space that was authorized under a boundary modification until July 1990. One of the two new sites is at the Lynch Road Industrial Park Condominium located at Lynch Road and Mt. Elliott Avenue. The owner is Lynch Road Properties, Inc., and the operator of the site will be Progressive Distribution Centers, Inc. The second site (two parcels) is owned by the Detroit Economic Development Corporation, and is located at Clark and Fort Streets, at the former Rockwell International and Fruehauf Corporation properties. GDFTZ indicates it needs the additional sites to accommodate new zone business.

In accordance with the Board's regulations, an examiners committee has been designated to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Cental Region, Patrick V. McNamara Bldg., 477 Michigan Ave., Detroit, MI 58226-2568; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231-1027.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 12, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Room 1529, Washington, DC 20230

Dated: February 23, 1988.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 88-4254 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-428-037]

Drycleaning Machinery From West Germany Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 7, 1988, the Department of Commerce published the preliminary results of antidumping duty administrative review and tentative determination to revoke in part on drycleaning machinery from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1985 through October 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5289/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 432) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972). The Department has now completed that

administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of West German drycleaning machinery currently classifiable under item 674.4100 of the Tariff Schedules of the United States and item number 8451.10.10 of the Harmonized System.

The review covers one manufacturer/exporter of West German drycleaning machinery to the United States, Seco Maschinenbau & Co. GmbH and the period November 1, 1985 through October 31, 1986.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that no dumping margin exists for Seco Maschinenbau & Co. GmbH for the period November 1, 1985 through October 31, 1986. The Department will instruct the Customs Service to not assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provcided for by section 751(a)(1) of the Tariff Act, since there was no margin the Department shall not require a cash deposit of estimated antidumping duties for Seco Maschinenbau & Co. GmbH. For any future shipments from the remaining known exporter not covered in this review, no cash deposit shall be required as published in the final results of the last administrative review (51 FR 43753, December 4, 1986).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1986 and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: February 23, 1988.

[FR Doc. 88-4255 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-701]

Preliminary Determination of Sales at Less Than Fair Value; Certain Granite Products From Italy

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain granite products from Italy are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Italy as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 9, 1988.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, (202) 377-5288, Steven Lim, (202) 377-4087 or Jess Bratton, (202) 377-3963, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

Preliminary Determination

We have preliminarily determined that certain granite products from Italy are being, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). Except as noted below, we made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, March 1, 1987 through August 31, 1987. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the last **Federal Register** publication pertaining to this investigation (the Notice of Initiation (52 FR 31649, August 21, 1987)), the following events have occurred.

On September 11, 1987, the ITC determined that there is a reasonable indication that imports of certain granite products from Italy are materially injuring a U.S. industry (U.S. ITC Pub. No. 2016, September 11, 1987).

On September 13, 1987, we presented questionnaires to counsel for respondents. The responses to section A were due October 9, 1987, while the responses to sections B and C were due October 18, 1987. Questionnaires were presented for seven Italian producers which comprise approximately 63% of all Italian exports of certain granite products during the period of investigation. These companies are: Campolonghi Italia S.p.A.; Euromarble S.p.A.; F.lli Guarda S.p.A.; Formai & Mariani S.r.l.; Henraux S.p.A.; Pisani Brothers S.p.A. and Savema S.p.A.

On October 6, 1987, respondents requested that the deadline for the responses to section A be extended to October 15, 1987. On October 9, 1987, we granted that request.

On October 13, 1987 (as requested by counsel for respondents), we presented constructed value questionnaires for cut-to-size granite slabs. Responses were due November 3, 1987. These slabs are dedicated for use in particular building projects. Because the projects for which cut-to-size slabs sold in Italy and for exportation to countries other than the United States are of a different character and magnitude than projects sold in the United States, price comparisons of such or similar cut-to-size granite slabs were not deemed feasible.

On October 14, 1987, respondents requested that the deadline for the responses to sections B and C be extended to November 2, 1987. On October 16, 1987, we granted that request.

On October 15, 1987, responses to section A were received. On October 23, 1987, we sent a deficiency letter regarding the section A responses to counsel for respondents and informed respondents that failure to provide the requested information by November 2, 1987, may result in our using best information available for this preliminary determination.

On October 23, 1987, respondents requested that the deadline for the responses to section E be extended to November 17, 1987. On October 28, 1987 we extended the deadline to November 10, 1987.

On November 2, 1987, we received responses to sections B and C, and supplemental responses to section A.

On November 9, 1987, we sent a deficiency letter regarding the responses

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to sections B and C and informed respondents that failure to provide the requested information by November 16, 1987 may result in our using best information available for this preliminary determination.

On November 10, 1987, we received responses to section E. We were provided actual costs for only those cut-to-size projects completed during the period of investigation. Estimated costs were provided for the projects begun but not finished during that period.

On November 18, 1987, petitioner requested a 30 day postponement of the preliminary determination in this case. On December 8 1987, in accordance with section 733(c)(1)(A) of the Act and § 353.39(b) of the Commerce Regulations (19 CFR 353.39(b)), we postponed the preliminary determination until not later than February 3, 1988 (53 FR 47618, December 15, 1987).

On November 17, 1987, we received supplemental responses to sections B and C.

On November 24, 1987, we sent a deficiency letter regarding sections B, C and E which stated that failure to provide the requested information by December 4, 1987 may result in our using best information available for this preliminary determination.

On December 4, 1987, we received supplemental responses to sections B, C and E.

On December 11, 1987, we sent another deficiency letter regarding sections B, C and E and informed respondents that failure to provide the requested information by December 18, 1987 may result in our using best information available for this preliminary determination.

On December 18, 1987, we received supplemental responses to sections B, C and E.

On December 18, 1987, we extended the period of investigation back to January 1, 1987 for cut-to-size granite slabs or projects in order to avoid the problems presented by the estimated costs provided in the constructed value submissions. We wanted to use actual costs in calculating the constructed value. We requested constructed value information only for those projects completed prior to November 30, 1987, so that we would be provided with actual costs. In order to be confident that the period of investigation contained a representative sample of large projects (i.e., $500,000 and over), we also extended the period of investigation back to July 1986, for these projects. We requested that responses be received nct later than January 8, 1988.

On December 30, 1987, petitioner requested an additional 20 day postponement of the preliminary determination. On January 11, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until not later than February 23, 1988 (53 FR 1050, January 15, 1988).

On December 22, 1987, counsel for respondents requested that the deadline for the responses to our supplemental constructed value request be extended to January 25, 1988.

January 4, 1988, we granted an extension until January 19, 1988.

January 26, 1988, petitioners alleged that respondents' sales of slabs, not cut-to-size, were at prices below their cost of production. The Department has determined that this allegation warrants formal investigation. Accordingly we will investigate this allegation for purposes of our final determination.

Scope of Investigation

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1cm) to 2½ inches (6.34cm) in thickness and include the following: rough-sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under TSUSA item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value as specified below. On February 5, 1988, Pisani Brothers S.p.A. (Pisani) submitted comments concerning petitioner's allegation of sales at prices below their cost of production for slabs, not cut-to-size. In this submission, Pisani stated that its initial response regarding its block costs was in error in all instances raised by the petitioner. Since we believe that this impeaches the credibility of Pisani's entire response, we have used the highest margin of all respondents that supplied adequate responses as best information available for Pisani.

United States Price

We base United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. These sales were made directly to unrelated customers in the United States prior to importation. Under these circumstances, section 772(b) clearly requires that purchase price be used to determine the U.S. sales price.

We calculated purchase price based on the ex-factory, f.o.b., c.i.f., or c.i.f., duty paid, packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight and handling, ocean freight and marine insurance, U.S. duty, and U.S. inland freight, as appropriate.

Foreign Market Value

We established separate categories of "such or similar" merchandise pursuant to section 771(16) of the Act, on the basis of form of material (rough slabs, face finished slabs, and tiles), type of stone, dimensions, finishes, edgeworks, anchoring and assembly work.

Where there were no identical products in the home market with which to compare products sold in the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

For sales of rough slabs, face-finished slabs, not cut-to-size, and tiles, we calculated foreign market value based on home market unpacked prices to unrelated purchasers in accordance with section 773(a) of the Act. We made deductions, where appropriate, for inland freight. We made adjustments for differences in circumstances of sale for credit expenses pursuant to § 353.15(b) of our regulations and commissions on sales in the United States and in the home market pursuant to § 353.15(c) of our regulations. We used the indirect selling expenses to offset the commissions.

For face finished slabs, cut-to-size, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act.

We calculated the constructed value of cut-to-size projects sold in the United States because there were no comparable projects sold in the home market or third country markets.

We used the respondents' submissions for materials and fabrication. Materials costs, which had been developed by the respondents using a theoretical waste calculation for waste during the production process, were adjusted to include losses arising from scrap which could not be used for another project or sold.

Also, for Savema, we applied the dimension waste factor to factory overhead for the flaming and polishing processes.

For Campolonghi's related company Freda, we applied factory overhead to the exteral processing costs which had not been included.

For F.lli Guarda, we used "best information" since the method used to calculate the waste factor was not explained in their response. We used as "best information" the highest waste factor reported by the other respondents.

Where the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. In calculating the general expense, the Department used the U.S. selling expenses for the projects, since selling expenses related to home-market projects which may not be comparable in sizes, granite type and quality would not be meaningful.

General expenses for all companies were computed using the most recent available financial statements.

Where the amount for profit was less than eight percent of the sum for the costs of materials, fabrication and general expenses, we used the statutory minimum of eight percent. Where appropriate for constructed value, an adjustment was made under § 353.15 of the Commerce Regulations for differences in circumstances of sale between then two markets. This adjustment was for differences in credit expenses.

Currency Conversion

We made currency conversions as of the date of sale in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Italy for all manufacturers/producers/exporters, with the exception of Campolonghi Italia S.p.A., F.lli Guarda S.p.A., and Savema S.p.A. that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. For Camplolonghi Italia S.p.A., F.lli Guarda S.p.A., and Savema S.p.A. liquidation is not suspended. For the remaining firms, the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below.

This suspension will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Campolonghi Italia S.p.A.	0.25
Euromarble S.p.A.	0.74
F.lli Guarda S.p.A.	0.00
Formai & Mariani S.r.l.	5.87
Henraux S.p.A.	12.59
Pisani Brothers S.p.A.	12.59
Savema S.p.A.	0.23
All Others	8.70

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Office of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing at 1:00 p.m. on April 15, 1988, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230 to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request to the Office of the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Office of the Assistant Secretary by March 18, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

February 23, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-4256 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-701]

Preliminary Determination of Sales at Less Than Fair Value; Certain Granite Products From Spain

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain granite products from Spain are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Spain as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 9, 1988.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION: Contact Charles E. Wilson (202) 377-5288, or James Riggs (202) 377-1766, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain granite products from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b)

(the Act). Except as noted below, we made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, March 1, 1987 through August 31, 1987. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the last Federal Register publication pertaining to this investigation [the Notice of Initiation (52 FR 31649, August 21, 1987)], the following events have occured.

On September 11, 1987, the ITC determined that there is a reasonable indicaton that imports of certain granite products from Spain are materially injuring a U.S. industry (U.S. ITC Pub. No. 2016, September 11, 1987).

Questionnaires were presented to two Spanish producers which comprised over 60 percent of all Spanish exports of certain granite products to the United States. These companies are Ingemar, S.A. (Granitos Ibericos). Ingemar forwarded to Ingemarga, S.A. (Ingemar) and Granitos Ibericos-Grayco, S.A. (Ingemarga), a related company, a copy of the questionnaire. In addition, we received voluntary responses from Artemarmol, S.A. (Artemarmol) and Modulgranito Iberico, S.A. (Modulgranito Iberico).

On September 17 and September 18, 1987, we presented questionnaires to the counsels for Ingemar and Granitos Ibericos. The responses to section A were due on October 9, 1987, while the responses to sections B through D were due on October 19, 1987. On November 6, 1987, were presented section E of our questionnaire, the constructed value section, to the counsels for Ingemar and Granitos Ibericos. The responses to secton E were due on November 27, 1987.

On October 8, 1987, Granitos Ibericos requested an extension of the deadline to October 13, 1987, for section A, and to October 22, 1987, for sections B through D. On October 15, 1987, we granted that request. On October 9, 1987, Ingemar requested an extension of the deadline for section A to October 19, 1987. On October 13, 1987, we granted the extension of section A until October 15, 1987. On October 14, 1987, Ingemar requested another extension to October 14, 1987, Ingemar requested another extension to October 23, 1987, for section A and to November 2, 1987, for sections B through D. On October 16, 1987, we granted the extension to October 19, 1987, for section A and to November 2, 1987, for sections B through D. On November 25, 1987, counsel for Granitos Ibericos requested an extension to submit section E of the response to December 4, 1987. We granted this request.

We received responses to section A on October 14, 1987, from Granitos Ibericos and Artemarmol, and on October 19, 1987, from Ingemar and Ingemarga. We received responses to sections B through D on October 22, 1987, from Granitos Ibericos and Artemarmol, and on November 12, 1987, from Ingemar and Ingemarga. Responses to section E were submitted by Ingemar and Granitos Ibericos on December 1 and December 2, 1987, respectively.

We sent the following deficiency letters to the counsel for Granitos Ibericos: On October 20 we sent a letter regarding section A, due on October 22; on October 27, 1987, we sent a letter regarding sections A through D, due on November 2, 1987; and on December 21, 1987, we sent a letter regarding section E, due on December 30, 1987. In each of these letters we stated that failure to provide the requested information by the due date may result in our using best information available for the preliminary determination. They submitted additional supplemental responses on October 15 and October 23, 1987. On February 16, 1988, Granitos Ibericos submitted a response to our letters; however, they did not submit all of the information needed for our preliminary determination.

We sent the following deficiency letters to the counsel for Ingemar and Ingemarga: On October 28, 1987, we sent a letter regarding section A, due on November 2, 1987; on November 5, 1987, we sent a letter regarding sections B through D, due on November 12, 1987, in which we also stated that they must consolidate their responses, as they may be treated by the Department as one entity because they are, to a significant degree, under common ownership. Counsel does not view these companies as one entity since the companies are operated separately and believes each company should be analyzed separately. Although we have assigned different margins for each of these companies for purposes of our preliminary determination, we will again consider this issue for purposes of our final determination. On November 24, 1987, we sent a letter regarding sections B and C, due on November 1, 1987. In each of these letters we stated that failure to provide the requested information by the due date may result in our using best information available for the preliminary determination. On November 2, November 12, and December 1, 1987, Ingemar and Ingemarga submitted responses to our letters; however, they did not consolidate the sales and stated that they would file comments on this issue.

In addition, we sent a letter on December 18, 1987, to Ingemar, due on January 8, 1988, and we sent deficiency letters to them regarding section E on December 21, 1987, due one December 30, 1987, and on January 12, 1988, due on January 19, 1988. On January 12, 1988, December 30, 1987, and January 19, 1988, Ingemar submitted responses to our letters. Additional corrections and supplemental responses were submitted by Ingemar on November 2, November 12, November 15, November 17, November 18, December 10, 1987, January 28, February 9, and February 22, 1988, and by Ingemarga on November 2, November 12, December 15, 1987, February 9, and February 22, 1988.

Additional supplemental responses were submitted by Artemarmol on October 23 and December 30, 1987.

On November 9, 1987 we received a voluntary submission from Modulgranito Iberico.

On November 18, 1987 petitioner requested a 30-day postponement of the preliminary determination in this case. On December 8, 1987, in accordance with section 733(c)(1)(A) of the Act and § 353.39 of the Commerce Regulations (19 CFR (353.39)) we postponed the preliminary determination until not later than February 3, 1988.

On December 8, 1987, counsel for Ingemar submitted comments on the use of constructed value.

On December 30, 1987 petitioner requested an additional 20-day postponement of the preliminary determination. On January 6, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until not later than February 23, 1988 (53 FR 1050, January 15, 1988).

On February 2, 1988, we notified counsel for Modulgranito Iberico, a voluntary respondent, that we would accept their response provided they confirm that all constructed value costs submitted were actual costs. We also notified counsel for Artemarmol, a voluntary respondent, that we would accept their response provided they submit total third country sales. We stated that failure to provide the requested information by February 15, 1988, may result in our including them in the "all other" category.

On February 16, 1988, we received supplemental responses from Artemarmol and Modulgranito Iberico. In their submission, Modulgranito Iberico failed to confirm that all costs were actual.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the approprite HS item numbers with our product descriptions on a test basis pending congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the Schedule.

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1cm) to 2½ inches (6.34cm) in thickness and include the following: rough-sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under TSUSA item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. Granitos Ibericos did not submit sufficient information; therefore, for purposes of our preliminary determination of Granitos Ibericos, we used the highest margin for all responding companies as the best information otherwise available. We included Modulgranito Iberico, a voluntary respondent, in the "all other" category because they did not supply any home market or third country sales data for use in the determination of foreign market value, and we were unable to use estimated costs for a constructed value analysis.

United States Price

We based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. These sales were made directly to unrelated customers in the United States prior to importation. Under these circumstances, section 772(b) clearly requires that purchase price be used for determining the U.S. sales price.

We calculated purchase price based on the f.o.b. or c.i.f., duty paid, packed prices to unrelated purchasers in the United States. We made deductions, as appropriate, for foreign inland freight and handling, ocean freight and marine insurance, U.S. duty, and discounts and rebates.

Foreign Market Value

We calculated foreign market value based on home market unpacked prices to unrelated purchasers for all sales except for sales from Ingemar of cut-to-size slabs, in accordance with section 773(a) of the Act.

When based on home market prices, we made deductions, where appropriate, for inland freight, inland insurance, and discounts. In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs. We made an adjustment for differences in circumstances of sale for credit expenses pursuant to section 353.15 of our regulations. We also adjusted for commissions on sales to the home market, where appropriate, using indirect selling expenses in the United States as an offset to those commissions pursuant to § 353.15(c) of our regulations.

We established separate categories of "such or similar" merchandise pursuant to section 771(16) of the Act, on the basis of form of material (rough slabs, face finished slabs, and tiles), type of stone, dimensions, finishes, edgeworks, anchoring and assembly work. In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise where there were no identical products in the home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

We did not allow the level of trade adjustments which were claimed by Ingemar and Ingemarga for the preliminary determination, as respondents failed to adequately justify these adjustments.

We calculated foreign market value based on constructed value in accordance with section 733(e) of the Act of cut-to-size projects of Ingemar sold in the United States because there were no comparable projects sold in the home market or third countries. We totaled the costs of materials, fabrication, general expenses, profit, and packing costs for shipments to the United States. We used the respondent's submission for material and fabrication costs. In calculating financial expenses, the Department used the latest available financial statement because the respondent excluded part of these expenses without explanation. We used U.S. selling expenses in accordance with the Department's usual methodology where there are no home market or third country sales which are comparable. Actual expenses were used for general expenses since they exceeded the statutory minimum of ten percent. The amount for profit was less than eight percent of the sum for the costs of materials, fabrication, and general expenses; therefore, we adjusted it to the statutory minimum of eight percent. Where appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. These adjustments were for differences in credit expenses.

Currency Conversion

We made currency conversion in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Spain that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States

price, as shown below. This suspension will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Ingemar	1.64
Ingemarga	1.29
Granitos Ibericos	8.22
Artemarmol	8.22
All Others	4.00

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. Industry.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on April 12, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Acting Assistant Secretary by April 4, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-4257 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-005]

Litharge, Red Lead, and Lead Stabilizers From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: On December 31, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on litharge, red lead, and lead stabilizers from Mexico. The review covers the period January 1, 1985 through December 31, 1986 and 11 programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 48313) the preliminary results of its administrative review of the countervailing duty order on litharge, red lead, and lead stabilizers from Mexico (47 FR 54847, December 6, 1982). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican litharge, red lead, and lead stabilizers, which include lead compounds "not specifically provided for" ("NSPF") and pigments containing lead NSPF. Such merchandise is currently classifiable under the following TSUSA item numbers: litharge, 473.5200; red lead, 473.5600; lead compounds NSPF, 419.0400; and pigments containing lead NSPF, 473.900. These products are currently classifiable under HS item numbers 2824.10.00—0, 3206.49.50—2, 3212.90.00—2, 2824.20.00—2, 3206.20.00—2, 3206.30.00—1, 3207.10.00—2, 3207.30.00—1, and 3212.90.00—2. The review covers the period January 1, 1985 through December 31, 1986 and 11 programs: (1) FOMEX; (2) FOGAIN; (3) CEPROFI; (4) FONEI; (5) Bancomext loans; (6) Article 15 loans; (7) import duty reductions and exemptions; (8) state tax incentives; (9) NDP preferential discounts; (10) accelerated depreciation; and (11) CEDI.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of the review are the same as the preliminary results. We determine the total bounty or grant to be 0.04 percent *ad valorem* during the 1985 period and 0.01 percent *ad valorem* during the 1986 period. The Department considers any rate less than 0.50 percent to be *de minimis.*

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1986.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publications of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Dated: February 24, 1988.

[FR Doc. 88-4258 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Stainless Steel Wire Rod; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S. Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain stainless steel wire rod.

DATE: Comments must be submitted no later than March 10, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for stainless steel wire rod, types 302, 304 and 430, in certain sizes. Type 302 ranges from 0.217 inch to 0.781 inch in diameter, type 304 ranges from 0.217 inch to 0.687 inch in diameter, and type 430 ranges from 0.217 inch to 0.276 inch in diameter.

Any party interested in commenting on this request should send written comments as soon as possible, and no later then March 10, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: February 19, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-4259 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Billets; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Hungary Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, the U.S.-Mexcio Understanding Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel billets.

DATE: Comments must be submitted on or before March 10, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Hungary Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Arrangement Concerning Trade in Certain Steel Products, the U.S.-Mexcio Understanding Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevent factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for continuous-cast carbon steel billets, grades C1006 through C1090, with a square cross section of 4¾ inches on each side and a length of 30 feet.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 10, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administraiton.

[FR Doc. 88-4260 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301).

we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-087. *Applicant:* Iowa State University, Purchasing Department, Second Floor Physical Plant Building, Ames, IA 50011. *Instrument:* FT-IR Spectrometer, Model IFS 120 HR. *Manufacturer:* Bruker Analytische Messtechnik GmbH, West Germany. *Intended use:* The instrument will be used as a high-resolution, parallel-wavelength, absorption detector for fundamental studies of spectral hole burning into the inhomogeneously broadened spectra of molecules dissolved in disordered solids. Additional experiments involve hole burning applications to photosynthetic reaction centers. *Application received by Commissioner of Customs:* January 27, 1988.

Docket Number: 88-088. *Applicant:* U.S. Environmental Protection Agency, MD-33, Research Triangle Park, NC 27711. *Instrument:* Gas Chromatograph/Mass Spectrometer Data System, MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended use:* The instrument will be used for the studies of compounds which include 2378-tetrachlorinated dibenzo-*p*-dioxin (2378-TCDD), other tetra through octa polychlorinated dibenzo-*p*-dioxins (PCDDs) and dibenzofurans (PCDFs), bromo/chloro dibenzo-*p*-dioxins (BCDDs) and dibenzofurans (BCDFs). The laboratory is performing the HRGC-HRMS analysis for determination of 2378-TCDD and other PCDDs and PCDFs in extracts of the ambient air samples. The data derived from the study will be used for assessment and risk purposes. *Application received by Commissioner of Customs:* January 27, 1988.

Docket Number: 88-089. *Applicant:* Florida Department of Agriculture and Consumer Services, Division of Animal Industry, Brueau of Diagnostic Laboratories, Kissimmee Animal Disease Diagnostic Laboratory, 2700 N. Bermuda Ave., P.O. Box 460, Kissimmee, FL 32742. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* The instrument will be used to study, in detail, and detect viruses and other infectious agents that can affect Florida's varied animal population, which includes cattle, swine, horses, poultry, pet birds, dogs, cats, fish, sea mammals and other aquatic life. The materials to be studied are tissue specimens exudates, body fluids such as blood and semen, feces, lung aspirates, tissue cultures, etc. of animal origin. It is hoped that techniques can be developed that will allow the laboratory to detect and identify viruses present in less than ideal specimens. It is also hoped that these techniques will provide the laboratory with a rapid method for the detection and identification of animal viruses that may be present in the various materials. *Application received by Commissioner of Customs:* January 28, 1988.

Docket Number: 88-090. *Applicant:* Appalachian State University, Boone, NC 28608. *Instrument:* Ground Conductivity Meter, Model EM31-DL. *Manufacturer:* Geonics Limited, Canada. *Intended use:* The instrument will be used to teach undergraduates how to locate hazardous wastes from pollution sources; buried drums. The courses involved are Economic Geology & Exploration Techniques and Environmental Geology. *Application received by Commissioner of Customs:* January 28, 1988.

Docket Number: 88-091. *Applicant:* Brown University, Chemistry Department, Providence, RI 02912. *Instrument:* Preparative Quencher, Model PQ-53. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended use:* The instrument will be used to investigate both enzyme reactions where reactions routinely occur within 5 milliseconds and metabolic studies of mitochrondria and reconstituted fatty acid oxidation systems (viscous solutions). Both of these studies require the rapid acceleration and deceleration of hydraulic rams. The objective is to determine how the enzymes of fatty acid oxidation catalyze their respective reactions and how they interact with each other in vivo to promote the efficient and well controlled production of energy in mammalian hearts. *Application received by Commissioner of Customs:* January 29, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-4261 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Application; Washington, DC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $558,353 for the project performance of July 1, 1988 to June 30, 1989. The MBDC will operate in the Washington, D.C. Metropolitan Statistical Area. The first year cost for the MBDC will consist of $474,600 in Federal Funds and a minimum of $83,753 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 03-10-88007-10.

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

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is March 31, 1988. Applications must be postmarked on or before March 31, 1988.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377-8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

Date: February 19, 1988.

[FR Doc. 88-4184 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene separate public meetings at the Perdido Beach Hilton, Highway 182 East, Orange Beach, AL, as follows:

Council: Will convene March 16, 1988, at 8:30 a.m., to allow public testimony on the Red Drum Fishery Management Plan; review options for collecting catch and effort data for charterboats (the National Marine Fisheries Service's Marine Recreational Fishery Statistics Surveys, logbooks, etc.); discuss committee reports, and recess at 5 p.m. On March 17 will reconvene at 8:30 a.m., to review the Marine Fisheries Advisory Committee (MAFAC) report; mackerel stock identification; enforcement and Directors' reports, and will adjourn at 11:15 a.m.

Committees: Public meetings will begin March 14, 1988, with a closed session (not open to the public) of the Personnel Committee from 1 p.m. to 2 p.m., followed by a meeting of the Red Drum Management Committee, and will adjourn at 5 p.m. On March 15 at 8 a.m., the Habitat Protection, Budget, Administrative Policy and Personnel Committees will convene. The Personnel Committee will convene a closed session at 4:15 p.m., and adjourn at 5 p.m.; the other committees will also adjourn at 5 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Date: February 24, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-4232 Filed 2-26-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force; Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Air Force Academy Candidate Personal Data Record; USAFA Form 146; and OMB Control No. 0701-0064.

Type of Request: Extension.

Annual Burden Hours: 5,700.

Annual Responses: 11,400.

Needs and Uses: The Air Force uses USAFA Form 146 to collect information about the personal background of applicants for admission to the Air Force Academy. Applicants supply information about their family, citizenship, military status, and education. The Air Force Academy uses the information in selecting appointees to the Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 22, 1988.

[FR Doc. 88-4214 Filed 2-26-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force; Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Application for AFROTC Membership; AFROTC Form 20; and OMB Control Number 0701-0105.

Type of Request: Extension.

Annual Burden Hours: 3,333.

Annual Responses: 20,000.

Needs and Uses: Applicants for admission to the AFROTC program use AFROTC Form 20 to furnish information on their qualifications to the Air Force. The Air Force evaluates the information furnished to determine the applicants' eligibility for admittance to the program.

Affected Public: Individuals.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204,

Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 22, 1988.

[FR Doc. 88-4215 Filed 2-26-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Committee on Establishing a Petroleum Research Institute of the National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Establishing a Petroleum Research Institute of the National Petroleum Council.

Date and Time: Wednesday, March 23, 1988, 2:00 p.m.

Place: National Petroleum Council, Conference Room, 1625 K Street NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review and discuss survey of R&D activities and report to the National Petroleum Council.

Tentative Agenda:

—Review and discuss the Committee's survey of R&D activities.
—Discuss the Committee's report to the National Petroleum Council.
—Discuss future meetings of the Committee.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Committee on Establishing a Petroleum Research Institute is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 23, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-4203 Filed 2-26-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 88-06; Certification Notice 11]

Filing of Certification of Compliance: Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type Facility	Megawatt capacity	Location
Kamine Milford, Limited Partnership, Union, New Jersey	2-2-88	Cogeneration Combined Cycle	45.89	Milford, NJ.
Hopewell Cogeneration, Limited Partnership, Houston, TX	2-16-88	Cogeneration Combined Cycle	356	Hopewell, VA.

Amendments to FUA on May 22, 1987 (Public Law 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on February 22, 1988.

Robert L. Davies,

Director, Officer of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-4204 Filed 2-26-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF87-432-001 et al.]

Unicord Power Associates et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: March 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

February 22, 1988.

Take notice that the following filings have been made with the Commission.

1. Unicord Power Associates

[Docket No. QF87-432-001]

On January 15, 1988, Unicord Power Associates (Applicant), of RFD #8, Box 188, Laconia, New Hampshire 03246 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pembroke, New Hampshire. The facility will consist of a stokerfired steam generator and a condensing/extraction turbine generator. The electric power production capacity will be 15 megawatts. The primary energy source will be biomass in the form of wood chips.

2. Ultrasystems Development Corporation—Richlands, Virginia

[Docket No. QF88-239-000]

On February 5, 1988, Ultrasystems Development Corporation (Applicant) of 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033 submitted for filing an application for certification of a facility as qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the site of United Coal Company's Knox Creek No. 3 coal preparation plant at Richlands, Tazewell County, Virginia. The facility will consist of a fluidized bed combustion boiler, an extraction/condensing steam turbine generator, and related auxiliary equipment. Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse produced during past operations and during on-going operations by the Knox Creek No. 3 coal preparation plant. The net electric power production capacity of the facility will be 50 megawatts. Applicant states that the electric power produced by the facility will be wheeled to the Virginia Power Company.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determinig the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4268 Filed 2-6-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

February 19, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0085
Title: Employment Inquiry
Form No.: FCC 65
Action: Reinstatement
Respondents: Individuals
Frequency of Response: On occasion
Estimated Annual Burden: 300 Responses; 75 Hours
Needs and Uses: Inquiry is made of personal references given by applicants for employment. Data are collected on work history and performance, and are used in the consideration and selection process.

Title: Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit
Form No.: FCC 307 (Data formerly submitted on FCC 701)
Action: New collection
Respondents: Licensees/Permittees of AM, FM, and TV broadcast stations
Frequency of Response: On occasion
Estimated Annual Burden: 966 Responses; 1,932 Hours
Needs and Uses: Filing is required by licensees/permittees of AM, FM, and TV broadcast stations to request an extension of time to construct a broadcast facility, or to apply for a construction permit to replace an expired permit. The data are used to ensure that a conscientious effort is being made to construct the authorized station and provide service to the public.

Federal Communications Commission.

H. Walker Feaster,

Acting Secretary.

[FR Doc. 88-4194 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

A Closed Circuit Test of the Emergency Broadcast System During the Week of March 7, 1988

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of March 7, 1988. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR

Federal Communications Commission.

H. Walker Feaster,

Acting Secretary.

[FR Doc. 88-4195 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting Advisory Committee Meeting

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Wednesday, March 30, 1988, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, DC.

The Committee will consider:

Reports from the Allocations and Technical Subgroups;
Possible improvements to service on the AM band through revisions to the technical AM Broadcast Rules;
Preparation for the Second Session of the Region 2 Administrative Radio Conference concerning expansion of the AM band; and
Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for March 30, 1988 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-4196 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

Roscoe Clifford Burwell, Jr., et al.; Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Roscoe Clifford Burwell, Jr. N. Fort Polk, LA.	BPH-861125MB	88-54
B. Maxine Moore d/b/a NFP Broadcasting Co., N. Fort Polk, LA.	BPH-861126MK	
C. William C. Monroe, N. Fort Polk, LA.	BPH-861126MM	

2. Pursuant to section 309(e) of the Commissions Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 451 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, ALL
2. Comparative, ALL
3. Ultimate, ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-4197 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

Carta Corp. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Carta Corporation, Fresno, CA.	BPH-861230MA	88-21
B. Fresno FM Limited Partnership, Fresno, CA.	BPH-861230MB	
C. Dennis R. Brostrom, Fresno, CA.	BPH-861230MC	
D. Wayne P. Decker Fresno, CA.	BPH-861230MD	
E. John Marshall Hooker d/b/a JMH Broadcasting, Fresno, CA.	BPH-861230ME	
F. California Broadcasting Company, Inc., Fresno, CA.	BPH-861231MB	
G. John Edward Ostlund, Fresno, CA.	BPH-861231MD	
H. Valley Radio Ltd., A California Limited Partnership, Fresno, CA.	BPH-861231ME	
I. Community First Broadcasters of Fresno, Fresno, CA.	BPH-861231MF	
J. Fresno FM Partnership, Ltd., Fresno, CA.	BPH-861231MG	
K. Valley FM Broadcasters, Fresno, CA.	BPH-861231MH	
L. Laura H. Norman, Fresno, CA.	BPH-861231MI	
M. Paul Bowman and Company, Inc., Fresno, CA.	BPH-861231MJ	
N. Robert Michael Mason, William Owen Mason & Laura Sue Moch d/b/a/ 3M Broadcasting, Fresno, CA.	BPH-861231MK	
O. Fresno FM Partnership, Ltd., A California Limited Partnership, Fresno, CA.	BPH-861231MA (DISMISSED)	
P. New Life Enterprises, Inc., Fresno, CA.	BPH-861231MC (DISMISSED)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, A,D,G,I,J,K,N
2. Air Hazard, M
3. Comparative, A-N
4. Ultimate, A-N

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-4198 Filed 2-26-88; 8:45 am]

BILLING CODE 6712-01-M

Loudon Broadcasters, Inc., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Loudon Broadcasters, Inc., Loudon, TN.	BPH-870105MA	88-54
B. James A. Graves, Jr., Loudon, TN.	BPH-870107MC	
C. Loudon County Communications, Inc., Loudon, TN.	BPH-870107MF	
D. Lauderdale-McKeehan Christian Broadcasting Corp., Loudon, TN.	BPH-870106MD (DISMISSED)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A–C
2. Ultimate, A–C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–4199 Filed 2–26–88; 8:45 am]

BILLING CODE 6712-01-M

Selectronics Corp. et al., Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Selectronics Corporation, Warren, VT.	BPH-851016MD	88-38
B. Radio Vermont, Inc., Warren, VT.	BPH-851018ME	....
C. Mountain Media, Inc., Warren, VT.	BPH-851018MC (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. (a) Site Availability, B
   (b) Section 1.65, B
   (c) Misrepresentation, B
   (d) Basic Qualifications, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–4200 Filed 2–26–88; 8:45 am]

BILLING CODE 6712-01-M

Sunrise Partners et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Sunrise Partners, Moultonborough, NH	BPH-860829MB	88-35
B. SFB Corporation, Moultonborough, NH	BPH-860902MA	
C. Hoover Communications Corporation, Moultonborough, NH	BPH-860902MB	
D. Lakes Region Broadcasting, Inc., Moultonborough, NH.	BPH-860902MC	
E. Ossipee Mountains Broadcasting, Inc., Moultonborough, NH.	BPH-860902ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, D
2. Comparative, ALL
3. Ultimate, All

3. If there is an non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO In this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 H Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International transcription Services, Inc., 2100 M Street NW., Washington DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–4201 Filed 2–26–88; 8:45 am]

BILLING CODE 6712-01-M

W & W Broadcast Service; Applications for a Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. W & W Broadcast Service, Dadeville, AL.	BPH-860903MD	88-36
B. Dale Broadcasting, Inc., Dadeville, AL.	BPH-860903MI	....
C. Frank L. Pearson, Dadeville, AL.	BPH-860903MK	....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth below in its entirety under the corresponding headings at 51 FR 19, 347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A,B,C
2. Ultimate, A,B,C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington , DC 20037. (Telephone (202) 857–1800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–4202 Filed 2–26–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010977–005.

Title: Hispaniola Discussion Agreement.

Parties:

United States Atlantic and Gulf/Hispaniola Steamship Freight Association

Zim American Israeli Shipping Co., Inc.

R.B. Kirkconnell & Bro. Ltd. ("R.B.K.")

Synopsis: The proposed amendment would delete Overseas Transportation International Corp. as a party to the agreement and change the name of R.B.K. to Kirk Line Ltd. It would also add Tropical Shipping and Construction Co., Ltd. and U.S.A. Tecmarine Incorporated d/b/a Tecmarine Lines as parties to the agreement. The parties have requested a shortened review period.

Agreement No.: 203–011172.

Title: United States Atlantic and Gulf Venezuela Freight Conference Discussion Agreement

Parties:

United States Atlantic and Gulf Venezuela Freight Conference

Marlago

King Ocean

Maritima Aragua, S.A.

Venezuelan Container Line

Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates, rules, charges and service contracts in the trade between United States Atlantic, Gulf and Florida ports and all U.S. inland and coastal points via such ports, and ports and inland or coastal points in Venezuela. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 24, 1988.

[FR Doc. 88–4271 Filed 2–26–88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects Program Announcement and Notice of Availability of Funds for Fiscal Year 1988; Amendment

A notice announcing the availability of funds for Fiscal Year 1988 for cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects was published in the **Federal Register** on Friday, February 5, 1988, Part VI (53 FR 3554). The notice is amended as follows:

1. On pages 3557, third column, and 3558, first and second columns, information regarding submission and receipt of applications under the heading *"Application and Submission Deadline,"* is amended as follows: The due date for submission of the consolidated AIDS Prevention and Surveillance applications is changed from February 29, 1988, to March 11, 1988. The new date is an actual receipt date and not a mailing date. It is therefore required that applications be received at the following address by 4:30 p.m., EST on March 11, 1988: Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305.

2. On Page 3558, column three, the Notice is amended to add the following paragraph after the section *"Where to Obtain Additional Information"*: "The document titled: CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATION SESSIONS (JANUARY 1988) is set forth below."

All other information and requirements in the notice remain the same.

Dated: February 24, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

Content of Aids-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

January 1988.

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. They include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship. For those individuals who do not eliminate risky behavior, methods or reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. This document is intended to provide guidance for the development of educational materials, and to require the establishment of local review panels to consider the appropriateness of messages designed to communicate with various population groups.

1. Basic Principles

a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to describe dangerous behaviors and explain less risky practices concerning AIDS should use terms or descriptors necessary for the target audience to understand the messages.

b. Such terms or descriptions used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as homosexual men, about high risk sexual practices, would be judged by a reasonable person to be inoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person

would not judge to be offensive to such people.

d. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

e. Messages which are part of any materials or activities supported with CDC funds must be consistent with recently enacted Federal legislation (Pub. L. 100-202 [1]) which prohibits the use of CDC funds for "* * * AIDS education, information, or prevention materials and activities that promote or encourage, directly, homosexual sexual activities." This legislation also directs that "Education, information, and prevention activities and materials * * * shall emphasize (1) abstinence from sexual activity outside a sexually monogamous marriage (including abstinence from homosexual sexual activities) and (2) abstinence from the use of illegal intravenous drugs."

The intent of Congress is further clarified in the Conference Report which accompanied Pub. L. 100-202. This report provides that the above language "* * * shall not be construed to prohibit descriptions of methods to reduce the risk of HIV transmission; to limit the eligibility for Federal funds of a grantee or potential grantee because of its non-Federally funded activities; nor shall it be construed to limit counseling or referrals to agencies that are not Federally funded."

The *Surgeon General's Report on Acquired Immune Deficiency Syndrome* (October 1986) contains messages which are consistent with the provisions of this legislation.

f. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. no. S-2]).

2. Program Review Panel

a. Prospective recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles (in the previous section) in conjunction with prevailing community standards, will review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements will be required to include in the application the following:

(1) Indentification of a panel of no less than five persons representing a reasonable cross-section of the general community [2] but which is not drawn predominantly from the target population or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational groups sessions are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by the business office, which includes:

(a) Concurrence with the guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement/ grant is awarded, the recipient will: (1) Convene the Program Review Panel and present for its assessment actual copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that their project files are documented with a statement(s) signed by the Program Review Panel which itemizes their majority vote of approval or disapproval of all proposed written materials, audiovisual materials and pictorials submitted to them.

(4) Provide to CDC in regular progress reports the signed statement(s) of all members of the program review panel itemizing their majority vote of approval or disapproval of all proposed written materials, audiovisual materials and pictorials.

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1988, Public Law 100-202, Title 5, Section 514

(a) Notwithstanding the matter under the heading "Centers for Disease Control", none of the funds made available under this Act to the Centers for Disease Control shall be used to provide AIDS education, information, or prevention materials and activities that promote or encourage, directly, homosexual sexual activities.

(b) Education, information, and prevention activities and materials paid for with funds appropriated under this Act shall emphasize—

(1) abstinence from sexual activity outside a sexually monogamous marriage (including abstinence from homosexual sexual activities) and

(2) abstinence from the use of illegal intravenous drugs.

(c) The homosexual activity referred to in subsections (a) and (b) includes any sexual activity between two or more males and described in section 2256(2)(A) of title 18, United States Code.

(d) The illegal drugs referred to in subsection (b) include any controlled substance as defined in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)).

(e) If the Secretary of Health and Human Services finds that a recipient of funds under this Act has failed to comply with this section, the Secretary shall notify the recipient, if the funds are paid directly to the recipient, or notify the State if the recipient receives the funds from the State, of such finding, and that—

(1) no further funds shall be provided to the recipient;

(2) no further funds shall be provided to the State with respect to noncompliance by the individual recipient;

(3) further payment shall be limited to those recipients not participating in such noncompliance; and

(4) the recipient shall repay to the United States, amounts found not to have been expended in accordance with this section.

Congressional Record, December 21, 1987, Page H12713

The conferees agree that language contained in section 514 of the Act relating to AIDS education shall not be construed to prohibit descriptions of methods to reduce the risk of HIV transmission; to limit the eligibility for Federal funds of a graduate or potential grantee because of its non-Federally funded activities; nor shall it be

[1] The complete texts of the pertinent sections of Pub. L. 100-202 and the Conference Report which accompanied this legislation are set forth at the end of this document.

[2] Panels which review materials for use with school age populations should include representatives of such groups as teachers, school administrators, parents, and students.

construed to limit counseling or referrals to agencies that are not Federally funded.

[FR Doc. 88-4303 Filed 2-26-88; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics; Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems.

Time And Date:

9:00 am—5:00 pm—March 21
8:30 am—12:00 noon—March 22

Status: Open.

Purpose: This Subcommittee meeting will involve a discussion of the: (1) Need for guidelines on clinical modification of ICD-10, (2) Cost-benefit of a single medical procedure code combining ICD-9-CM and CPT-4, and (3) ICD-9-CM Coordination and Maintenance Report and review of decision-making process.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: February 23, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-4205 Filed 2-26-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86N-0251]

Bioequivalence of Solid Oral Dosage Forms; Availability of Task Force Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the "Report by the Bioequivalence Task Force on Recommendations from the Bioequivalence Hearing Conducted by the Food and Drug Administration." The hearing on the bioequivalence of solid oral dosage forms was held from September 29 through October 1, 1986, in Washington, DC.

ADDRESS: Written requests for a copy of the Task Force report to the Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Donald B. Hare or Edwin V. Dutra, Jr., Center for Drug Evaluation and Research (HFN-203), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

SUPPLEMENTARY INFORMATION:

Background

On September 29 through October 1, 1986, FDA held a hearing on the bioequivalence of solid oral dosage forms in Washington, DC. The primary purpose of the hearing was to provide an opportunity for interested persons to express their views on the scientific principles and procedures FDA uses to make a finding of bioequivalence between immediate release solid oral dosage forms. Over 50 formal presentations were made at the hearing by representatives from, among others, various segments of the pharmaceutical industry, professional societies, governmental agencies, and academia.

A transcript of the hearing was made from an audio recording. The transcript is on public display in the Dockets Management Branch (address above) under Docket No. 86N-0251.

The public docket for the hearing was kept open until February 23, 1987. On or before that date, interested persons were given the opportunity to submit written comments concerning the issues discussed at the hearing. Persons who made presentations at the hearing were also given the opportunity to submit comments to supplement their presentations or make additional points.

Task Force

On January 13, 1987, FDA formed an internal agency Task Force to evaluate the presentations, comments, questions, and suggestions made at the hearing as well as the comments submitted to the public docket. The Task Force, following its evaluation and review of these materials, submitted a report to the Commissioner of Food and Drugs. The report is titled "Report by the Bioequivalence Task Force on Recommendations from the Bioequivalence Hearing Conducted by the Food and Drug Administration" and includes recommendations for action the Task Force considers appropriate for FDA to take concerning the bioequivalence program. The report of the Task Force is now available upon request from the Dockets Management Branch (address above).

Dated: February 23, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-4241 Filed 2-26-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-88-1763; FR-2184]

Federally Mandated Exclusions From Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Rules concerning the definition of income used in HUD's Rent Supplement, Section 236, Section 8, and Public and Indian Housing Programs provide that the definition of income does not include amounts of other benefits precluded by Federal law from being considered in HUD assisted housing programs. This notice provides a current list of program benefits excluded under that provision, updated to reflect a recent amendment to Title V of the Older Americans Act of 1965, which excludes from income (for purposes of these housing programs) payments made to individuals under the Community Services Employment program administered by the Department of Labor.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881, and 883 through 886; James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 426-3944.

For Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate Rehabilitation and the Housing Voucher programs) and for Public and Indian Housing programs: Edward Whipple, Chief, Rental and

Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 426-0744. (These are not toll-free numbers.)

Any member of the public who becomes aware of any other benefit believed to be excluded from consideration as income in these programs should submit information about the other benefit program to one of the persons listed as a contact or to the Rules Docket Clerk, Attention N-87-1715, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

SUPPLEMENTARY INFORMATION: Excluded from the definition of "annual income" under 24 CFR 215.21(c)(9), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10) are "amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility or benefits under a category of assistance programs that includes [these HUD programs]."

On September 9, 1987, HUD published a revision to these rules (52 FR 34108) removing the list of specific program benefits that qualify under that exclusion from the rule. On that date HUD also published an accompanying Notice (52 FR 34116) listing the programs that qualified for the Federally mandated exclusion provision of those rules. The rule revision and Notice were announced to be effective on November 1, 1987, the earliest date on which they could be made effective (falling on the first day of a month), considering the date of publication and the requirements of section 7(o) of the Department of HUD Act concerning delayed effectiveness of HUD rules.

Since the publication of the rule revision and the Notice, Congress enacted the Older Americans Act Amendments of 1987 ("1987 Amendments"), (Pub. L. No. 100-175, signed by the President on November 29, 1987). Section 166 of the 1987 Amendments amended Title V of the Older Americans Act of 1965 (42 U.S.C. 3056) to provide as follows:

> Funds received by eligible individuals from projects carried out under the program established in this title shall not be considered to be income of such individuals for purposes of determining the eligibility of such individuals, or of any other persons, to participate in any housing program for which Federal funds may be available * * *

The Conference Report stated that "the term 'determining eligibility' includes the determination of the level of subsidy for which an individual qualifies." (H.R. Rep. 100-427 as printed at 133 Cong. Rec. H9597 daily ed. Nov. 9, 1987).

The Department has determined that the programs affected by the rules cited above qualify as "housing program[s] for which Federal funds may be available." These rules do not distinguish between "income" for purposes of eligibility and for purposes of determining the individual's levels of benefits. Consequently, consistent with Congressional intent, exclusion of benefits provided under Title V of the Older Americans Act of 1965 (administered by the Department of Labor) from income under these rules will prevent consideration of those benefits for purposes of determining both eligibility for, and level of, housing program benefits.

The program administered under Title V is the Community Service Employment program, under which grants are distributed to qualifying organizations to fund part-time employment of persons who are at least 55 years of age and have limited income. Examples of programs funded under the Community Service Employment program (CSEP) are the Green Thumb program and the Senior Aides program.

The Older Americans Act Amendments of 1987 contains an effective date provision requiring changes such as the exclusion from income provision to "take effect on October 1, 1987," despite the fact that the Amendments were not enacted until November 29, 1987. Other provisions of the 1987 Amendments, concerning the establishment of a demonstration project to promote economic development in the State of Hawaii, are to become effectivce 90 days after enactment of the Amendments. Implementation of this new exclusion from income provision will require PHAs and owners—as soon as they are able—to make adjustments to income and rent determinations retroactive to October 1, 1987, for former tenants and current tenants who receive benefits under the CSEP. In addition, PHAs and owners will need to determine what applicants have been denied admission to these programs since October 1, 1987 because their annual income was too high and who among them are in the right age group to have qualified to participate in the CSEP, so that these applicants can be informed that if they had income derived from the CSEP, they can request reconsideration of the denial of eligibility.

The following updates the list of program benefits that currently qualify for the income exclusion stated in 24 CFR 215.21(c)(9), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10):

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4636);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(iii) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vii) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-2504);

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407);

(x) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 that are used to cover the cost of attendance at an educational institution (See 24 CFR 215.1(c)(6), 236.3(c)(6), 813.106(c)(6), and 913.106(c)(6)); and

(xi) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).

Date: February 18, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-4275 Filed 2-26-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96, North Atlantic Planning Area; Public Hearings

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public hearings for proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96, North Atlantic Planning Area, and the announcement of the closing date for the receipt of comments on the Draft Environmental Impact Statement (DEIS).

SUMMARY: This notice announces two public hearings to be held regarding the DEIS for proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96, North Atlantic Planning Area. The purpose of these hearings is to receive comments and suggestions relating to the DEIS. The meetings will take place in Providence, Rhode Island, and Boston, Massachusetts. In addition, this notice identifies April 19, 1988, as the closing date for receipt of comments on the DEIS.

ADDRESSES:

March 29, 1988—Providence-Marriott, Charles and Orms Streets, Providence, Rhode Island 02904, (401) 272-2400.

March 30, 1988—The Boston Park Plaza and Towers, 50 Park Plaza at Arlington Street, Boston, Massachusetts 02117, (617) 426-2000.

Directions to these locations can be obtained by calling the hotels at the numbers listed above.

Both hearings will have two sessions. The first session will begin at 10 a.m. and will continue until 5 p.m. A second session will begin at 6 p.m. and continue until 8 p.m. Sessions will be adjourned early if all speakers have had an opportunity to speak. Time constraints may make it necessary to limit the length of oral presentations to 10 minutes. Written testimony may be given in addition to or instead of oral testimony. Any written testimony will receive the same degree of consideration in the Final Environmental Impact Statement (FEIS) as oral testimony presented at the hearing. Written testimony may be submitted to the hearing officer or mailed to the following address: Regional Director, Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, Phone: (703) 285-2165 or FTS 285-2165.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Good at the same address and phone number. Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are asked to contact Mr. Good at the above address, by 4:15 p.m., March 22, 1988. Written testimony and comments on the DEIS will be accepted until April 19, 1988. To the extent that time is available after presentation of oral statements by those who have given advance notice, others will be given an opportunity to be heard.

SUPPLEMENTARY INFORMATION: On February 24, 1988, the MMS published a notice in the **Federal Register** (Volume 53, Number 36) announcing the availability of the DEIS for proposed OCS Oil and Gas Lease Sale No. 96, North Atlantic Planning Area. To ensure that all comments and suggestions pertaining to the DEIS are identified and addressed in the FEIS, two hearings are scheduled. The hearings will provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential effects of leasing oil and gas tracts in the North Atlantic OCS. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

After both oral and written testimony and comments have been received and analyzed, a FEIS will be prepared.

Date: February 24, 1988.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 88-4209 Filed 2-26-88; 8:45 am]

BILLING CODE 4310-MR-M

Out Continental Shelf Advisory Board; North Atlantic Regional Technical Working Group

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting of North Atlantic Regional Technical Working Group Committee.

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region has scheduled a meeting of its North Atlantic Regional Technical Working Group (NARTWG) Committee. The committee will provide comments and suggestions to the Regional Director, Atlantic OCS Region concerning the draft environmental impact statement for proposed Oil and Gas Lease Sale 96 (North Atlantic) and other sale-related topics.

DATES: March 31, 1988.

ADDRESSES: The meeting will begin at 9 a.m. at the following location: Berkeley and Clarendon Rooms, The Boston Park Plaza Hotel & Towers, 50 Park Plaza at Arlington Street, Boston, Massachusetts 02117.

The Atlantic OCS Region is at the following location: Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

FOR FURTHER INFORMATION CONTACT: Marsha Polk, RTWG Coordinator, Atlantic OCS Region, at the Virginia address above; telephone 703/285-2165, (FTS) 285-2165.

SUPPLEMENTARY INFORMATION: The NARTWG is part of the OCS Advisory Board and was established to advise the Minerals Management Service (MMS) Director on technical matters of Regional concern regarding offshore prelease and postlease sale activities in the North Atlantic. NARTWG membership consists of representatives from Federal Agencies, the Coastal States of Maine through New Jersey, the petroleum industry, and other private interests.

(Federal Advisory Committee Act (Pub. L. No. 92-463)

Date: February 24, 1988.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 88-4208 Filed 2-26-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30300]

CSX Corp.; Control; American Commercial Lines, Inc. (Oversight Proceeding)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of annual third oversight proceeding.

SUMMARY: In *CSX Corporation—Control—American Commercial Lines,* 2 I.C.C. 2d. 490, the Commission authorized the acquisition of control by several class I railroads, of American Commercial Lines and its water carrier subsidiary, American Commercial Barge Lines Company (ACBL). The Commission also imposed reporting and oversight conditions upon CSX and established a procedure for five annual oversight proceedings. These conditions are set forth in Appendix E to the decison at 2 I.C.C. 2d. 490. The reporting conditions require CSX to file financial and rate information annually for a total period of 5 years.

By decison served February 28, 1986, published at 51 FR 7140 (February 28, 1986), the Commission instituted the first oversight proceeding. Public comments regarding any adverse or beneficial effects of the consolidation were sought. Also the proceeding was assigned to the Commission's Office of Hearings for a recommendation. In a decision served July 25, 1986, the presiding administrative law judge summarized the public comments and recommended that the proceeding not be reopened. It was concluded that competition in the ACBL market area is not diminished. A second oversight proceeding was conducted in 1987, and in a decision served June 8, 1987, similar findings favorable to ACBL were made by the administrative law judge. As required by the decision of the Commission in 2 I.C.C. 2d. 490, a third annual oversight proceeding is instituted.

Any interested party may submit comments concerning the acquisition of ACBL by CSX relative to the statutory standards of 49 U.S.C. 11321. These comments are due on or before April 30, 1987. In this regard, parties seeking to reopen the proceeding based on allegations of noncompliance with statutory standards must provide evidence of specific problems flowing from the consolidation.

Upon receipt of public comments, the proceeding will be assigned to a presiding administrative law judge. On his own motion or upon request of the parties, the ALJ may order that oral hearings be held and may receive additional written and oral evidence and argument. Proceedings before the ALJ are to be completed by June 30, 1988. The ALJ then will prepare a report to the Commission which will be served on applicants and on commenting parties no later than July 31, 1988.

DATED: Comments are due on or before April 30, 1988.

ADDRESSED: Send comments referring to Finance Docket No. 30300 to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423

(2) CSX's representative: G Paul Moates, 1722 Eye Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Paul S. Cross, (202) 275-7474.

TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decison in *CSX Corporation-Control-American Commercial Lines, Inc.*, 2 I.C.C. 2d 490.

To purchase a copy of the Commission's full decision; write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area) (assistance for the hearing impaired is available through TDD services at (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: February 26, 1988.

By the Commission, Paul S. Cross, Chief Administrative Law Judge.

Noreta R. McGee,

Secretary.

[FR Doc. 88-4172 Filed 2-26-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Complaint and Consent Decree Pursuant to Toxic Substances Control Act; Environmental International Electrical Services, Inc.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on February 17, 1988, a proposed Complaint and Consent Decree in *United States* v. *Environmental International Electrical Services, Inc.*, Civil Action No. 88-2084-S, was lodged with the United States District Court for the District of Kansas.

The complaint filed by the United States alleges violations of the polychlorinated biphenyl ("PCB") regulations promulgated under the Toxic Substances Control Act (TSCA). The company owns and operates two PCB storage and disposal facilities. Inspections of the facilities have revealed violations of the storage, marking, disposal and recordkeeping requirements of the PCB regulations and the approval granted to EIES to operate an alternate PCB disposal facility. The proposed consent decree requires the defendants to pay a civil penalty of $100,000.00 and requires EIES to establish a $1 million closure fund for the two facilities, to clean up the Brinkerhoff facility and to close the Wyoming Street facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Environmental International Electrical Services, Inc.*, Department of Justice Reference #90-5-1-1-2824.

Copies of the proposed Complaint and Consent Decree may be examined at the following locations: Office of the United States Attorney, United States Courthouse, 412 U.S. Courthouse, 812 North Seventh Street, Kansas City, Kansas 66101; and, at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6220, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Complaint and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States* v. *Environmental International Electrical Services, Inc.*, Department of Justice Reference #90-5-1-1-2824 and enclose a check in the amount of $1.90 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-4222 Filed 2-26-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; B & R Insulation, Inc. and FMC Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 19, 1987, a proposed consent decree in *United States of America v. B & R Insulation, Inc., and FMC Corporation*, Civil Action No. 87-2568-0, was lodged with the United States District Court for the District of Kansas.

The proposed consent decree resolves a judicial enforcement action brought by the United States against B & R Insulation of the Clean Air Act. The complaint filed by the United States alleged that defendants violated the National Emission Standard for Hazardous Air pollutants (NESHAP) for asbestos during demolition and renovation activities that took place at FMC's chemical production facility in Lawrence, Kansas.

The proposed consent decree enjoins defendants from violating the asbestos NESHAP in the future. The proposed consent decree also requires defendants to pay a civil penalty of $10,000 to the United States Treasury.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the

Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *B & R Insulation, Inc., and FMC Corporation,* D.J. Ref. 90-5-2-1-1113.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 412 Federal Building, 812 North Seventh Street, Kansas City, Kansas 66601, and at the Region VII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Becky Ingrum Dolph, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530.

[FR Doc. 88-4223 Filed 2-26-88; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Generic Technical Position on "Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Generic Technical Position on Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events."

DATE: The comment period expires April 29, 1988.

ADDRESSES: Send comments to Ronald L. Ballard, Chief, Technical Review Branch, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 1WFN 4-H-3, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Cathy Jensen, Technical Review Branch, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 1WFN 4-H-3, Washington, DC 20555, Telephone (301) 492-3455.

FOR FURTHER INFORMATION CONTACT: John Trapp, Technical Review Branch, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop 1WFN 4-H-3, Telephone (301) 492-0509.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97-425) and the Commission regulation 10 CFR Part 60 provide for interactions between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions serve to inform DOE about the information that the NRC staff considers to be necessary in such a license application.

An important mechanism for providing guidance to the DOE is the NRC comments on DOE's Site Characterization Plan, as required by the Nuclear Waste Policy Act. Under 10 CFR Part 60, this takes the form of a Site Characterization Analysis (SCA). Other means of providing guidance to supplement the SCA are staff technical positions on both generic and site-specific issues. Generic Technical Positions (GTP) establish the staff's position on broad technical issues that are applicable to any site; Technical Positions establish the staff's position on a site-specific technical issue. A number of technical positions will be developed by the staff on both generic and site-specific issues. This announcement notices availability and solicits comments on the "Draft Generic Technical Position on Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events."

The purpose of this GTP is to provide guidance concerning the methodologies the NRC staff proposes to utilize in evaluating processes and events which could occur after closure of a high-level radioactive waste repository so that, after significant processes and events have been determined, they can be categorized into anticipated processes and events and unanticipated processes and events. The significance of differentiating between anticipated processes and events and unanticipated processes and events relates to the post-closure performance requirements imposed by the regulations. In particular, for those processes and events categorized as "anticipated," the engineered barrier system must meet the numerical design requirements set forth in 10 CFR 60.113. To conform with the applicable environmental standards as expected to be set forth by the Environmental Protection Agency in 40 CFR Part 191 and implemented in 10 CFR 60.112, consideration must be given to both "anticipated" and "unanticipated" processes and events, including potential human intrusion, to assure that the likelihood of exceeding the EPA environmental standards under these circumstances is low. In arriving at a determination of reasonable assurance that overall performance objectives can be met, additional regulatory requirements may be found to be necessary as they relate to unanticipated processes and events.

In this GTP, the staff provides a basis for categorizing natural processes and events that could occur in the post-closure period into anticipated processes and events and unanticipated processes and events. In addition, the staff provides its view on how human processes and events and repository-induced modifications should be included in the evaluation.

The staff is interested in receiving comments on the utility and practicality of the categorization procedures and potential impacts this draft position would have on the design and analysis required for a high-level waste geologic repository.

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

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Technical Review Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-4230 Filed 2-26-88; 8:45 am]

BILLING CODE 7590-01-M

Extended Burnup Fuel Use in Commercial LWRs; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering whether or not a generic environmental impact statement (GEIS) is necessary in regard to the anticipated widespread use of extended burnup fuel [1] in commercial light water power reactors (LWRs).

[1] The length of use, or total energy generated, or "burnup" of fuel in a reactor is measured in terms of megawatt days per metric ton of uranium (Mwd/MtU) or Gwd/MtU where 1 Gwd/MtU = 1000 Mwd/MtU. Typically, fuel has been removed from reactors after 3 to 5 years with burnup levels of 28 Gwd/MtU for boiling water reactors and 33 Gwd/MtU for pressurized water reactors. "High" or "Extended" burnup nuclear fuel is considered, for the purpose of this discussion, to be fuel that is left

Continued

Environmental Assessment

Identification of Proposed Action

No specific licensing action is being identified regarding use of extended burnup fuel in LWRs; however, there have been various requests for the use of extended burnup fuel that have been treated by the Commission on a case-by-case basis. The proposed action being considered by this environmental assessment (EA) is the widespread licensing for use of extended burnup nuclear fuel in commercial LWRs.

The Need for the Proposed Action

There has been an increasing number of applications from licensees in the nuclear industry for license amendments permitting incremental increases in the burnup of fuel. The usage has been cautious at first, but if the fuel continues to perform satisfactorily and if the current economic parameters remain constant, the use of extended burnup fuel is expected to continue. Within the next 10 to 12 years most licensees will probably plan for burnups of 45 Gwd/MtU or more, with refueling cycles of 1.5 to two years instead of the current one year cycle. In view of this trend, it is prudent and timely to evaluate the environmental significance of the potential widespread use of extended burnup fuel and to determine whether a detailed environmental impact statement (EIS) is warranted. The environmental evaluation will also consider the impact on Tables S-3 and S-4 of 10 CFR 51.51 and 51.52, respectively, to determine their applicability for extended burnup fuel.

Environmental Impacts of the Proposed Action

In evaluating the environmental impacts of the use of extended burnup fuel, the Commission relied upon the results of a study conducted for it by Pacific Northwest Laboratories (PNL). The results of the study have been documented in detail in the report entitled, "Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors," (NUREG/CR-5009, PNL-6258). The overall findings of this study are that no significant adverse effects will be generated by increasing the present batch-average burnup level of 33 Gwd/MtU to 50 Gwd/MtU or above as long as the maximum rod average burnup level of any fuel rod is no greater than 60 Gwd/MtU. Furthermore, based on the above study and the report entitled, "The Environmental Consequences of Higher Fuel Burn-up," (AIF/NESP-032), the NRC staff concludes that the environmental impacts summarized in Table S-3 of 10 CFR 51.51 and in Table S-4 of 10 CFR 51.52 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 percent by weight.

Extensive studies of extended burnup fuels have been conducted under the direction of the U.S. Department of Energy (DOE) and the Electric Power Research Institute (EPRI), with the participation of the fuel vendors nationwide and with the cooperation of several nuclear reactor utilities (see pgs. 1-7 to 1-10 of above mentioned NUREG/CR-5009). These studies have shown that there is no loss in fuel integrity for rod average burnups reaching 60 Gwd/MtU (the maximum level tested), as long as power levels (rate of heat generation) and operating temperatures for the fuel rods remain normal. Activity inventory may increase for long-lived radionuclides of concern; however, for short-lived fission products, the inventories will essentially remain the same. Of the longer lived fission products of concern, only cesium-134, cesium-137, and strontium-90 increase significantly with extended burnup (by factors of 2.5, 1.9, and 1.8, and respectively). The neutron emission rate from transuranic isotopes will increase with extended burnup by a factor of 5.6. At current power levels, the fractions of volatile fission products released into the gap between the fuel and the fuel cladding may increase by a factor of two, but will remain below NRC accident analysis assumptions for noble gases and iodines.

During the study, all aspects of the fuel-cycle were considered; from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, decommissioning, waste disposal and reprocessing. If leakage of radionuclides from a fuel element occurs during operation, the radioactivity is expected to be removed by the plant cooling-water cleanup system. No change in the licensed technical specifications pertaining to allowed cooling-water activity concentrations would be necessary. Thus, with extended burnup, little or no increase in the release of radionuclides to the environment is expected during normal operation. Other parts of the fuel cycle would also not be adversely affected by changing to an extended burnup fuel utilization plan. The impacts on workers and the general population would actually be reduced because at higher burnups, outages for fuel changes will be less frequent, and fuel shipments to and from the reactor sites would be reduced, thus reducing exposure. Although the inventory of long-lived radionuclides in the spent fuel will increase, the amount of spent fuel removed from reactors each year will decrease. In summary, for all aspects considered, except those involving low-level wastes, the radiological impacts were either unchanged or reduced when changing from normal to extended burnup fuel. The low level wastes include various solids collected from the spent fuel storage pool circulating water and reactor cooling water. There would be an increase in the radioactivity of the solids collected from the reactor cooling water as a result of increased fission product inventory and gap-release fraction. The greater activity resulting from the increases in fission product inventory and gap-release fraction, as much as a factor of two, would need to be removed from the reactor cooling water to meet the technical specifications. Overall, there would be less than a 20 percent increase in the radioactivity of the low-level waste.

Accidents that involve the damage or melting of the fuel in the reactor core and spent-fuel handling accidents were also reviewed. It should be noted that since the fuel rod integrity has been shown to be unaffected by the extended burnups considered, the probability of an accident will not be affected. For accidents in which the core remains intact, the release would involve only volatile fission products, and no increase in impacts will occur since the radionuclides contributing most to the dose are short lived and thus do not increase with burnup. For larger (severe) accidents, i.e., those in which an appreciable amount or all of the fuel has melted and fission products and aerosols have been released from the containment system into the biosphere, only a few fission products and the actinides will increase in inventory with extended burnup. The fission products would increase by no more than a factor of two, and the actinides by no more than a factor of six (of those contributing to the dose). However, since these actinides have very small release fractions and biotransfer factors, the risks associated with the actinides would be insignificant compared to those associated with fission products such as cesium-137 and strontium-90. Therefore, the overall accident risk is increased by only a factor of two when changing from 33 Gwd/MtU to 60 Gwd/MtU.

in a reactor long enough to achieve a burnup of greater than 40 Gwd/MtU. Burnup Levels of up to about 60 Gwd/MtU are being considered.

BEST COPY AVAILABLE

For the fuel-handling accident, only the noble gases and iodines escaping the damaged cladding are of significance in the assessment of dose impacts to the population. For a peak rod of an extended burnup fuel design at a burnup level of 60 Gwd/MtU, the release fractions increase by factors of three to four for these radionuclides; however, they remain below those assumed in Regulatory Guide 1.25, "Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors," with the exception of iodine-131. Note that there is not expected to be any increase in fuel clad perforations. Because the calculated iodine-131 gap-release fraction is 20 percent greater than the Regulatory Guide 1.25 assumed value of 0.10, the calculated thyroid doses resulting from a fuel-handling accident with extended burnup fuel could be 20 percent higher than estimated using the guide. To put this into perspective, it should be noted that Section 15.7.4, Revision 1, "Radiological Consequences of Fuel Handling Accidents," of the NRC's Standard Review Plan indicates that the acceptable dose to an individual "should be well within the 10 CFR Part 100 exposure guidelines of 25 rem." It is indicated that "well within means 25 percent or less than the 10 CFR Part 100 exposure guideline values." Therefore, the 20 percent possible increase in environmental risk of a fuel handling accident is insignificant in view of the staff's conservative interpretation of the dose guidelines.

Spent-fuel transportation accidents were also reviewed. Activity inventory may increase by an overall factor of about three for long-lived radionuclides of concern (assuming a 5-year cooling period) when changing to extended burnup fuel. This increase would be offset by a decrease in the number of shipments, so that the overall change related to spent-fuel transportation accidents would be a 50 percent increase in risk by changing to 60 Gwd/MtU burnup. However, the contribution of the spent-fuel transportation accidents to overall transportation risk is very small. The draft environmental assessment on "The Transportation of Radioactive Material (RAM) to and from U.S. Nuclear Power Plants" (NUREG/CR-2325 prepared by Sandia National Laboratories for the NRC in December 1983) summarizes the normal transportation and transportation accident risks. For spent-fuel transportation during sample years 1985 and 1990, the Summary (Table S-2) shows that these accidents contribute much less than 1 percent to the overall transportation risk. Therefore, a 50 percent increase in such a small contribution will have a negligible effect on overall risk. On balance, the approximatley 45 percent reduction in normal transportation impacts, due to the need for fewer fuel shipments, far outweighs the less than one percent increase in impacts associated with transportation accidents. (e.g., Assume the normal transportation impact is X and the transportation accident impact is 0.01 X. Then for extended burnup, the transportation accident impact would be increased to 0.015 X while the normal transportation impact would be reduced to 0.55 X giving a total impact of 0.565 X; a significant net reduction in overall transportation impact.)

The use of extended burnup fuel would reduce fuel requirements per unit of electricity. This translates directly into reduced requirements for the various materials and operations linked to fuel production (uranium mining, milling, conversion, separation, and fuel fabrication). The result of these reduced production requirements will be a significant reduction in cost, as well as a reduction in environmental impacts from fuel cycle operations required to support one year of reactor operation.

Although the discharged fuel at extended burnup is slightly thermally hotter, has increased neutron emission, and has more long-lived nuclides per unit mass compared to fuel that has not undergone extended burnup, the volume of fuel discharged per unit time will be reduced. Thus, although the waste contains a greater actinide and long-lived fission-product activity, there will be less of it. These opposing characteristics of the waste have an effect on all the back-end stages of the fuel cycle (at-reactor storage, transportation, and repository storage). The net result of these changes would be an increase in transportation shielding requirements, a reduction in the number of fuel shipments, smaller repository waste packages or increased spacing in the underground repository, and a reduction in future at-reactor storage requirements.

As indicated previously, no significant adverse effects were uncovered in the study. On balance, provided that applicable technical specifications and engineering and shielding requirements are adhered to, the study indicated that there should be no net increase in the environmental risk when changing from 33 to 55 Gwd/MtU batch-average burnup level. Likewise, there is no increase in the individual and collective radiation dose to the public or occupational workers during normal operations; in fact, as the study indicated, these doses would actually be reduced. While there is an increase in doses resulting from some postulated accidents, these accidents are extremely low probability events and contribute little to overall risk. Furthermore, though there is an increase, it is generally below what has been assumed in evaluating power plant safety. In summary, the increased accident doses do not significantly affect the risk of any dominant accident scenario and the effect on the overall risk is insignificant.

Alternative to the Proposed Action

The Commission has concluded that there is no significant increase in the environmental impact associated with the proposed action. The principal alternative would be to retain a batch-average burnup level of 33 Gwd/MtU and deny licensee requests to extend the allowed burnup to higher levels. Such action would not reduce environmental impacts and, as indicated above, could result in increased overall environmental impact. In addition, it would deny to the licensees and the public the cost benefits resulting from the use of extended burnup fuel.

Agencies and Persons Consulted

The NRC staff was assisted by Pacific Northwest Laboratories in developing the information needed to perform the environmental assessment. Staff of the Department of Energy (DOE) and the National Environmental Studies Project of the Atomic Industrial Forum were also consulted with regard to results of applicable experimental and analytical studies. The NRC staff did not consult with any other agencies or persons.

Finding of No Significant Impact

The NRC staff has reviewed the anticipated widespread use of extended burnup fuel in commercial LWRs. Based upon the foregoing environmental assessment, the staff concluded that there are no significant adverse radiological or non-radiological impacts associated with the use of extended burnup fuel and that this use will not significantly affect the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, the Commission has determined that an environmental impact statement need not be prepared for this action.

Copies of NUREG/CR-5009 and NUREG/CR-2325 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the Superintendent of

Documents, 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. Copies are available for inspection or coping for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

Regulatory Guide 1.25 and Section 15.7.4 of the NRC's Standard Review Plan are available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Copies of the Regulatory Guide may be purchased by calling (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

Copies of AIF/NESP-032 may be purchased from the USCEA, Publications Office, 7101 Wisconsin Ave., Bethesda, MD 20814, telephone number (301) 654-9260.

Dated at Bethesda, Maryland, this 23rd day of February 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-4229 Filed 2-26-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on March 15, 1988, EPRI NDE Center, 1300 Harris Blvd., Charlotte, NC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, March 15, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review the status of the NDE of cast stainless steel piping and other topics related to Subcommittee activities.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 24, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-4282 Filed 2-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-13435, ASLBP No. 88-559-01-SC]

Atomic Safety and Licensing Board Panel Hearing; Finlay Testing Laboratories, Inc.

February 22, 1988.

Before Administrative Judges: Robert M. Lazo, Chairman, Glenn O. Bright, Richard F. Cole.

Order (Postponing Hearing)

Please take notice that the evidentiary hearing in this proceeding, scheduled to commence on March 9, 1988, is postponed until further notice.

Dated at Bethesda, Maryland, this 22nd day of February 1988.

It is so *orderd.*

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 88 4283 Filed 2-26-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC)

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on March 10 and 11, 1988 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on March 10, recess and reconvene at 8:00 a.m. on March 11, 1988. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The March 10 session and a portion of the March 11 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456-7740, prior to 3:00 p.m. on March 9, 1988. Mrs. Diering is also available to provide specific

information regarding time, place and agenda for the open session.

Jonathan F. Thompson,

Executive Assistant, Office of Science and Technology Policy.

Febraury 23, 1988.

[FR Doc. 88-4424 Filed 2-26-88; 10:18 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25380; File No. SR-AMEX-88-01]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Extension of the AUTO-EX Emergency Pilot Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on January 13, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to extend, until June 30, 1988, the pilot plan that permits the implementation of AUTO-EX for equity (stock) options during the emergency or unusual market conditions.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In November 1985, the Exchange implemented a pilot program under which two Floor Governors were permitted to authorize implementation of emergency AUTOAMOS procedures, for short periods of extremely high order flow, in any listed class or series of options.[2] Under the pilot plan, the specialist is permitted, after approval of two Floor Governors and appropriate notification, to execute incoming AUTOAMOS orders, either as agent against the book or as principal, without exposing them to the crowd.

In January 1987, the pilot plan for equity options was extended and enhanced by the utilization of AUTO-EX.[3] AUTO-EX is implemented when it is determined by two Floor Governors that an emergency situation involving high order flow is occurring. AUTO-EX has been activated on twenty-eight occasions in response to various different "emergency" or "breakout" situations since January 1987.

The AUTO-EX pilot plan for equity options has been highly successful in enhancing execution and operational efficiencies during these emergency situations. The Amex believes that it is important to continue to have available the most efficient means of dealing with emergency, high volume situations. Accordingly, the Exchange proposes to extend the AUTO-EX pilot program so that it can continue to be activated in equity options when emergency situations occur.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange by continuing procedures which enhance the execution of orders during emergency situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 March 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

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[1] AUTO-EX is an automatic system that permits member firms to route public customer market and marketable limit orders of up to 10 contracts through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order. If the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned to one of the Amex Registered Options Traders who have signed on the system or to the specialist who participates in the rotation.

[2] SR-Amex-85-28, approved in Securities Exchange Act Release No. 22447 (September [illegible], 1985), 50 FR 40093.

[3] SR-Amex-87-4, approved in Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR [illegible].

Dated: February 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4262 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25384; File No. SR-MBS-88-1]

Self-Regulatory Organizations; Filing and Order Approving a Proposed Rule Change by MBS Clearing Corporation on an Accelerated Basis

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 14, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change which would increase the authorized number of directors on MBSCC's board of directors from thirteen to fifteen. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. This order also approves the proposal on an accelerated basis.

I. Description of the Proposal

The proposed rule change will amend MBSCC's by-laws to permit an additional two members to the board of directors. The number of directors will increase from thirteen to fifteen members. The present board is divided into three classes—Class I, Class II and Class III. Classes I and II consists of four directors and Class III consists of five directors. With the proposed rule change, each class will consist of five directors. Attached as Exhibit A is the proposed rule change to MBSCC's by-laws.

MBSCC is currently in the process of restructuring its Depository Division into a separate corporate entity. Under this restructuring, it is expected that the Depository Division's assets will be transferred to a new trust company within the next several months. In connection therewith, MBSCC's board has established committees to negotiate various issues relating to the restructuring. The two new board positions will be filled by representatives of the Midwest Stock Exchange, MBSCC's sole shareholder, whose input on the board will help facilitate the restructuring.

II. MBSCC's Rationale for the Proposal

MBSCC believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") in that it facilitates the fair representation of the MBSCC's participants and shareholder in the administration and governance of MBSCC's affairs.

MBSCC also believes there is good cause for approving the proposed rule change on an accelerated basis. Accelerated approval of the proposed rule change will facilitate the restructuring of the Depository Division by adding the directors in time for the next board meeting.

III. Discussion

The Commission believes the proposal is consistent with section 17A of the Act and is approving it on an accelerated basis. The Commission believes that the proposal is consistent with MBSCC's obligations to assure fair representation for its shareholders and participants in the selection of its directors. In conjunction with the restructuring, MBSCC expects that the Depository Division will become a user-owned entity and that it will file with the Commission an application for registration as a clearing agency. The Commission believes that the increase in the number of directors will provide additional guidance and efficiency to the restructuring of the Depository Division. In addition, the Commission believes that the increased number of directors will allow MBSCC in the future to handle other matters with greater efficiency.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, Section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register,** because the proposal should give MBSCC better ability to facilitate the restructuring of the Depository Division by adding the directors in time for the next board meeting. Therefore, the Commission is approving the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-MBS-88-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of MBSCC.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-MBS-88-1) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 23, 1988.

Exhibit A

Article 3

DIRECTORS

Number, Election and Term of Office

Sec. 3.1 The number of directors which shall constitute the whole board shall be [thirteen] *fifteen.* Directors shall be divided into three classes, to be known as Class I, Class II and Class III, respectively, and except as provided in Section 3.2 of this Article shall be elected as provided in this Section 3.1. Classes I and II shall consist of [four] *five* directors and Class III shall consist of five directors * * *

[FR Doc. 88-4263 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25382; File No. SR-NASD-88-5]

Self-Regulatory Organizations; National Association of Securities Dealers Inc.; Proposed Amendment to the Code of Arbitration Procedure

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 February 8, 1988, the National Association of Securities Dealers, Inc.; ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Part III, Sections 13, 19, and 43 of the NASD Code of Arbitration Procedure ("Code") to expand the availability of its simplified arbitration procedure, to provide flexibility with the selection of arbitration panels in cases not heard under the simplified arbitration procedure, to set a filing fee of $200 in cases in which the amount in constroversy is more than $5,000 but does not exceed $10,000 and increase in certain cases the amount of the administrative fee which may be retained when a case is settled or withdrawn prior to its first hearing session.

Section 13 of the Code of Arbitration Procedure currently provides that claims of less than $5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed amendment would increase the limit on the size of claims for which the simplified arbitration procedures are available from $5,000 to $10,000 in order to increase substantially the number of cases processed under that section of the Code; and would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

Section 19 of the Code currently provides that in cases brought by public customers in which the claim exceeds $500,000, a panel of five arbitrators is required. In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the Director of Arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in all cases not heard under the Code's simplified arbitration procedures.

The proposed rule amending Section 43(d) of the Code would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session be increased from $25 to $100. This rule would not apply to cases processed pursuant ot the Code's simplified arbitration procedures, which would continue to provide for refund of the full deposit.

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 a statement concerning the propose of, and basis for the proposed rule change. The text of this statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Uniform Arbitration Code ("Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of the representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, is implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed rule changes are intended to conform the provisions of the NASD's Code to amendments to the Uniform Code approved by SICA.

The Association believes the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the NASD's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

The Association has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it resons 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 following. 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 Refernce Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-5 and should be submitted by March 21, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: February 23, 1988.

[FR Doc. 88-4264 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25383; File No. SR-NASD-88-3]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Application Fee for Statutorily Disqualified Associated Persons

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 February 10, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the

Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The self-regulatory organization has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act and corresponding Rule 19b-4(e), which renders the fee effective upon the Commission's receipt of this filing. 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 to Section 12 of Schedule A of the NASD's By-laws increases from $500.00 to $1,000.00 the application fee imposed on all member firms filing an application seeking approval to employ or to continue to employ as an associated person any individual who is subject to a disqualification set forth in Article II, Section 4 of the NASD's By-Laws.

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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to Section 12 of Schedule A of the NASD's By-Laws increases from $500.00 to $1,000.00 the application fee imposed on all member firms filing an application seeking approval to employ or to continue to employ as an associated person any individual who is subject to a disqualification set forth in Article II, Section 4 of the NASD's By-Laws. The proposed user-based fee reduces reliance upon general assessments in assisting the NASD in recouping a portion of its costs in processing and reviewing member firm applications seeking approval to associate a disqualified person.

The proposed application fee is imposed without respect to the merit of the application filed or the member's success before the Board of Governors. The proposed application fee is therefore user-based, with those members filing applications and using the NASD's services or facilities more often paying proportionately more than members filing applications and using such services or facilities less frequently. The proposed application fee is equitable in that it is imposed upon all NASD members.

The proposed application fee is reasonable in that it recoups less than the expenses incurred by the NASD in processing and reviewing member firm applications seeking approval to associate a disqualified person.

For the reasons stated above, the proposed application fee is consistent with and in furtherance of section 15A(b)(5) of the Act which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects reasonable dues, fees and other charges imposed by the NASD exclusively upon its members. The increased application fee will be imposed on all applications received by the NASD beginning on February 29, 1988 or the date of publication of this notice in the **Federal Register**, which ever is sooner.

At any time within 60 days of the filing of a proposed rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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 purpose 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 submissions, 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-3 and should be submitted by March 21, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: February 23, 1988.

[FR Doc. 88-4265 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25385; File No. SR-PHILADEP 87-01]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Proposed Penalty Schedule for Failure to Timely Confirm Accuracy of Monthly Account Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1987, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Depository Trust Company (PHILADEP) proposes as a rule change the adoption of Rule 30 to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is as follows.

Statements

Rule 30. (a) The Philadelphia Depository Trust Company (PHILADEP) will render to participants a daily Bookkeeping Form. This statement must be verified upon receipt, and any exceptions or corrections promptly reported to PHILADEP.

(b) As of the last Friday of each month except December, which will be as of the last business day, PHILADEP will request each participant to respond in writing as to whether monthly account statements issued by PHILADEP and received by the participant are accurate for each type of account. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the written reply. The reply must be signed by the member and returned to PHILADEP by the 20th day of the month following the date of the statement.

(c) The Chairman or Vice Chairman of the Audit Committee, or an officer of PHILADEP designated by either one of them, may impose the following penalties upon a participant who fails to respond to confirmation requests in a timely manner, as required by Section (b) of this rule:

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine.

(d) Notice of any penalty imposed under Section (c) shall be given by the issuance of a written citation. There shall be a right to a hearing before a member of the Audit Committee, appointed by its Chairman, whose ruling in the matter shall be final.

(e) When the failure of a participant to respond to confirmation requests in a timely manner, as required by Section (b) of this rule, constitutes the fourth such offense within a twelve-month period, the matter shall be referred to the President of the Corporation who is empowered, under Rule 20, to authorize the initiation of disciplinary proceedings for alleged violations by any member or participant of the rules of the Corporation.

(f) Notwithstanding the foregoing, the President or the Board of Directors may extend the times fixed for compliance with this rule whenever, in the judgment of either, such extension is necessary or desirable.

. . . COMMENTARY

Procedure for Hearing Before Audit Committee Representative

.01 Conduct of Hearing—No hearing shall be granted unless, on or before the fifteenth calender day after the date appearing on the penalty citation upon which the hearing is sought, a written statement requesting such hearing is delivered to the Corporation Secretary. The Corporation shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally. The hearing shall be held before a Hearing Officer, who is a member of the Audit Committee appointed by its Chairman, and who shall conduct the hearing in whatever manner will permit full presentation of the evidence. An appropriate record shall be kept. The Hearing Officer shall be the sole judge of the relevance and the materiality of the evidence offered.

.02 Report to Securities and Exchange Commission (SEC)—A report of the findings in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of Rule 30 if a citation is not contested and any penalty imposed is paid promptly.

* * * * *

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examind at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to emphasize to members and participants the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by PHILADEP for the various types of accounts carried for them. PHILADEP's depository services and its maintenance of numerous accounts in connection therewith are complex activities involving many functions, computations and entities. Promptness in confirming accounts and identifying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen participant and depository risk. Fairness calls for all participants to follow the same standards. Empowering PHILADEP to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate regulatory aid, particularly in light of the addition of specific due process safeguards.

The proposed rule change is consistent with section 17(b)(3)(F) of the Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17(b)(3)(H), a fair procedure with respect to the disciplining of participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the file number in the caption above and should be submitted by March 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 23, 1988.

[FR Doc. 88-4266 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25386; File No. SR-SCCP 87-04]

Self-Regulatory Organizations; Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating To Proposed Penalty Schedule for Failure To Timely Confirm Accuracy of Monthly Account Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1987, the Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes as a rule change an amendment to its Rule 21 to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is as follows (brackets indicate deletions; Italics indicates additions).

Statements

Rule 21. *(a)* Stock Clearing Corporation *(SCCP)* will render to clearing members a daily Bookkeeping Form. This statement must be verified upon receipt, and any exceptions or corrections promptly reported to [Stock Clearing Corporation] *SCCP.*

(b) As of the last Friday of each month except December, which will be as of the last business day, [Stock Clearing Corporation will issue to clearing members a month-end exception letter indicating whether the statement received on that day is] *SCCP will request each member to respond in writing as to whether monthly account statements issued by SCCP and received by the member are* accurate for each type of account [(CNS or margin)]. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the [exception letter. The verification letter] *written reply. The reply* must be signed by the member and returned to [Stock Clearing Corporation] *SCCP* by the [15th] *20th* day of the month following the date of the statement.

(c) The Chairman or Vice Chairman of the Audit Committee, or an officer of SCCP designated by either one of them, may impose the following penalties upon a clearing member who fails to respond to confirmation requests in a timely manner, as required by Section (b) of this rule.

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine.

(d) Notice of any penalty imposed under Section (c) shall be given by the issuance of a written citation. There shall be a right to a hearing before a member of the Audit Committee, appointed by its Chairman, whose ruling in the matter shall be final.

(e) When the failure of a clearing member to respond to confirmation requests in a timely manner, as required by Section (b) of this rule, constitutes the fourth such offense within a twelve-month period, the matter shall be referred to the President of the Corporation who is empowered, under Rule 23, to authorize the initiation of disciplinary proceedings for alleged violations by any member or participant of the rules of the Corporation.

(f) Notwithstanding the foregoing, the President or the Board of Directors may extend the times fixed for compliance with this rule whenever, in the judgment of either, such extension is necessary or desirable.

. . . COMMENTARY

Procedure for Hearing Before Audit Committee Representatives

.01 Conduct of Hearing—No hearing shall be granted unless, on or before the fifteenth calendar day after the date appearing on the penalty citation upon which the hearing is sought, a written statement requesting such hearing is delivered to the Corporation Secretary. The Corporation shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally. The hearing shall be held before a Hearing Officer, who is a member of the Audit Committee appointed by its Chairman, and who shall conduct the hearing in whatever manner will permit full presentation of the evidence. An appropriate record shall be kept. The Hearing Officer shall be the sole judge of the relevance and the materiality of the evidence offered.

.02 Report to Securities and Exchange Commission (SEC)—A report of the findings in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of Rule 21 if a citation is not contested and any penalty imposed is paid promptly.

* * * * *

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 20, 1986, SCCP filed SR-SCCP-86-01 with the Commission, a proposed rule change to establish a schedule of fines to deter SCCP members and participants from being delinquent in verifying month-end exception statements regarding SCCP's records of the particular member/participant's account[s]. With SCCP's consent, the rule change proposal was not noticed for comment pending discussions with the Commission of potential amendments to the proposal. In general, the Commission was concerned of the summary nature of the

proposed fines and the absence of minimal due process procedures. Accordingly, to address these concerns, SCCP has amended the proposal by affording the right to a hearing to any member/participant subject to a fine citation under the Rule. As is clear from the text of the revised proposal as contained herein, Rule 21 will provide detailed hearing procedures for any aggrieved member/participant.

The purpose of the proposed rule change remains as being an emphasis to members and participants of the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by SCCP for the various types of accounts carried for them. SCCP's clearance and settlement of securities transactions and its maintenance of numerous accounts in connection therewith are complex activities involving many functions, computations and entities. Promptness in confirming accounts and indentfying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen participant and clearing corporation risk. Fairness calls for all participants to follow the same standards. Empowering SCCP to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate regulatory aid, particularly in light of the addition of specific due process safeguards.

The proposed rule change is consistent with section 17(b)(3)(F) of the Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17(b)(3)(H), a fair procedure with respect to the disciplining of participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the file number in the caption above and should be submitted by March 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4267 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16262; File No. 812-6882]

Hartford Life Insurance Co.; et al.; Application for Exemption

February 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Hartford Life Insurance Company ("HL"); Hartford Life Insurance Company Separate Account Two ("HL Separate Account Two"); Hartford Variable Annuity Life Insurance Company ("HVA"); and, Hartford Variable Annuity Life Insurance Company DC Variable Account-I, DC Variable Account-II, QP Variable Account, NQ Variable Account and Variable Account "A" (DC Variable Account-I is referred to herein as "HVA Separate Account DC-I" and DC Variable Account-II, QP Variable Account, NQ Variable Account and Variable Account "A" are collectively referred to herein as the "HVA Separate Accounts").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from section 17(a).

Summary of Application: Applicants seek an order exempting, to the extent necessary, the proposed transfer of the four HVA Separate Accounts to HL Separate Account Two and of HVA Separate Account DC-I to HL.

Filing Date: The application was filed on September 30, 1987 and was amended on December 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on March 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 200 Hopmeadow Street, Simsbury, Connecticut, mailing address: P.O. Box 2999, Hartford, Connecticut 06104-2999.

FOR FURTHER INFORMATION CONTACT: Special Counsel David S. Goldstein (202) 272-2622 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations: 1. HVA and HL are stock life insurance companies; HVA is a wholly-owned subsidiary of HL, which, through a chain of ownership, is ultimately owned by Hartford Fire Insurance Company, a wholly-owned subsidiary of ITT Corporation.

2. The five existing separare accounts of HVA are registered under the 1940 Act as unit investment trusts. These

separate accounts fund group and individual variable annuity contracts offered by HVA (the "HVA Contracts"). HL Separate Account Two, registered with the SEC as a unit investment trust under the 1940 Act, also funds a variable annuity contract (the "HL Contract," collectively referred to sometimes hereinafter with the HVA Contracts as the "Contracts").

3. The five existing separate accounts of HVA and HL Separate Account Two invest exclusively in the shares of HVA Fixed Income Fund, Inc.; HVA Stock Fund, Inc.; HVA Money Market Fund, Inc.; HVA Government Securities Fund, Inc.; HVA Advisers Fund, Inc.; HVA Aggressive Growth Fund, Inc.; Hartford Index Fund, Inc.; and Hartford GNMA/Mortgage Securities Fund, Inc. (collectively, the "Funds"), all of which are open-end management investment companies registered as such under the 1940 Act.

4. The Hartford Investment Management Company ("HIMCO"), a wholly-owned subsidiary of HVA, serves as investment manager or investment adviser to each of the Funds. Hartford Equity Sales Company, Inc. ("HESCO"), a wholly-owned subsidiary of HVA, serves as the principal underwriter of the Contracts. The Contracts are sold by salespersons of HESCO who represent either HVA or HL, whichever is appropriate, as insurance and variable annuity agents and who are registered representatives or broker-dealers who have entered into distribution agreements with HESCO.

5. HVA will, subject to necesssary regulatory approval detailed in the Application, be merged with and into HL on or before March 31, 1988.

6. Applicants will transfer the four HVA Separate Accounts to HL Separate Account Two and transfer HVA Separate Account DC-I to HL. HL Separate Account Two will fully assume all duties, obligations, and liabilities of the four HVA Separate Accounts, and HL will fully assume all other duties, obligations, and liabilities of HVA, including those in connection with HVA Separate Account DC-I. Such duties, obligations, and liabilities will include, but will not be limited to, those pertaining to all of the insurance policies issued by HVA, together with all outstanding losses, whether reported or unreported, arising therefrom. On the Transfer Date, HL will substitute itself fully for HVA and will hold itself responsible to and deal directly with all contractholders and other claimants or creditors of HVA as if it were the original owner and sponsor of the four HVA Separate Accounts and of HVA Separate Account DC-I.

7. To reflect the transfer of contractual obligations and liabilities of the HVA Contracts issued by the four HVA Separate Accounts and HVA Separate Account DC-I and the change of sponsorship from HVA to HL, HL will file new registration statements under the Securities Act of 1933 on Form N-4 relating to all of the former HVA Contracts (hereinafter referred to as the "New Contracts"). HL will file these registration statements in a timely manner to ensure that they will become effective as of or before the proposed transfer. Current HVA contractholders and participants under group contracts identifiable from HVA's records will receive a prospectus that reflects HL's assumption of the HVA Contracts and, as appropriate, its sponsorship of the four HVA Separate Accounts and HVA Separate Account DC-I, but which will retain the historical financial information of the former HVA Separate Accounts and HVA Separate Account DC-I.

8. After the proposed transfer is completed, the four HVA Separate Accounts that are to be transferred to HL Separate Account Two will file applications pursuant to Section 8(f) of the 1940 Act and Rule 8f-1 thereunder for orders declaring that they have ceased to be investment companies. Simultaneous with the filing of the registration statement on Form N-4 under the 1933 Act referred to above in paragraph 7, HL and HVA Separate Account DC-I will amend the 1940 Act registration statement on Form N-4 of HVA Separate Account DC-I to reflect the change in legal ownership of the assets therein from HVA to HL.

9. On the date the assets of HVA are transferred to HL, including all of the assets of the existing separate accounts of HVA, all duties, obligations, and liabilities of HVA will be fully assumed by HL and HL Separate Account Two, whichever is appropraite. The four HVA Separate Accounts and HVA Separate Account DC-I will, as a practical matter, continue to operate in a manner virtually identical to that prior to the transfer. The assets as well as the individual structures of the four HVA Separate Accounts and HVA Separate Account DC-I will essentially remain intact. Monies under the New Contracts will continue to be invested exclusively in shares of the Funds, HIMCO will continue to act as investment adviser or manager to the Funds, HESCO will continue to be the principal underwriter of the New Contracts, and the level of charges imposed under the New Contracts will remain the same. The only change under the New Contracts from the HVA Contracts will be a change of the sponsor from HVA to HL. Unit values under the New Contracts will be the same as under the HVA Contracts and the number of units owned by each contractowner will be the same both before and after the transfers. HVA and HL will assume all expenses related to the transfer of the four HVA Separate Accounts to HL Separate Account Two and of HVA Separate Account DC-I to HL. In addition, the transactions described will not cause any federal income or other taxes to be imposed on HVA contractholders in connection therewith.

10. Upon effectiveness of the registration statements, new prospectuses will be sent to holders of the New Contracts and participants under group contracts identifiable from HVA's records. HL will also send to all such contractholders and participants, shortly after the consummation of the proposed merger of HVA into HL, notice of the transfer contractual obligations and liabilities and of the change of sponsorship of the HVA Contracts.

11. The interests of contractholders in the four HVA Separate Accounts and HVA Separate Account DC-I will not be adversely affected by the transfer of the four HVA Separate Accounts to HL Separate Account Two or the transfer of HVA Separate Account DC-I to HL, respectively. The proposed transfer will not result in any dilution of contractholders' interests and will not result in any change in the terms of or assets underlying the HVA Contracts. Rather, the transfers will benefit contractholders because the resulting new sponsor of the four HVA Separate Accounts and of HVA Separate Account DC-I, HL, will be a company that is financially stronger than HVA.

12. The terms of the proposed transfer of the four HVA Separate Accounts to HL Separate Account Two and of HVA Separate Account DC-I to HL are reasonable and fair to all parties and do not involve overreaching on the part of any person concerned.

13. The proposed transfers are consistent with the policies of the five existing separate accounts of HVA and HL Separate Account Two and the general purposes of the 1940 Act.

14. The requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4224 Filed 2-26-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0514]

Citicorp Investments Inc; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Citicorp Investment Inc., 399 Park Avenue, New York, New York 10043 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107,102 (1987).

The officers, directors, and sole shareholder of the Applicant are as follows:

Name and address	Position	Percent of ownership
Eric West, 160 East 65th Street, Apt. 27F, New York, New York 10021.	Chairman, Director	
David T. King, 40 Harrison Street, Apt. 100, New York, New York 10013.	President, Director	
James W. McLane, 1150 Park Avenue, Apt. 12F, New York, New York 10128.	Director	
George A. Skouras, 364 East Middle Patent Road, Greenwich, Connecticut 06830.	Vice President	
Edward R. Spector, 12 Franklin Avenue, Croton-on-Hudson, New York 10520	Treasurer	
Janet L. Burak, 300 East 75th Street, Apt. 27F, New York, New York 10021.	Secretary	
Frances A. Marangiello, 2815 Wellman Avenue, Bronx, New York 10461.	Assistant Treasurer	
Citibank (Delaware), New Castle Corporate Commons, One Penn's Way, Operations One Building, New Castle, Delaware 19720.	Shareholder	100

Citicorp Holdings Inc., New Castle Corporate Commons, One Penn's Way, Operations One Building, New Castle, Delaware 19720 is the sole shareholder of Citibank (Delaware). Citicorp Holdings Inc., is a wholly owned subsidiary of Citicorp, 399 Park Avenue, New York, New York 10043.

The Applicant, a Delaware Corporation, will begin operations with $9,500,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in New York City and the surrounding metropolitan area but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: February 18, 1988.

[FR Doc. 88-4277 Filed 2-26-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0150]

Diamond Capital Corp.; Issuance of a Small Business Investment Company License

On October 5, 1987, a notice was published in the **Federal Register** (52 FR 37241) stating that an application has been filed by Diamond Capital Corp., New York, New York, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business November 4, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0150 on January 21, 1988, to Diamond Capital Corp., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: February 17, 1988.

[FR Doc. 88-4278 Filed 2-26-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0184]

Fidelcor Capital Corporation; Issuance of a Small Business Investment Company License

On September 14, 1987, a notice was published in the **Federal Register** (52 FR 34734) stating that an application has been filed by Fidelcor Capital Corporation, Philadelphia, Pennsylvania, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business October 14, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0184 on January 14, 1988, to Fidelcor Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: February 17, 1988.

[FR Doc. 88-4279 Filed 2-26-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0509]

SLK Capital Corporation; Issuance of a Small Business Investment Company License

On August 19, 1987, a notice was published in the **Federal Register** (52 FR 31110) stating that an application has been filed by SLK Capital Corporation, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business September 18, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0509 on January 27, 1988, to SLK Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: February 18, 1988.

[FR Doc. 88-4280 Filed 2-26-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Employee Counseling Services Program Records DOT/ALL-5

The Department of Transportation herewith republishes a notice relating to the implementation of a system of records to cover all records maintained by the Department pertaining to Employee Counseling Services Programs for civilian employees. The records include case files of current and former employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

A notice proposing implementation of this system of records was published on December 30, 1986 (51 FR 47094). Based on comments received, the section of the notice describing routine uses of Employee Counseling Services Program records has been reworded to clarify the strict limitations on disclosure of information contained in these records. No comments were received concerning any other sections of the proposed notice.

The notice is effective April 15, 1988.

Issued in Washington, DC February 23, 1988.

Jon H. Seymour,
Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation, Office of the Secretary, Office of Personnel, Establishment of Employee Counseling Services Program Records System

The Office of the Secretary is establishing the Employee Counseling Services Program Records System, DOT/ALL-5 on a Department-wide basis to cover all records maintained by the Department of Transportation's (DOT) Operating Administrations pertaining to Employee Counseling Services Programs for civilian employees.

The purpose of the system and the authorities under which it is maintained are described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register.**

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 et seq, 21 U.S.C. 1101 et set, and 42 CFR Part 2) and participation in the programs is limited to employees of the Department. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular, A-130, Appendix 1, 50 FR 52730 (1985).

DOT/ALL-5

SYSTEM NAME:

Employee Counseling Services Program Records

SYSTEM LOCATION:

Records are maintained in the office of the Employee Counseling Service which provides counseling to the employee.

Note.—In order to meet the statutory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug programs, and to better accommodate establishment of a health service program to promote employees' physical and mental fitness, it may be necessary for the Department of Transportation (DOT) to negotiate for use of the counseling staff of another Federal, state, or local government, or private sector agency or institution. This system also covers records on DOT employees that are maintained by another Federal, state, or local government, or private sector agency or institution under such a negotiated agreement.

SECURITY CLASSIFICATION:

None

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, state, local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, state, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 4561, and 44 U.S.C. 3101.

PURPOSE:

These records are used to document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOT, all patient identifying information shall be removed).

b. To disclose information, when an individual to whom a record pertains is mentally incompetent or under legal disability, to any person who is responsible for the care of the individual.

c. To disclose information to the Department of Justice that is relevant and necessary to evaluate and defend claims against the United States that are based upon participation in alcohol, drug, or other treatments or rehabilitation programs conducted by DOT.

DOT's general routine uses (49 FR 15345) do not apply to this system or records. These are the only routine uses provided for DOT's Employee Counseling Services Program records. Furthermore, in many instances a full disclosure of the contents of the record is not required. Whenever possible, a partial disclosure will be made or a summary of the contents of the record will be disclosed. Full disclosure of the record will be made only when a partial disclosure or a summary will not suffice.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name or social security number of the individual on whom they are maintained or by a unique case file identifier.

SAFEGUARDS:

These records are maintained in locked file cabinets with access strictly limited to employees directly involved in the DOT's Employee Counseling Services Program.

RETENTION AND DISPOSAL:

Records are maintained for three to six years after the employee's last contact with DOT's Employee Counseling Services Program.

SYSTEM MANAGER AND ADDRESS:

Director of Personnel, Office of the Secretary, Department of Transportation, Room 9101, 400 7th Street, SW., Washington, DC 20590

NOTIFICATION PROCEDURE:

DOT employees wishing to inquire whether this system of records contains information about them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

RECORD ACCESS PROCEDURES:

DOT employees wishing to request access to records pertaining to them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

CONTESTING RECORDS PROCEDURES:

DOT employees wishing to request amendment to these records should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

RECORD SOURCE CATEGORIES:

Information in this sytem of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the Supervisor, the Employee Counseling Service Program staff member who records the counseling session, and therapists or institutions providing treatment.

[FR Doc. 88-4251 Filed 2-26-88; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

[FHWA Docket No. MC 87-24, Notice No. 2]

Qualifications of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of waiver grant.

SUMMARY: Notice is hereby given that the FHWA has granted Greyhound Lines, Inc., a waiver of certain requirements of 49 CFR Part 391 that pertain to qualifying new driver employees who will be operating commercial motor vehicles in interstate or foreign commerce. This action will reduce the administrative burden of the motor carrier for a single instance and will not compromise the safety of the motoring public.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Greyhound Lines, Inc., has acquired Trailways Lines, Inc., pending final approval by the Interstate Commerce Commission. Greyhound has stated that each Trailways Lines Inc., driver has been offered employment with Greyhound as a new employee. Greyhound has further stated that the Trailways drivers and their qualification files meet all of the requirements of 49 CFR Part 391. Because of this, Greyhound has requested that the requirements for an application for employment, a background check and other qualification certifications requied for each new driver employee be waived for those Trailways drivers employed at the time of the acquisition. Greyhound specifically seeks a waiver for the following sections of 49 CFR Part 391:

§ 391.21 Application for employment.

§ 391.23 Investigation and inquiries.

§ 391.31 Road test.

§ 391.35 Written examination.

§ 391.51 Driver qualification files.

Notice of this request for a waiver was publisned in the Federal Register on November 12, 1987 (52 FR 43421). One

comment was received in response to the above notice. The Amalgamated Transit Union, the recognized bargaining representative of the drivers and other employees of Greyhound Lines, Inc., fully supports the waiver request. It believes that granting the waiver request would enhance Greyhound's ability to continue providing safe and efficient service throughout its expanded route network.

The FHWA believes that to require a well-established motor carrier to requalify the drivers of another well-established motor carrier, simply because of a merger of the two operations, would serve no safety purpose. Further, such a requirement, in this instance, would create an undue burden on the surviving motor carrier. Therefore, Greyhound's request is granted.

A waiver has been issued to Greyhound Lines Inc., which will allow them to merge Trailways drivers and their attendant driver qualification files into the Greyhound work force expeditiously and with no degradation of safety. This waiver applies only to those Trailways drivers employed at the time of acquisition. All subsequent new hires must be hired in accordance with all applicable Federal regulations. A copy of the waiver must be placed in the file of each Trailways driver that is merged into the Greyhound operation.

A copy of the waiver is available for inspection in Room 4232 after February 22, Office of the Chief Counsel, 400 Seventh Street SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

(49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.)

Issued on: February 23, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-4250 Filed 2-26-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-822]

Waterman Steamship Corp.; Application Pursuant to Section 605(c) of the Merchant Marine Act, 1936, as Amended, Authorizing Operation Between North Atlantic Ports and Mediterranean Ports in Egypt

Notice is hereby given that Waterman Steamship Corporation (Waterman) by application dated January 29, 1988, and amended February 18, 1988, has applied pursuant to section 605(c) of the Merchant Marine Act, 1936, as amended (Act), for an amendment to its Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-115 authorizing operation of up to 18 sailings on a privilege basis between U.S. North Atlantic ports and Mediterranean ports in Egypt. Waterman requests permission to use any vessels operating under authority of ODSA MA/MSB-115.

Waterman states that according to Lykes Bros. Steamship Co., Inc.'s application in Docket S-807, service is inadequate in the Mediterranean markets. Waterman believes that termination of service by Prudential Lines, Inc. (PLI) has made clear the need for barge-carrying vessel service in these markets. In Waterman's view, it can lessen any inadequacy caused by PLI's departure as no other carrier could, because it operates the LASH barge system. Waterman already operates its barge-carrying vessels from U.S. South Atlantic and Gulf ports to Mediterranean Egypt and offers intermodal service to Egypt from North Atlantic points via South Atlantic ports. Waterman carries North Atlantic-originated cargo to Mediterranean Egypt in this latter service. Waterman claims that it need only be authorized to advertise all-water service in order to commence serving these markets immediately with LASH all-water service.

Waterman affirms that this amendment would cause no increase in the operating-differential subsidy paid Waterman. Waterman would continue to operate its service inclusive of the proposed service in a manner which would not preclude it from receiving at least 50 percent of its inbound gross revenues and at least 50 percent of its outbound gross revenues from the carriage of commercial cargoes, conference-rated civilian preference cargoes or open-rated civilian preference cargoes carried at "world" rates.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on March 21, 1988. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating—Differential Subsidies)

By Order of the Maritime Subsidy Board.

Date: February 24, 1988.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88-4249 Filed 2-26-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 23, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0928.
Form Number: None.
Type of Review: Revision.
Title: Notices, Elections, and Consents Under the Retirement Equity Act of 1984 Treasury Decision 8037.
Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.
Respondents: State and local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
Estimated Burden: 435,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88-4206 Filed 2-26-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

[Determination; Amdt. No. 2]

Culturally Significant Objects Imported for Exhibition

On October 13, 1987, notice was published at page 38030 of the **Federal Register** (52 FR 38038), and January 26, 1988, notice was published at page 2142 of the **Federal Register** (53 FR 2142) by the United States Information Agency pursuant to Pub. L. 89–259 relating to the exhibit "Crossroads of Continents: Cultures of Siberia and Alaska." Temporary exhibit of the additional imported culturally significant objects listed [1] is in the national interest.

C. Normand Poirier,

Acting General Counsel.

Date: February 23, 1988.

[FR Doc. 88–4252 Filed 2–26–88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given to the following determination: Pursuant to the authority vested in me by the act of October, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Dutch and Flemish Paintings From the Hermitage," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the Metropolitan Museum of Art in New York, NY, beginning on or about March 26, 1988, to on or about June 5, 1988, and at the Art Institute of Chicago, beginning on or about June 29, 1988, to on or about September 18, 1988, is in the national interest.

Public notice of this determination is order to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: February 24, 1988.

[FR Doc. 88–4220 Filed 2–26–88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: (9:30 a.m. (Eastern time) Tuesday, March 8, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

1. Agency Adjudication and Determination on Federal, Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Date: February 24, 1988.

Hilda D. Rodriguez,
Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-4341 Filed 2-25-88; 11:31 am]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 1, 1988 from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approvals;
2. Amendments to the Investment Policy—Wichita District;
3. Revised Debt Management Policy—Omaha Farm Credit Banks;
4. Amended Investment Policy—Farm Credit Banks of Springfield;
5. FLBA and PCA Bylaw Changes—Seventh Farm Credit District;
6. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management;
7. Proposed Changes to Retirement and Severance Plans for the First District, Tenth District and the Farm Credit Corporation of America;
8. CEO Salary Proposals for the Central Bank for Cooperatives and the Federal Farm Credit Banks Funding Corporation;
9. Salary Changes for the Springfield Districts;
10. Implementation of the Agricultural Credit Act of 1987; and

***Closed Session**

11. Examination and Enforcement Matters.

Dated: February 24, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 88-4355 Filed 2-25-88; 1:01 pm]

BILLING CODE 6705-01-M

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(4), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:12 p.m. on Tuesday, February 23, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointee), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 25, 1988.

Federal Deposit Insurance Corporation

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 88-4351 Filed 2-25-88; 1:00 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 18, 1988, 53 FR 4930.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 25, 1988, 3:00 p.m.

CHANGE IN THE MEETING:

Addition to the Closed Session:

2. Docket No. 87-6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade—Petition for Reconsideration or, in the Alternative, Petition for Stay.

Joseph C. Polking,
Secretary.

[FR Doc. 88-4358 Filed 2-25-88; 1:12 pm]

BILLING CODE 6730-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an open meeting on Thursday,

March 3, 1987, at 10:00 a.m., to consider the following item.

Consideration of whether to publish two releases relating to Regulations D, the limited offering exemptions from the registration requirements of the Securities Act of 1933. The first release would in effect: (1) Revise the definition of "accredited investor"; (2) raise the dollar ceiling for certain offerings under Rule 504 and adjust the general solicitations standard for Rule 504 offerings; (3) revise certain conditions to the exemption; (4) provide a substantial and good-faith compliance standard for procedural requirements; and (5) make certain technical amendments to the regulation. The second release would request public comment on an additional revision of the "accredited investor" definition. For further information, please contact Richard K. Wulff at (202) 272-2644.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan Katz,

Secretary.

February 24, 1988.

[FR Doc. 88-4345 Filed 2-25-88; 11:30 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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 AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

Correction

In rule document 88-2549 beginning on page 3721 in the issue of Tuesday, February 9, 1988, make the following correction:

§ 68.90 [Corrected]

On pages 3732 and 3733, in § 68.90, in Table 3, the heading should read, "Table 3.—*Laboratory Fees*".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-3331-9]

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

Correction

In proposed rule document 88-3675 appearing on page 5195 in the issue of Monday, February 22, 1988, make the following correction:

In the first column, under DATES, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-16]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

Correction

In rule document 88-1681 beginning on page 2482 in the issue of Thursday, January 28, 1988, make the following correction:

§ 71.123 [Corrected]

On page 2484, in the first column, in § 71.123, under "V-268", in the fifth line "233°" should read "223°".

BILLING CODE 1505-01-D

federal register

Monday
February 29, 1988

Part II

Department of Agriculture

48 CFR Part 404 et al.

Acquisition Regulation; Miscellaneous Amendments; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF AGRICULTURE

48 CFR Parts 404, 407, 409, 410, 412, 414, 415, 416, 417, 419, 422, 424, 425, 428, 432, 436, 437, 439, 442, 445, 446, 447, and 452

[Agriculture Acquisition Circular No. 2]

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of Operations, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Department of Agriculture Acquisition Regulation (AGAR). The revisions standardize Departmental coverage for the application of labor standards provisions in contracts for services prescribed by 29 CFR Part 4; set administrative standards and guidelines for uniform solicitation provisions and contract clauses; and prescribe miscellaneous internal policies and procedures.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, United States Department of Agriculture, Washington, DC 20250; (202) 447–8924.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. National Environmental Policy Act.

I. Background

On January 12, 1988, the Department of Agriculture published a notice of proposed rulemaking in the **Federal Register** (53 FR 749). The notice invited public comments by February 11, 1988 on the proposed Agriculture Acquisition Circular No. 2 which would amend the Agriculture Acquisition Regulation (AGAR). No public comments were received. Comments that were received from contracting activities within the agency were editorial in nature. They were considered and adopted to the extent that they would improve the clarity of this final rule.

On February 8, 1988, Federal Acquisition Circular (FAC) 84–33 was published in the **Federal Register** (53 FR 3688). The FAR amended the Federal Acquisition Regulation (FAR), effective February 22, 1988, to provide single, uniform procedures in the FAR for implementing OMB Circular A–125, Prompt Payment. Accordingly, although it was not included in the proposed rule, this final rule removes the existing AGAR instructions concerning prompt payment, and does not adopt the proposed amendments thereto.

This rulemaking amends the AGAR, as necessary, to incorporate labor standards provisions applicable to Departmental contracts for services. USDA has been operating under instructions contained in the Federal Acquisition Circular 84–1 to follow policy and procedures contained in Federal Procurement Regulations (FPR), Temporary Regulation 76, for labor standards coverage applicable to Federal service contracts. The FPR Temporary Regulation has expired.

In addition this final rule revises the blanket authority delegated to heads of contracting activities to acquire ADP resources; adds policy and procedures for conducting cost-plus-award-fee contracts; and adds uniform provisions and clauses for solicitations and contracts issued and awarded by Departmental contracting offices.

II. Procedural Requirements

A. Executive Order 12291

The Executive order entitled "Federal Regulations" requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services, or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

All information collections contained in 48 CFR Subpart 422.70 are the direct result of Department of Labor (DOL) rules as published in 29 CFR Part 4. The DOL rules have been cleared by the Office of Management and Budget (OMB) and assigned the OMB control numbers shown therein. All other information collections contained in this AGAR amendment have been cleared by OMB in prior rulemaking or as declared by USDA in its information collection requests. For example, the information collections relative to the submission of contract proposals in section 415.407 have been declared and cleared previously as contract specific collections. This rule merely consolidates a range of information that contracting officer should, at their discretion, consider asking prospective contractors to furnish.

D. National Environmental Policy Act

USDA has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, et seq., 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 404, 407, 409, 410, 412, 414, 415, 416, 417, 419, 422, 424, 425, 428, 432, 436, 437, 439, 442, 445, 446, 447, and 452

Government procurement.

Issued in Washington, DC, February 23, 1988.

Frank Gearde, Jr.,
Director, Office of Operations.

For the reasons set out in this preamble, Chapter 4 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for 48 CFR Parts 404, 407, 409, 410, 412, 414, 415, 416, 417, 419, 422, 424, 425, 428, 432, 436, 437, 439, 442, 445, 446, 447, and 452 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

PART 404—ADMINISTRATIVE MATTERS

2. Subpart 404.6 is amended by adding section 404.670 to read as follows:

404.670 Solicitation provision.

The contracting officer shall insert the provision at 452.204–70, Data Universal Numbering System (DUNS), in each solicitation that will result in an award which will be subject to reporting on Form AD–760.

3. Subpart 404.70 is added to read as follows:

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the

provision at 452.204-71, Inquiries, in all solicitations.

PART 407—ACQUISITION PLANNING

4. Section 407.305 is added to read as follows:

407.305 Solicitation provision and contract clause.

The contracting officer shall insert the clauses at 452.207-70, Definition of "Right of First Refusal", and 452.207-71, Report of Employment Under Commercial Activities, when the clause at FAR 52.207-3, Right of First Refusal of Employment, is used.

PART 409—CONTRACTOR QUALIFICATIONS

5. Section 409.504 is added to read as follows:

409.504 Contracting officer responsibilities.

The contracting officer shall insert a clause substantially the same as the clause at 452.209-70, Organizational Conflict of Interest, in solicitations and contracts, if there is a potential for an organizational conflict of interest as described in FAR Subpart 9.5.

PART 410—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 410.011 is added to read as follows:

410.011 Contract clauses.

(a) The contracting officer shall insert the clause at 452.210-71, Statement of Work/Specifications, when the statement of work or specifications is included in Section J of the solicitation.

(b) The contracting officer shall insert the clause at 452.210-72, Attachment to Statement of Work/Specifications, when there are attachments to the statement of work or specifications.

7. Part 412 is added to read as follows:

PART 412—CONTRACT DELIVERY OR PERFORMANCE

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 412.1—Delivery or Performance Schedules

412.104 Contract clauses.

(a)(1) If the type of contract is a cost-plus-fixed fee, the contracting officer shall insert the clause at 452.212-70, Level of Effort—Cost Reimbursement Term Contract.

(2) If the type of contract is a cost or cost-sharing, the contracting officer shall use the clause with its Alternate I.

(3) If the type of contract is a cost-plus-incentive-fee, the contracting officer shall use the clause with its Alternate II.

(4) If the type of contract is a cost-plus-award-fee, the contracting officer shall use the clause with its Alternate III.

(b) The contracting officer shall insert the clause at 452.212-71, Task Orders, when task orders will be used in a cost-reimbursement term contract.

(c)(1) The contracting officer shall insert the clause at 452.212-72, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(2) The contracting officer shall insert the clause at 452.212-73, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

PART 414—SEALED BIDDING

8. Subpart 414 is added to read as follows:

Subpart 414.2—Solicitation of Bids

414.201 Preparation of invitations for bids.

414.201-6 Solicitation provision.

The contracting officer shall insert the provision 452.214-70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

PART 415—CONTRACTING BY NEGOTIATION

9. Section 415.407 is added to read as follows:

415.407 Solicitation provisions.

(a)(1) The contracting officer shall insert a provision substantially the same as the provision at 452.215-71, Instructions for the Preparation of Technical and Business Proposals, when the request for proposals requires offerors to submit technical proposals and business proposals, including cost or pricing proposals.

(2) The contracting officer shall insert a provision substantially the same as Alternate I to the provision, when a contract for major facilities management or other major services is contemplated.

(b) The contracting officer shall insert the provision at 452.215-72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

(c) The contracting officer shall insert a provision substantially the same as the provision at 452.215-73, Submission of Proposals, when a proposal must be submitted in various formats and quantities.

(d) The contracting officer shall insert the provision at 452.215-74, General Financial and Organizational Information, in solicitations for negotiated fixed-price or cost-reimbursement contracts.

(e) The contracting officer shall insert a provision substantially the same as the provision at 452.215-75, Definition of Labor Classifications, in cost-reimbursement solicitations which identify the disciplines and levels of expertise required to perform the effort. The requisitioning program office shall identify for the contracting officer the labor classifications that may appropriately apply. Paragraphs (c) and (d) of the clauses are examples only, which may be modified or deleted to accommodate the particular procurement.

10. Section 415.608 is added to read as follows:

415.608 Proposal evaluation.

HCA's or their designees are authorized to make the determinations to reject all proposals under the circumstances listed in FAR 15.608(b).

11. Section 415.1070 is added to read as follows:

415.1070 Post-Award Conference.

If a postaward conference is necessary and in the Government's interest, the contracting officer shall insert a clause substantially the same as the clause at 452.215-76, Post-Award Conference, in cost-reimbursement and fixed-price service contracts.

PART 416—TYPES OF CONTRACTS

12. Section 416.404-2, is revised to read as follows:

416.404-2 Cost-plus-award-fee contracts.

This section establishes USDA policy and procedures for awarding and administering cost-plus-award-fee (CPAF) type contracts.

(a) *Applicability.* (1) Contracting officers should consider those contract actions which conform to the use criteria at FAR 16.404-2(b) and which have a potential value of $5,000,000 or more as candidates for award as a CPAF contract. However, contracting officers may use CPAF contracts for requirements whose estimated value is less than $5,000,000.

(2) The formal procedures established in paragraphs (e), (f), and (g) of this

section apply to contracts estimated to exceed $1,000,000. The simplified procedures prescribed in paragraph (h) of this section are authorized for CPAF contracts with a potential value of $1,000,000 or less.

(b) *Objectives.* The award fee contract, when properly applied, will satisfy three critical contracting objectives:

(1) It provides for the reimbursement of allowable, allocable, and reasonable costs;

(2) It fixes a dollar amount beyond the initial estimate of costs that represents the compensation for risk (base fee); and

(3) It motivates performance throughout the life of a contract where evaluated success can yield additional income (award fee).

The CPAF contract is used when the work to be performed is such that specific quantitative objective measurement is not feasible and the required performance extends over a sufficient period of time for the award fee features to be used effectively.

(c) *Fee limitations.* Normally, the base fee should be not more than three percent of the estimated cost of the contract. (See FAR 15.903(d) for maximum fee limitations.) At the time of award, the contracting officer shall obligate the total amount of base and award fee. The contracting officer shall award the total award fee earned for the period being evaluated. The contracting officer shall not carry forward into a subsequent evaluation period any award fee not awarded in a previous evaluation period.

(d) *Definitions and responsibilities.* "Award fee plan" means a plan, developed by the Performance Evaluation Board (PEB), which identifies various categories of performance and clearly describes the criteria used by the PEB to evaluate contractor performance. The plan also allocates the award fee pool among performance categories.

"Award fee pool" means that portion of the contract fee set forth in the contract as the amount of fee available to be awarded for Contractor performance in accordance with the criteria contained in the award fee plan.

"Evaluation coordinator" means a Government official appointed to receive, code, validate, and assess performance event reports; and to present such contractor performance information and data to the PEB.

"Fee determination official (FDO)" means the Chief of the contracting office who reviews the recommendation of the PEB and makes the final determination of the award fee.

"PEB executive secretary" means a Government official who prepares the official PEB report.

"Performance evaluation board (PEB)" means a board of Government officials, which performs the in-depth review of all aspects of contractor performance and recommends an appropriate fee to the FDO.

"Performance event (PE)" means a discrete happening or series of related happenings occurring during the course of performance which indicate or represent contractor performance. Performance events shall be reported by the performance monitors to the evaluation coordinator. The contractor may report performance events directly to the evaluation coordinator either as they occur or as a summary report for the evaluation period.

"Performance monitors" means those Government employees designated to observe, assess, and report the performance of the contractor on a close, continuous day-to-day basis. Performance monitors are to two categories: technical and business. The technical performance monitors report on the contractors performing the technical requirements of the contract. The business performance monitors report on the business aspects of the contractor's performance; these individuals will be the contracting officer and cost analyst most familiar with the specific contractual and financial aspects of the contract.

"Period of evaluation" means a segment of the contract's period of performance specified in the award fee plan which will be evaluated by the PEB for purposes of establishing the award fee for that period.

(e) *Appointment of personnel.* (1) The HCA will determine, in concert with the responsible program office, the participants in the award fee process. The contracting officer shall prepare the formal appointment memorandum and forward it to the HCA prior to issuance of the solicitation. Individuals shall be designated as follows:

(i) *Chairperson, Performance Evaluation Board and Board Members.* The Chairperson of the performance evaluation board shall be the director of the program initiating the procurement. A representative of the responsible contracts operation office shall be a voting member of all PEB's. The chairperson of the PEB and the contracting officer shall recomm[illegible]d other board members.

(ii) *Evaluation Coordinator.* As recommended by the chairperson of the PEB.

(iii) *Executive Secretary.* As recommended by the chairperson of the PEB.

(iv) *Performance Monitors.* The PEB chairperson shall assure that adequate performance monitoring capability is available. These individuals need not be designated in the appointment memorandum.

(2) If any changes in the composition of the PEB are necessary, the following approvals shall be obtained:

(i) Chairperson, PEB—by the FDO.

(ii) PEB members—by the Chairperson, PEB.

(f) *Preparation of the award fee plan.* The purpose of the award fee plan is to describe in one document the plan for monitoring, assessing, and evaluation contractor performance to determine any award fee earned. The PEB shall develop and follow an award fee plan which clearly describes the criteria to be used to determine fee. The PEB shall forward the plan through the contracting officer to the HCA for approval prior to issuance of the solicitation. The contracting officer shall include the award fee plan in the solicitation. A complete award fee plan should include the following elements:

(1) The base fee amount.

(2) The total award fee pool.

(3) Performance areas to be evaluated.

(4) Criteria to be used in evaluations.

(5) Relative weights to be assigned to performance areas and to the evaluation criteria.

(6) Frequency and timing of award fee determination.

(7) Proportion of the total award fee pool to be available for each evaluation period.

(8) Procedure to be followed (the timing involved) in evaluating performance and determining the award fee.

(g) *Operation of the evaluation system.*—(1) *Performance event reporting.* Performance monitors shall file their individual performance event reports directly with the evaluation coordinator for each interval specified in the award fee plan and in the following or similar format.

(i) Contract number.

(ii) Contractor.

(iii) Task order number (if applicable).

(iv) Date or inclusive period of reported event.

(v) Performance evaluation category.

(vi) Description of performance event and statement whether the contractor has been notified of the reported event.

(vii) Performance rating:

(A) Superior: "+" The performance event exceeds the satisfactory level.

(B) Satisfactory: "0" The performance event is acceptable.

(C) Substandard: "−" The performance event is less than satisfactory.

(viii) Signature and date.

(2) *Significant performance event coordination.* (i) The evaluation coordinator shall receive, validate, and assess the performance events (PE) reports submitted by the monitors and select all those PE's he/she considers to be significant, i.e., above (+) or below (−) satisfactory performance.

(ii) The evaluation coordinator shall also prepare separate PE summaries for each performance evaluation category. The summaries will incorporate the reported PE's which the coordinator considers significant, whether reported by the performance monitor or the contractor. The evaluation coordinator shall be responsible for preparing and presenting all material the PEB requires for its performance assessment. This material will serve as the PEB's agenda, and as the complete documentation package which will support the PEB's fee recommendation. It will be organized into separate sections for each performance evaluation category. Each section will consist of the following material:

(A) Summary of significant performance events, and

(B) The individual PE reports.

(3) *Evaluation of performance.* The PEB shall perform a review of the performance events against each performance evaluation category to arrive at the recommended award fee for each category as well as the total award fee for the period. The PEB must meet within 30 calendar days after the end of each evaluation period. At the initial PEB meeting the board members shall determine what fee the contractor would normally receive if the work was being undertaken on a Cost-Plus-Fixed-Fee (CPFF) basis. After determining this amount, the PEB shall determine what percentage of the available award fee pool that, when added to the base fee, will equal the amount the contractor would receive under a CPFF contract. This percentage of award fee will set the baseline for satisfactory performance.

(4) *The period of evaluation.* The period of evaluation will be at least every six months. The desired period of evaluation will be every four months.

(5) *Performance evaluation report.* Following the PEB meeting at which the award fee recommendation is reached, the executive secretary will prepare a performance evaluation report and forward this to the contracting officer. The contracting officer will prepare a letter for signature of the FDO informing the contractor's general management of the amount of basis of the fee awarded. The contracting officer shall forward the performance evaluation report and the fee determination letter (the performance evaluation report shall be an attachment to the fee determination letter) to the FDO for signature. The FDO will review the performance evaluation and fee recommendation and make a final determination of fee.

(h) *Simplified procedures.* The following CPAF procedures are authorized for procurements of $1,000,000 or less.

(1) No appointment of a formal PEB is necessary. A program office representative and the contracting officer shall perform the duties and functions of the PEB members. In lieu of performance monitors reporting to an evaluation coordinator, the program official will personally monitor and assess the technical performance of the contractor for each evaluation period. The contracting officer will monitor the business aspects of the contractor's performance.

(2) The chief of the contracting office shall approve the award fee plan in lieu of the HCA.

(3) The project officer and the contracting officer shall report performance events in the format described in 416.404–277(a)(1). Use of the summary of significant performance events is not required.

(4) The project officer, with input from the contracting officer, will prepare the performance evaluation report.

13. Section 416.405 is added to read as follows:

416.405 Contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 452.216–70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

14. Section 416.470 is added to read as follows:

416.470 Solicitation provision.

The contracting officer shall insert the provision at 452.216–71, Base Fee and Award Fee Proposal in solicitations which contemplate the award of a cost-plus-award-fee contract.

15. Subpart 416.5 is added to read as follows:

Subpart 416.5—Indefinite Delivery Contracts

Sec.

416.505 Contract clauses.
416.570 Solicitation provision.

Subpart 416.5—Indefinite Delivery Contracts

416.505 Contract clauses.

The contracting officer shall insert the clause at 452.216–73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216–18 is used.

416.570 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 452.216–72, Evaluation Quantities—Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

16. Section 416.603–4 is added to read as follows:

416.603–4 Contract clauses.

The contracting officer shall insert the clause at 452.216–75, Letter Contract, in a definitive contract superseding a letter contract.

17. Section 416.670 is added to read as follows:

416.670 Contract clauses.

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216–74, Ceiling Price.

PART 417—SPECIAL CONTRACTING METHODS

18. Subpart 417.2 is added to read as follows:

Subpart 417.2—Options

417.208 Solicitation provisions and contract clauses.

(a) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217–70, Option to Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract, in term (level-of-effort) contracts. Alternate I of the clause is for use in completion contracts.

(b) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217–71, Option to Extend the Term of the Contract—Cost-No-Fee Contract, in term (level-of-effort) contracts. Alternate I of the clause is for use in completion contracts.

(c) If the Government needs additional periods of contractor

performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-72, Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, in level-of-effort contracts. Alternate I is to be used for completion contracts.

(d) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-73, Option for Increased Quantity—Cost-Plus-Fixed-Fee Contracts, in level-of-effort contracts.

(e) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-74, Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract, in level-of-effort contracts.

(f) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-75, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, in level-of-effort contracts.

(g) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-76, Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract, in time-and-materials or labor-hour contracts.

(h) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-77, Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract, in indefinite-delivery and indefinite-quantity contracts.

(i) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-78, Option to Extend the Term of the Contract—Fixed-Price Contract, in fixed-price contracts.

(j) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-79, Option for Increased Quantity—Fixed-Price Contract, in fixed-price contracts.

PART 419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERN

19. Section 419.508 is added to read as follows:

419.508 Solicitation provisions.

The contracting officer shall insert the provision at 452.219-70, Set-Aside/Size Standard Information, in solicitations that are set-aside for small businesses or labor surplus area concerns.

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

20. Subpart 422.70 is added to read as follows:

Subpart 422.70—Service Contract Act of 1965

Sec.

422.7001 Applicability.
422.7002 Clause for contracts of $2,500 or less.
422.7003 Clauses for contracts over $2,500.
422.7004 Notice of intention to make a service contract.
422.7005 Hearings.

Subpart 422.70—Service Contract Act of 1965

422.7001 Applicability.

(a) *General.* Pending coverage in the FAR, the policies and procedures in the Federal Procurement Regulations (FPR) Subpart 1-12.9, Service Contract Act of 1965, as amended by the FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, must be followed in acquisitions of services. This Subpart 422.70 implements the essential elements of the FPR Temporary Regulation 76 and includes the major changes to the Department of Labor (DOL) regulations, dated October 19, 1983.

(b) *Request for determinations and exemptions.* The HCA shall direct requests for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act to the Wage and Hour Administrator.

422.7002 Clause for contracts of $2,500 or less.

The contracting officer shall insert the clause at 452.222-70, Service Contract Act of 1965-Contracts of $2,500 or less, in solicitations and contracts if the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 applies.

422.7003 Clauses for contracts over $2,500.

(a) The contracting officer shall insert the clause at 452.222-71, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Service Contract Act of 1965 and is—

(1) Expected to exceed $2,500 or

(2) For an indefinite dollar amount and the contracting officer expects the contract amount to exceed $2,500 during any 12-month period.

(b) The contracting officer shall insert the clauses at 452.222-72, Statement of Equivalent Rates for Federal Hires and 452.222-73, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed price service contract containing the clause at 452.222-71, Service Contract Act of 1965 (as amended), that exceeds the small purchase limitation. The clause at 452.222-73 is optional for small purchases.

422.7004 Notice of intention to make a service contract.

(a) The Department of Labor (DOL) has issued a Service Contract Act Directory of Occupations to use in determining job classifications when procuring services. The directory contains occupational titles and descriptions that contracting offices must use when listing on SF 98a the classes of service employees to be used. When contracting officers are unable to find an appropriate title or description in the directory, they must develop and submit an appropriate occupational title and description for the work to DOL with the SF 98 request.

(b) Requests to expedite wage determinations or to check the status of a request may be made by the contracting officer directly to the DOL Wage and Hour Administrator.

422.7005 Hearings.

Requests for hearings under 29 CFR 4.11 will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C., 20210. All such requests shall be coordinated with the appropriate legal counsel.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

21. Subpart 424.1 is added to read as follows:

Subpart 424.1—Protection of Individual Privacy

424.104 Contract clauses.

When applicable, the contracting officer shall insert the clause at 452.224-71, Confidentiality of Information, in

contracts involving confidential information.

PART 425—FOREIGN ACQUISITION

22. Subpart 425.4 is added to read as follows:

Subpart 425.4—Purchases Under the Trade Agreements Act of 1979

Sec.
425.402 Policy.
425.407 Solicitation provision and contract clause.

Subpart 425.4—Purchases Under the Trade Agreements Act of 1979

425.402 Policy.

Whenever the U.S. Trade Representative publishes a redetermination of the dollar threshold at which the Agreement on Government Procurement applies, the Department will set out the dollar threshold in a Departmental Notice, 5025 series. Contracting officers shall use the specified amount to complete paragraph (b) of the clause at FAR 52.225-9.

425.407 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 452.225-70, English Language and U.S. Currency Requirements, whenever the solicitation contains the provision at FAR 52.225-8.

PART 428—BONDS AND INSURANCE

23. Section 428.102-3 is revised to read as follows:

428.102-3 Solicitation requirements.

(a) The contracting officer shall insert the provision at 452.228-70, Notice of Required Bid Guarantee, in a solicitation if a performance bond or a performance and payment bond is required.

(b) The contracting officer shall insert the clause at 452.228-71, Notice of Required Performance Security, in solicitations and contracts for construction or other service contracts over $25,000, which require the contractor to furnish a performance bond.

(c) The contracting officer shall insert the clause at 452.228-72, Notice of Required Payment Security, in solicitations and contracts for construction exceeding $25,000.

24. Section 428.310 is added to read as follows:

428.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 452.228-73, Insurance Coverage, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount exceeds the appropriate small purchase limitation in FAR Part 13, the contract requires work on a Government installation and contains the clause at FAR 52.228-5, unless—

(a) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or

(b) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.

The contracting officer may insert the following clause in solicitations and contracts described in paragraphs (a) and (b) above if it is in the Government's interest to do so. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

PART 432—CONTRACT FINANCING

25. Section 432.103 is added to read as follows:

432.103 Progress payments construction contracts.

The Government does not, in the course of making progress payments under a fixed-price construction contract, reimburse the contractor for any amount of paid bond premiums in addition to the stated contract price. When the contractor furnishes evidence to the contracting officer that the surety company has been paid in full for bond premiums and requests reimbursement therefore, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full without proration or affixing any retainage then or later.

26. Section 432.111 is revised to read as follows:

432.111 Contract clause.

The contracting officer shall insert the clause at 452.232-74, Reimbursement for Bond Premiums—Fixed-Price Construction, whenever the clause at FAR 52.232-5 is used in a contract.

Subpart 432.70—Contract Payments [Removed]

27. Subpart 432.70 consisting of sections 432.7000 through 432.7004, inclusive, is removed.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

28. Section 436.370 is amended by revising the last sentence to read as follows:

436.370 Additive or deductive items.

* * * In such case, the contracting officer shall insert the provision at 452.236-70, Additive or Deductive Items, in solicitations for construction.

29. Subpart 436.5 is revised to read as follows:

Subpart 436.5—Contract Clauses

436.570 Scope.
436.571 Prohibition Against the Use of Lead-Based Paint.
436.572 Use of Premises.
436.573 Archeological or historic sites.
436.574 Control of erosion, sedimentation, and pollution.
436.575 Maximum workweek—construction schedule.
436.576 Samples and certificates.
436.577 Emergency control.
436.578 Forest Service Standard Specifications for Construction of Roads and Bridges.
436.579 Opted Timber Sale Road Requirements.

Subpart 436.5—Contract Clauses

436.570 Scope.

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the small purchase limitation. The contracting officer may use the clauses if the contract amount is expected to be within the small purchase limitation.

436.571 Prohibition Against the Use of Lead-Based Paint.

The contracting officer shall insert the clause at 452.236-71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

436.572 Use of premises.

The contracting officer shall insert the clause at 452.236-72, Use of premises, if the contractor will be permitted to use land or premises administered by USDA.

436.573 Archeological or historic sites.

The contracting officer shall insert the clause at 452.236-73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.574 Control of erosion, sedimentation, and pollution.

The contracting officer shall insert the clause at 452.236–74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls on the performance of work. Use of the clause is optional in service contracts for on-the-ground work; e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.575 Maximum workweek—construction schedule.

The contracting officer shall insert the clause at 452.236–75, Maximum Workweek—Construction Schedule, if a specific workweek schedule that is limited to a maximum number of hours is needed.

436.576 Samples and certificates.

The contracting officer shall insert the clause at 452.236–76, Samples and Certificates, in all contracts.

436.577 Emergency control.

A Forest Service contracting officer shall insert the clause at 452.236–77, Emergency Control, in Forest Service construction contracts.

436.578 Forest Service Standard Specifications for Construction of Roads and Bridges.

Forest Service contracting officers shall insert the clause at 452.236–78, Forest Service Standard Specifications for Construction of Roads and Bridges, in Forest Service construction contracts that incorporate the standard specifications.

436.579 Opted Timber Sale Road Requirements.

Forest service contracting officers shall insert the clause at 452.236–79, Opted Timber Sale Road Requirements, in Forest Service road construction contracts resulting from a timber sale turnback.

PART 437—SERVICE CONTRACTING

30. Section 437.110 is added to read as follows:

437.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–70, Loss, Damage, Destruction of Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237–71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert a provision substantially the same as the clause at 452.237–72, Pre-Bid/Pre-Proposal Conference and Site Visit, in solicitations when a pre-proposal conference and site visit will be used. Use of the provision, or one substantially the same, is optional for construction solicitations.

(d) The contracting officer shall insert the provision at 452.237–73, Equipment Inspection Visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237–74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(f) The contracting officer shall insert a clause substantially the same as the clause at 452.237–75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

31. Section 437.270 is added to read as follows:

437.270 Solicitation and Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–76, Progress Reporting, in all contracts for consulting service. It may also be used in other service contracts.

(b) The contracting officer shall insert the clause at 452.237–77, Identification of Contract Deliverables, in contracts for consulting services that require reports.

(c) The contracting officer shall insert a clause substantially the same as the clause at 452.237–78, Contracts with Consulting Firms for Services, in solicitations and for consulting services which prohibit follow-on contracts with the contracting firm.

PART 439—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

32. Sections 439.7001 and 439.7002 are revised to read as follows:

439.7001 Blank delegations of authority.

(a) Each HCA, to whom the Director, OO, has granted a general delegation of contracting authority, may acquire automatic data processing (ADP) resources (as that term is defined in the Federal Information Resources Management Regulation, FIRMR, 41 CFR Part 201–2) up to the following blanket limitations, unless the limits have been amended in either an HCA's general delegation or under a special delegation. These limits are applicable to contracts which are awarded in accordance with the policies and procedures contained in FAR Subpart 6.1, 6.2, and 6.3.

(1) *ADP equipment.* HCA's may acquire ADP equipment (ADPE) if the purchase price does not exceed $250,000 or the basic monthly rental charges (including maintenance) do not exceed $100,000 annually. An upgrade or augmentation to existing ADPE may be acquired under blanket authority if the cumulative purchase value of the initial ADPE plus any features or devices to be added does not exceed $250,000.

(2) *ADP services.* HCA's may acquire ADP services if the contract amount does not exceed $200,000 annually.

(3) *ADP maintenance services.* HCA's may acquire ADP maintenance services if the contract amount does not exceed $100,000 annually.

(4) *ADP software.* HCA's may acquire commercial software if the contract amount does not exceed $100,000 for purchase or annual rental.

(5) *ADP support services.* HCA's may acquire ADP support services if the contract amount does not exceed $300,000 annually.

(6) *ADP supplies.* HCA's may acquire related ADP supplies in any amount under specific purchase programs established by GSA or, absent a GSA program, in the open market.

(7) *ADP systems.* HCA's may acquire ADP equipment, services, maintenance, software, and support services in any combination via one contract for a system configuration, if the individual limits specified in paragraphs (a)(1), (2), (3), (4), and (5) of this section are not exceeded.

(b) HCA's may acquire ADP resources from GSA requirements-type or schedule contracts up to the limits set forth in FIRMR 201–23.104 and in accordance with the procedures in FIRMR 201–32.206.

439.7002 Special delegation of authority.

HCA's shall submit each prospective acquisition, which is greater than the limits of the blanket delegations of authority set forth in 439.7001 or any other limits stipulated in the HCA's general delegation, to the Director, OO, for a delegation of ADP contracting authority. The Office of Operations will

either conduct the acquisition or delegate special authority to the HCA to conduct the acquisition.

PART 442—CONTRACT ADMINISTRATION

33. Subpart 442.7 is added to read as follows:

Subpart 442.7—Indirect Cost Rates

442.704 Billing rates.

The contracting officer shall insert a clause substantially the same as the clause at 452.242–70, Estimated and Allowable Costs, in cost-plus-fixed-fee contracts. The clause with its Alternate I is for use in cost (no-fee) contracts. The clause with its Alternate II is for use in cost-plus-incentive-fee contracts. The clause with its Alternate III is for use in cost-plus-award-fee contracts.

PART 445—GOVERNMENT PROPERTY

34. Subpart 445.1 is added to read as follows:

Subpart 445.1—General

445.106 Government property clauses.

The contracting officer shall insert the clause at 452.245–70, Government-Furnished Property, in contracts in which Government property is furnished to the contractor.

35. Section 452.302–7 is added to read as follows:

445.302-7 Optional property-related clauses for facilities contracts.

The contracting officer shall insert a clause substantially the same as the clause at 452.245–71, Government Property—Facilities Use, in contracts to authorize the contractor to use specified Government-owned facilities.

PART 446—QUALITY ASSURANCE

36. Subpart 446.3 is added to read as follows:

Subpart 446.3—Contract Clauses

446.370 Inspection and acceptance.

The contracting officer shall insert a clause substantially the same as the clause at 452.246–70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

37. Part 447 is added to read as follows

PART 447—TRANSPORTATION

Subpart 447.3—Transportation in Supply Contracts

Sec.
447.302 Place of delivery—F.O.B. point.
447.305–10 Packing, marking, and consignment instructions.

Authority: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 447.3—Transportation in Supply Contracts

447.302 Place of delivery—F.O.B. point.

The contracting officer shall insert a clause substantially the same as the clause at 452.247–70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and any other delivery details (e.g., quantities to be delivered to each location, etc).

447.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247–71, Marking Deliverables, in solicitations and contracts if special markings on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247–72, Packing for Domestic Shipment, in contracts when item(s) will be delivered to a continental destination for immediate use, when the material specification or purchase description does not provide preservation, packaging, packing and/or marking requirements and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247–73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels and the required activity has not specified such requirements.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

38. Subpart 452.2 is revised completely to read as follows:

Subpart 452.2—Texts of Provisions and Clauses

Sec.
452.204–70 Data Universal Numbering System (DUNS).
452.204–71 Inquiries.
452.207–70 Definition of "Right of First Refusal".
Sec.
452.207–71 Report of Employment Under Commercial Activities.
452.209–70 Organizational Conflict of Interest.
452.210–70 Brand Name or Equal.
452.210–71 Statement of Work/Specifications.
452.210–72 Attachments to Statement of Work/Specifications.
452.212–70 Level of Effort—Cost-Reimbursement Term Contract.
452.212–71 Task Orders.
452.212–72 Period of Performance.
452.212–73 Effective Period of the Contract.
452.214–70 Award by Lot.
452.215–71 Instructions for the Preparation of Technical and Business Proposals.
452.215–72 Amendments to Proposals.
452.215–73 Submission of Proposals.
452.215–74 General Financial and Organizational Information.
452.215–75 Definition of Labor Classifications.
452.215–77 Post-Award Conference.
452.216–70 Award Fee.
452.216–71 Base Fee and Award Fee Proposal.
452.216–72 Evaluation Quantities—Indefinite-Delivery Contract.
452.216–73 Minimum and Maximum Contract Amounts.
452.216–74 Ceiling Price.
452.216–75 Letter Contract.
452.217–70 Option to Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract.
452.217–71 Option to Extend the Term of the Contract—Cost-No-Fee Contract.
452.217–72 Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract.
452.217–73 Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract.
452.217–74 Option for Increased Quantity—No-Fee Contract.
452.217–75 Option for Increased Quantity—Cost-Plus-Award-Fee Contract.
452.217–76 Option to Extend the Effective Period of the Contract—Time-and-Material or Labor-Hour Contract.
452.217–77 Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract.
452.217–78 Option to Extend the Term of the Contract—Fixed-Price Contract.
452.217–79 Option for Increased Quantity—Fixed-Price Contract.
452.219–70 Set-Aside/Size Standard Information.
452.222–70 Service Contract Act of 1965—Contracts of $2,500 or less.
452.222–71 Service Contract Act of 1965.
452.222–72 Statement of Equivalent Rates for Federal Hires.
452.222–73 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
452.224–70 Confidentiality of Information.
452.225–70 English Language and U.S. Currency Requirements.
452.228–70 Notice of Required Bid Guarantee.
452.228–71 Notice of Required Performance Security.
452.228–72 Notice of Required Payment Security.

Sec.
452.228-73 Insurance Coverage.
452.232-70—452.232-73 [Reserved]
452.232-74 Reimbursement for Bond Premiums—Fixed-Price Construction.
452.236-70 Additive or Deductive Items.
452.236-71 Prohibition Against the use of Lead-Based Paint.
452.236-72 Use of Premises.
452.236-73 Archeological or Historic Sites.
452.236-74 Control or Erosion, Sedimentation, and Pollution.
452.236-75 Maximum Workweek—Construction Schedule.
452.236-76 Samples and Certificates.
452.236-77 Emergency Control.
452.236-78 Forest Service Standard Specifications for construction of Roads and Bridges.
452.236-79 Opted Timber Sale Road Requirements.
452.237-70 Loss, Damage, Destruction or Repair.
452.237-71 Pre-Bid/Pre-Proposal Conference.
452.237-72 Pre-Bid/Pre-Proposal Conference and Site Visit.
452.237-73 Equipment Inspection Visit.
452.237-74 Key Personnel.
452.237-75 Restrictions Against Disclosure.
452.237-76 Progress Reporting.
452.227-77 Identification of Contract Deliverables.
452.227-78 Contracts with Consulting Firms for Services.
452.242-70 Estimated and Allowable Costs.
452.245-70 Government-Furnished Property.
452.245-71 Government Property—Facilities Use.
452.246-70 Inspection and Acceptance.
452.247-70 Delivery Location.
452.247-71 Marking Deliverables.
452.247-72 Packing for Domestic Shipment.
452.247-73 Packing for Overseas Shipment.
452.252-70 List of Attachments.

Subpart 452.2—Texts of Provisions and Clauses

452.204-70 Data Universal Numbering System.

As prescribed in 404.670, insert the following provision:

Data Universal Numbering System (DUNS) (Feb 1988)

(a) The offeror is requested to insert the DUNS number applicable to the contractor's address shown on the solicitation form.

DUNS NO.————————

(b) If the production point (point of final assembly) is other than the location entered on the solicitation form, or if additional production points are involved, enter the DUNS number applicable to each production point in the space provided below.

ITEM NO. ————————

MANUFACTURER ————————

PRODUCTION POINT ————————

DUNS NO.————————

(c) If DUNS numbers have not been established for the contractor, or the production point(s) shown above, a number will be assigned upon request by Dun & Bradstreet, Allentown, Pennsylvania, phone (215) 776-4388, 89, 90 or 91.

(End of Provision)

452.204-71 Inquiries.

As prescribed in 404.7001, insert a provision substantially as follows:

Inquiries (Feb. 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the contracting officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of Provision)

452.207-70 Definition of "Right of First Refusal."

As prescribed in 407.305, insert the following clause:

Definition of "Right of First Refusal" (Feb. 1988)

(a) OMB Circular A-76 provides that Contractors will give Federal employees displaced as a result of a conversion to contract the right of first refusal for employment on the contract in positions for which they are qualified and for which the Contractor is hiring. The purpose of this clause is to define the phrase "displaced as a result of the conversion" so that eligibility for the right of first refusal can be determined.

(b) It is the policy of the U.S. Department of Agriculture to extend the right first refusal to any permanent full-time or permanent part-time employee who, as a result of a reduction-in-force notice, is reduced in grade or separated as a direct result of a "conversion" action under OMB Circular A-76. A conversion is defined as "the transfer of work from Government commercial or industrial activity to performance by a private commercial source under contract."

(c) Offers by Contractors made as a result of an employee's right of first refusal will be subject to the terms and conditions of employment set by the Contractor. For example, a permanent part-time employee does not have the right to a part-time tour of duty with the Contractor. Similarly, this policy does not afford an affected Government employee any right to a specific job or salary. Such employment considerations are deemed to be matters solely between the Contractor and the affected Government employee. Employees with the right of first refusal have only the right to an offer of a position for which they are qualified and for which the Contractor is hiring.

(d) Employees who hold any Federal civil service appointment other than permanent (e.g., a temporary appointment) do not have a right of first refusal if displaced as a result of a conversion.

(e) The determination by USDA of an employee's eligibility for the right of first refusal is appealable under the procedures provided in Departmental Regulation (DR) 2170-1. Determinations related to the implementation of OMB Circular A-76 are not subject to any negotiated or agency grievance procedure. Decisions rendered under the agency procedure are final.

(f) The Contracting Officer will provide a successful Contractor with a listing of those employees that USDA has determined are eligible for right of first refusal.

(End of Clause)

452.207-71 Report of Employment Under Commercial Activities.

As prescribed in 407.305, insert the following clause:

Report of Employment Under Commercial Activities (Feb. 1988)

(a) The Contracting Officer, as soon as practicable, will provide the Contractor with a list of the Federal employees, including social security numbers, that will be involuntarily separated from Government employment as a result of this contract.

(b) The Contractor agrees—

(1) To provide the Contracting Officer within five working days after the date of transfer of the operation and maintenance responsibilities of a Federal project to the Contractor (contract start date) with the names and social security numbers of individuals on the list referenced in paragraph (a) that, as of the contract start date, had accepted or rejected offers of employment comparable to their previous employment with the Federal Government. For those who reject the Contractor's offer, the Contractor shall include total monetary value of the pay and benefits offered;

(2) To provide the Contracting Officer with the names and social security numbers of the individuals hired, within five working days of such hiring, during the first 90 days after the contract start date, if the Contractor hires any additional Federal employees on the list referenced in paragraph (a) for any job within the Contractor's organization; and

(3) To furnish the information required by this clause in a concise and clearly detailed format.

(c) The operation of the system of records identified by this clause is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and clause 52.224-1 "Privacy Act Notification" and clause 52.224-2 "Privacy Act" included in this contract. This clause constitutes the notice required to invoke compliance by the Contractor with the provisions of the notice and clause.

(End of Clause)

452.209-70 Organizational Conflicts of Interest.

As prescribed in 409.504, insert a clause substantially as follows:

Organizational Conflicts of Interest (Feb 1988)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined

in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

(End of Clause)

§ 452.210-70 Brand Name or Equal.

As prescribed in 410.004, insert the following provision:

Brand Name or Equal (Feb 1988)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to the equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in its bid as well as other information reasonably available to the contracting activity. Caution to bidders: The contracting activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to—(i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, the bid shall include: (i) A clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

452.210-71 Statement of Work/ Specifications.

As prescribed in 410.011, insert a clause substantially as follows:

Statement of Work/Specifications (Feb 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/ Specifications referenced in Section J.

(End of Clause)

452.210-72 Attachments to Statement of Work/Specifications.

As prescribed in 410.011, insert the following clause:

Attachments to Statement of Work/ Specifications (Feb 1988)

The attachments to the Statement of Work/ Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of Clause)

452.212-70 Level of Effort—Cost-Reimbursement Term Contract.

As prescribed in 412.104(a)(1), insert a clause substantially as follows:

Level of Effort—Cost-Reimbursement Term Contract (Feb 1988)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government will order _____ * direct labor hours for the base period which represents the Government's best estimate of the level of effort required to fulfill these requirements.

(b) For determining level of effort hours, direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers. Support personnel such as company management, typists, and key punch operators will not be considered as part of the level of effort. However, support personnel should be charged directly to the contract if it is the Contractor's practice to do so.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee.

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be accumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either of the FAR clauses 52.232-20 "Limitation of Cost" or 52.232-22 "Limitation of Funds".

(End of Clause)

**Contracting Officer shall insert number of estimated direct labor hours.*

Alternate I (Feb 1988). As prescribed in 412.104(a)(2), substitute a paragraph (c) substantially as follows, when a cost or cost-sharing term contract without fee is contemplated:

(c) The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached.

Alternate II (Feb 1988). As prescribed in 412.104(a)(3), substitute a paragraph (c) substantially as follows, when a cost-plus-incentive-fee (CPIF) term contract is contemplated:

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the base fee and incentive fee for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the base fee and incentive fee.

Alternate III (Feb 1988). As prescribed in 412.104(a)(4), substitute a paragraph (c) substantially as follows, when a cost-plus-award-fee (CPAF) term contract is contemplated:

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the base fee and award fee for that period will be made. The Government may require the

Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the base fee and award fee.

452.212-71 Task Orders

As prescribed in 412.104(b), insert a clause substantially as follows in cost-reimbursement term contracts when task orders are to be used.

Task Orders (Feb 1988)

(a) The Contractor shall perform work under this contract as specified in written task orders issued by the Contracting Officer.

(b) Each task order will include: (1) A numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, (4) the description of the work, and (5) identification of the period (base, option period No. 1, etc.) to which the task order is to be charged if the contract includes overlapping option periods.

(c)(1) The Contractor shall acknowledge receipt of each task order by returning to the Contracting Officer a signed copy of the task order within ——*—— calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a task order.

(2) Within ——*—— calendar days after receipt of a task order, the Contractor shall submit ——**—— copies of a work plan to the Contracting Officers Representative and ——**—— copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and detailed cost estimate.

(3) Within ——*—— calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor.

(4) If the Contractor has not received approval on a work plan within ——*—— calendar days after its submission, the Contractor shall stop work on that task order. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of clause 452.212-70 "Level of Effort—Cost Reimbursement Term Contract," nor the notification requirements of either of the FAR clauses 52.232-20 "Limitation of Cost" or 52.232-22 "Limitation of Funds".

(e) Task orders shall not change any terms or conditions of the contract. If any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately request clarification from the Contracting Officer.

(End of Clause)

**Contracting Officer shall insert appropriate numbers of calendar days.*

***Contracting Officer shall insert appropriate number of copies.*

452.212-72 Period of Performance.

As prescribed in 412.104(c)(1), insert the following clause:

Period of Performance (Feb 1988)

The period of performance of this contract is from ——*—— through ——*——.

(End of Clause)

**Contracting Officer shall insert the appropriate dates.*

452.212-73 Effective Period of the Contract.

As prescribed in 412.104(c)(2), insert the following clause:

Effective Period of the Contract (Feb 1988)

The effective period of this contract is from ——*—— through ——*——.

(End of Clause)

**Contracting Officer shall insert appropriate dates.*

452.214-70 Award by Lot.

As prescribed in 414.201-6, insert a provision substantially as follows:

Award by Lot (Feb 1988)

Subject to the Section L provision entitled "Contract Award—Sealed Bidding," award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by items within any lot when the Contracting Officer determines that it is advantageous to the Government.

(End of Provision)

452.215-71 Instructions for the Preparation of Technical and Cost or Pricing Proposals.

As prescribed in 415.407(a), insert a provision substantially as follows:

Instructions for the Preparation of Technical and Business Proposals (Feb 1988)

(a) *General Instructions.* The following instructions establish the acceptable minimum requirements for the format and content of proposals:

(1) The proposal must be prepared in two parts: a technical proposal and a business proposal. Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated. It must disclose the contractor's technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirement of the technical proposal instructions.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(b) *Technical Proposal Instructions.* (1) Proposals which merely offer to conduct a program in accordance with the requirements of the Government's statement of work will not be eligible for award. The contractor must submit an explanation of its proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

(2) A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. The technical approach should be in as much detail as the offeror considers necessary to fully explain the proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

(3) The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate the offeror's understanding and management of important events or tasks. The offeror must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

(4) The technical proposal must include a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project. Their résumés should be included and should contain information on education, background, recent work experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

(5) The technical proposal must provide the general background, experience and qualifications of the organization. Similar or related contracts, subcontracts, and/or grants should be included and/or each contain the name of the customer, contract number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

(6) The technical proposal must contain a discussion of present or proposed facilities and equipment which will be use in the performance of the contract.

(c) *Business Proposal Instructions.*

(1) General Requirements. To reduce subsequent requests to offerors for additional data in support of proposed costs, the following information is required:

(i) Cost proposals must be submitted in accordance with FAR 15.804-6 by using Standard Form 1411, Contract Pricing Proposal Cover Sheet, and Table 15-2, Instructions for Submission of a Contract Pricing Proposal.

(ii) The offeror shall submit separate cost or pricing data for the following:

(A) Options to extend the term of the contract.
(B) Options specified in the proposed statement of work.
(C) Major tasks, if required by special instruction.
(2) Specific Requirements. The offeror must also submit the following detailed information to support the proposed budget:
(i) Breakdown of direct labor cost by named person or labor category including number of labor hours and current actual or average hourly rates. Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. Direct labor or levels of effort are to be identified as labor hours and not as a percentage of an individual's time. Indicate fringe benefit rate, if separate from the indirect cost rate.
(ii) The amount proposed for travel, subsistence and local transportation supported with a breakdown which includes: number of trips anticipated, cost per trip per person, destination(s) proposed, number of person(s) scheduled for travel, mode of transportation, and mileage allowances if privately owned vehicles will be used.
(iii) Cost breakdown of materials, equipment and other direct costs including duplication/reproduction, meetings and conferences, postage, communication and any other applicable items. Costs must be supported by specific methodology utilized.
(iv) If an offeror proposes to employ the use of an Automatic Data Processing System (ADPS), detailed data concerning proposed costs should include the following:
(A) Make and model year of all equipment which will be used: keypunch, verifier, sorter, collator, tabulator, central processor unit (CPU), input-output components (I/O), etc.
(B) Estimated number of hours and usage rates for each distinct piece of equipment proposed.
(C) Listing of rates or quotes from prospective suppliers of the offeror.
(D) Copies of invoices submitted by past suppliers of the offeror.
(E) Listing of rates developed and/or approved by a Government agency where offeror has in-house capability.
(v) If consultants are proposed, detailed data concerning proposed consultant costs should include the following:
(A) Names of consultant(s) to be engaged.
(B) Daily fees to be paid to each consultant.
(C) Estimated number of days of consulting services.
(D) Consulting agreements entered into between consultant(s) and the offeror, or invoices submitted by consultant(s) for similar services previously provided to the offeror.
(E) Rationale for acceptance of cost.
(vi) If proposed, cost information for each subcontractor shall be furnished in the same format and level of detail as prescribed for the prime offeror. Additionally, the offeror shall submit the following information:
(A) A description of the items to be furnished by the subcontractor.
(B) Identification of the proposed subcontractor and an explanation of why and who the proposed subcontractor was selected including the extent of competition obtained.
(C) The proposed subcontract price, the offeror's cost or price analysis thereof, and performance/delivery schedule.
(D) Identification of the type of subcontract to be used.
(vii) Offeror shall briefly describe organization policies in the following areas (published policies may be furnished):
(A) Salary increases to include:
(aa) Merit.
(bb) Cost of living.
(cc) General.
(B) Travel/subsistence
(C) Consultant use and terms of agreements
(viii) Offerors lacking Government approved indirect cost rates must provide detailed background date indicating the cost elements included in the applicable pool and a statement that such treatment is in accordance with the established accounting practice. Offerors with established rate agreements with Federal cognizant agencies shall submit one copy of such agreement.
(ix) Offeror shall—
(A) Provide CPA certified balance sheet, profit/loss statement and statement of retained earnings covering each of the offeror's last three annual accounting periods.
(B) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.
(C) Provide the name, location, and intercompany pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.
(D) Provide an estimated cash flow. Each offeror is required to submit a schedule of proposed monthly costs for the planned duration of the project.

(End of Provision)

Alternate I (FEB 1988). As prescribed in 415.407(a)(2), insert a provision substantially as follows:

Instructions for the Preparation of Technical and Business Proposals—Alternate I (Feb 1988)

The proposals submitted in response to this solicitation shall be formatted as follows and furnished in the number of copies stated below. A cover letter may accompany the proposal to set forth any information the offeror wishes to bring to the attention of the Government. Any exceptions or deviations to the Statement of Work or other provisions of this solicitation must be clearly set forth in this cover letter. The proposal shall consist of the following volumes and must include all requested information. The resulting contract shall consist of the following volumes and any amendments to the solicitation.
(a) *Standard Form of Contract* (Volume 1). This volume of the proposal shall consist of the offer (Sections A through K).
(b)(1) *Technical Proposal* (Volume 2). This volume of the proposal shall consist of the following parts which are limited to directly responding to the information sought by the Government's Statement of Work. Offerors are specifically cautioned that this volume must not contain any discussion or references to price and/or cost. The technical proposal shall include *UNPRICED* details of labor hours, materials, and other direct cost elements.
(2) The technical proposal will be used in the evaluation of a firm's capability to perform the required services. Therefore, the proposal must present sufficient information to reflect a thorough understanding of the work requirements and detailed practical program for achieving the objectives of the scope of work. Proposals which merely paraphrase the requirements of the Government's scope of work or parts thereof, or use such phrases as "will comply" or "standard techniques will be employed" will be consiidered non-responsive to this request for proposal and will not be considered further. The technical proposal must include a detailed description of the techniques and procedures to be employed in achieving the proposed end results in compliance with the requirements of the Government's statement of work.

Note: Offerors are hereby advised that the Government will have the right to use, duplicate, or disclose in any manner and for any purpose whatsoever, and have the right to permit others to do so, all subject data required to be delivered under any contract resulting from this solicitation. Any reservations regarding these Government rights to data should be stated in the proposal and will be resolved during any subsequent negotiations.

(3) The technical proposal shall be formatted and submitted as follows:
(a)
(1)
(i)
(A)
(i) Similar Experience. List up to five (5) contracts of a nature and complexity similar to this proposed contract that were awarded or performed within the past five years or are currently in force. For each contract listed, give the following information:
(A) Name, address, and telephone number of the contracting organization, the Government's Project Officer, and Contracting Officer.
(B) Contract number, type, and dollar value.
(C) Date of contract and period of performance.
(D) Average number of technical personnel (by labor skill) involved.
(E) Percentage turnover of contract technical personnel/year.
(F) Brief description of contract work, scope, and responsibilities.
(G) Discussion of the similarities and differences between this proposed effort and that contract.
(H) If the contract(s) cited were "Award Fee" contract(s), list the ratings given during the life of the contract.
(I) If the contract(s) cited were of a cost-reimbursement nature, describe the experiences in performing the contract at, or below, the contract's monetary ceiling.
(ii) Key Personnel. This section shall describe the key personnel who will be assigned to manage performance and supervise the work under this contract. Information is required which will show each key person's general qualifications and

recent experience with similar projects or contracts. For those key personnel who will not be assigned fulltime to this contact, show the approximate percentage of time each will be available for this contract.

(A) Résumés are required which will indicate education, background, recent experience, and specific pertinent accomplishments.

(B) Describe additional personnel, if any, who will be required for full-time employment on a subcontract basis. The technical areas, character, and extent of subcontract activity shall be stated and the anticipated sources will be specified and qualified.

(c) Cost/Business Proposal (Volume 3). This volume shall be divided into two major sections: Section (1), "Business/Management Proposal" and Section (2), Cost Proposal. These sections shall be formatted as follows:

(1) Business/Management Proposal. This section shall consist of the offeror's outline, addressing the business/management aspects of this procurement, the resources the offeror will use and how the offeror will use them. Since the Business/Management Proposal will be evaluated to determine such matters as a contractor's potential for completing the required work, it should be specific and complete. It must contain the information specified below in the following general format:

(i) Cover Page—At a minimum, the cover page must contain the Solicitation number, summary of service to be performed, name and address or organizational unit which would be responsible for this operation, and date.

(ii) Table of Contents.

(iii) List of Exhibits.

(iv) Business/Management Discussion. This section shall include the following:

(A) Financial Condition, Capability, and Corporate Utility.

(aa) Furnish financial statements for the last three years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in which case a statement as to when and where this information was provided may be furnished instead.

(bb) State what percentage this proposed contract will represent of the offeror's estimated total business during the period of performance (e.g. offeror may state "less than 25 percent" if such is the case).

(cc) State the distribution of the last complete fiscal year's sales and volumes between commerical business, Government prime contracts, and subcontracts under Government prime contracts.

(B) Suitability of Business Management Organization and Controls. Furnish a brief narrative of the proposing entity (corporate or management unit with primary responsibility for the overall effort) including the following:

(aa) The offeror must demonstrate the ability to implement Government procurement and subcontracting administrative procedures dealing with programs having a similar scope and magnitude and the ability to excercise Government accounting, property, inventory, and cash management procedures dealing with programs having a similar scope and magnitude.

(bb) Describe the means by which the financial reporting required in the resultant contract will be accomplished. Discuss the adequacy and adaptability of the proposed reporting system and detail the flow of cost and manpower information through the accounting system into the final report format. The approving authority for each report should be designated and should be responsible for both accuracy and timeliness of reports. Cost and manpower reporting shall be furnished from the same data base and time span.

(cc) Describe any management procedures or systems developed expressly for this proposed contract and provide the rationale thereof.

(dd) Have all contractor systems, such as accounting, purchasing, estimating, etc., which require Government approval been approved without condition? If not, explain any existing conditional approvals and the status of any for which approval is currently withheld.

(C) Priority placed by the Corporate Level of the Offeror on the work being proposed. Demonstrate the amount of corporate commitment. Describe what level of home/corporate support can be expected during the performance of any resultant contract. Indicate at what level of offeror's structure this support will be provided.

(D) Contract History. For those contracts listed in the technical proposal (volume 2), provide the following:

(aa) Contracting organization name, address and phone number of the Technical Officer and of the Contracting Officer.

(bb) Contract number, contract type, and total value.

(cc) Date of contract and period of performance.

(dd) Average number of technical personnel (by labor skill) involved.

(ee) Percentage turnover of contract technical personnel/year.

(ff) Brief description of contract work scope and responsibilities.

(gg) Method of acquiring the contract—noncompetitively or competitively. If competitively, comment as the basis of competitive award (price, delivery schedule, technical merit, etc.).

(hh) Nature of the award—initial award or a follow-on to an existing contract. If an initial award, indicate whether the award was preceded by a Government or customer financed study or by the offeror's financed study.

(ii) Average percentage of available award fee earned on each cost-plus-award-fee contract.

(jj) Description of firm's experience in performing the contract at, or below, the contracts, monetary ceilings. In addition, the offeror must list any contract(s) terminated (partial or complete) within the past five (5) years and include the contract number, name, address, and telephone of the terminating officer. The offeror must describe its ability to estimate programs and monitor costs and expenditures in an orderly manner in sufficient depth to accomplish management goals and ensure cost and budgetary controls.

(E) Compliance with Equal Employment Opportunity Requirements. The offeror's proposal should discuss company policy and practices in regard to compliance with the solicitation's provisions entitled "Equal Opportunity." Indicate what positive efforts your company will take to implement the concepts of equal employment under the proposed contract.

(F) Extent of Proposed Small Business and Minority Enterprise Participation in Subcontract Requirement. Any goals the contractor has set in the past five (5) years and his actual performance against these goals.

(G) Summary of Deviations/Exceptions in the Business Management Proposal. The offeror will explain any deviations, exceptions, or conditional assumptions taken with respect to the information requested in this Business/Management Proposal. Any exceptions taken must carry sufficient amplification and justification to permit evaluation. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing any obvious benefit to the Government, may however, result in rejection of the proposal.

(2) Cost Proposal.

(i) General. This section shall consist of the offeror's costs to perform the work outlined in the Statement of Work. Cost proposals must be fully supported by cost and pricing data adequate to establish reasonableness of the proposed amount using the Standard Form 1411, Contract Pricing Proposal. The offeror shall furnish a cost breakdown with supporting data, including a breakdown of direct labor cost estimates by major functional areas including numbers of person-hours and applicable actual average hourly rates.

(ii) Realism in Request for Proposals. An offeror's proposal is presumed to represent his best efforts to respond to the solicitation. Any inconsistency, whether real or apparent, between promised performance, and cost or price, should be explained in the proposal. For example, if the intended use of new and innovative production techniques is the basis for an abnormally low estimate, the nature of these techniques and their impact on cost or price should be explained; or, if a corporate policy decision has been made to absorb a portion of the estimated cost, that should be stated in the proposal. Any significant inconsistency, if unexplained, raises a fundamental issue of the offeror's understanding of the nature and scope of the work required and of his financial ability to perform the contract, and may be grounds for redjection of the proposal, subject to the requirements for discussions to be held with those offerors in the competitive range pursuant to the Federal Acquisition Regulation. The burden of proof as to cost credibility rests with the offeror.

(iii) Contents. In addition to providing information to support costs as explained below, full supporting schedules must be provided as exhibits to the SF1411 to explain all elements of proposed costs.

(A) Phase-in Period. A fully executed Standard Form 1411 covering the initial phase-in period shall be furnished. All costs

associated with this period of performance shall be fully documented and justified. A narrative explanation of all anticipated costs, and the distribution and placement of personnel and other resources shall be included

(B) Initial Period. A fully executed Standard Form 1411 covering the initial period of performance (as defined in the Schedule) shall be furnished. All projected costs associated with the period shall be fully documented and justified. Costs associated with the direct labor shall be justified with accompanying documentation showing the functional and organizational distribution of the contractor's resources.

(C) First Optional Period of Performance. A fully executed Standard Form 1411 covering the First Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance.

(D) Second Optional Period of Performance. A fully executed Standard Form 1411 covering the Second Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(E) Third Optional Period of Performance. A fully executed Standard Form 1411 covering the Third Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(F) Fourth Optional Period of Performance. A fully executed Standard Form 1411 covering the Fourth Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(iv) Overhead and G&A. This section will explain the basis for any corporate labor overhead and general and administrative (G&A) charges anticipated. The data shall be prepared for each of the offeror's two previously completed fiscal years and the current fiscal year. Offerors must provide detailed background data indicating the cost elements included in the overhead, G&A, or indirect pool, and a statement that such treatment is in accordance with its established accounting practice and represents an equitable distribution.

(v) Proposed Ceilings on Overhead and G&A. The offeror shall list in this section of the cost proposal its proposed ceiling for overhead and G&A. A statement will be required for any deficiencies between the proposed ceiling rate(s) and those used for forward pricing purposes.

(End of Provision)

452.215-72 Amendments to Proposals.

As prescribed in 415.407(b), insert the following provision:

Amendments to Proposals (Feb. 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of Provision)

452.215-73 Submission of Proposals.

As prescribed in 415.407(c), insert a provision substantially as follows:

Submission of Proposals (Feb. 1988)

All proposals shall be submitted in the formats and quantities specified below:

(a) Standard Form 33—one (1) original and ——*—— copies

(b) Technical Proposal— ——*—— copies

(c) Cost/Price Proposal— ——*—— copies

(End of Provision)

**Contracting Officer shall insert number for required copies.*

452.215-74 General Financial and Organizational Information.

As prescribed in 415.407(d), insert a provision substantially as follows:

General Financial and Organizational Information (Feb 1988)

Offerors are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at USDA or update all outdated information on file.

(a) Offeror's Name: ————

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

————

(c) Telephone Number: ————

(d) Individual(s) to contact regarding this proposal: ————

(e) Cognizant Government Audit Agency:

————

Address: ————

Auditor: ————

(f) Work Distribution for Last Completed Fiscal Accounting Period.

(1) Sales:

Government cost-reimbursement type prime contracts and subcontracts: $ ————

Government fixed-price prime contracts and subcontracts: $ ————

Commercial Sales: $ ————

Total Sales: $ ————

(2) Total Sales for offeror's first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year: $ ————

Total Sales for Second Preceding Fiscal Year: $ ————

(g) Is company a separate entity, divisions, or subsidiary corporation?

Yes ———— No ————

If yes, name the parent company:

————

(h) Date Company Organized: ————

(i) Staffing:

(1) Total Employees: ————

(2) Direct: ————

(3) Indirect: ————

(4) Standard Work Week (Hours): ————

(j) Commercial Projects: ————

(k) Attach a current organizational chart of the company.

(l) Estimating System.

(1) Description of offeror's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/actual cost	Standard cost
Estimating System:		
Job Order		
Process		
Accumulating System:		
Job Order		
Process		

(2) Has the offeror's cost estimating system been approved by a Government Agency?

Yes ———— No ————

If yes, give name and address of the agency:

————

(3) Has the offeror's cost accumulation system been approved by any Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

————

(m) What is the offeror's fiscal year period? (Give starting month and ending month):

————

What were the indirect cost rates for the last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits		
Overhead		
G&A Expense		
Other		

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

————

Date of last pre-award audit review by a Government agency: ————

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(o) Cost estimating is performed by:

Accounting Department ————

Contracting Department ————

Other (describe) ——————

(p) Has system of control of Government property been approved by a Government agency?

Yes —————— No ——————

If yes, give name and address of the agency:

(q) Purchasing Procedures:

Are purchasing procedures written?

Yes —————— No ——————

Has the purchasing system been approved by a Government agency?

Yes —————— No ——————

If yes, give name and address of the agency:

(r) Does the offeror have an established written incentive compensation or bonus plan?

Yes —————— No ——————

(End of Provision)

452.215-75 Definition of Labor Classifications.

As prescribed in 415.407(e), insert a provision substantially as follows:

Definition of Labor Classifications (Feb 1988)

Offerors shall use the following labor classifications in preparing their technical and cost proposals.

(a) Definition of labor classifications. The direct labor hours appearing below are for professionals and technicians only. These hours do not include management at a level higher than the project management and clerical support staff at a level lower than technician. If it is the contractor's normal practice to charge these types of personnel as a direct cost, the proposal must include them along with an estimate of the directly chargeable staff-hours for these personnel. If this type of effort is normally included in indirect cost allocations, no estimate is required. However, direct charging of indirect costs on any resulting contract will not be allowed. Additionally, the hours below are the workable hours required by the Government and do not include release time (i.e., holiday, vacation, etc.).

(b) Distribution of level of effort. Proposals must utilize the labor categories and distribution of the level of effort specified below:

	Basic quantity	Optional quantity
Professional Level IV:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Professional Level III:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Professional Level II:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Professional Level I:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level III:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level II:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level I:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		

	Basic quantity	Optional quantity	Total quantity
Summary:			
Base Period			
Option Period I			
Option Period II			
Option Period III			
Option Period IV			

(c) When identifying individuals assigned to the project, the proposal must specify in which of the above categories the identified individual belongs. If the contractor proposes an average rate for a company classification, the proposal must identify the professional or technical level within which each company category falls.

(d) The proposal shall also include Standard Forms 1411 for each of the following:

(1) A summary proposal for the total contract period

(2) For each contract period:

(i) A summary proposal

(ii) A proposal for the basic quantity

(iii) A proposal of ——— hours for the option quantity

(End of Provision)

452.215-76 Postaward Conference.

As prescribed in 415.1070, insert a clause substantially as follows:

Post Award Conference (Feb 1988)

A post award conference with the successful offeror is required. It will be scheduled and held within 15 days after the date of contract award. The conference will be held at: ——*——.

(End of Clause)

**Contracting Officer shall insert appropriate address.*

452.216-70 Award Fee.

As prescribed in 416.405, insert a clause substantially as follows:

Award Fee (Feb 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every ——*—— months beginning with ——**——. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of Clause)

**Contracting Officer shall insert appropriate number of months.*

***Contracting Officer shall insert appropriate date.*

452.216-71 Base Fee and Award Fee Proposal.

As prescribed in 416.405, insert the following provision:

Base Fee and Award Fee Proposal (Feb 1988)

For the purpose of this solicitation, offerors shall propose a base fee of ——*—— percent of the total estimated cost proposed. The award fee shall not exceed ——*—— percent of the total estimated cost.

(End of Provision)

**Contracting Officer shall insert appropriate percentages.*

452.216-72 Evaluation Quantities—Indefinite Delivery Contract.

As prescribed in 416.505, (a), insert a provision substantially as follows:

Evaluation Quantities—Indefinite-Delivery Contract (Feb 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(End of Provision)

452.216-73 Minimum and Maximum Contract Amounts.

As prescribed in 416.505(b), insert the following clause:

Minimum and Maximum Contract Amounts (Feb 1988)

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totalling a minimum of ——*——, but not in excess of ——*——.

(End of Clause)

**Contracting Officer shall insert appropriate quantity or dollar amounts.*

452.216-74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

Ceiling Price (Feb 1988)

The ceiling price of this contract is $ ——*——. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of Clause)

**Contracting Officer shall insert appropriate dollar amount.*

452.216-75 Letter Contract.

As prescribed in 416.603-4, insert the following clause:

Letter Contract (Feb 1988)

This contract replaces letter contract No. —— * —— dated —— * —— and all amendments thereto.

(End of Clause)

**Contracting Officer shall insert number and date.*

452.217-70 Option To Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract.

As prescribed in 417.208(a), insert a clause substantially as follows:

Option To Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract (Feb 1988)

(a) The Government has the option to extend the term of this contract for the additional period(s) indicated in paragraph (b)(1) of this clause. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for each respective option period as follows:

Period	Level of effort (direct labor hours)
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs and fixed-fees for each respective option period as follows:

Period	Estimated cost	Fixed fee	Total
Option Period I	—*—	—*—	—*—
Option Period I	—*—	—*—	—*—
Option Period I	—*—	—*—	—*—
Option Period I	—*—	—*—	—*—

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost items
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(End of clause)

** Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

Alternate I (Feb 1988). As prescribed in 417.208(a), substitute a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

452.217-71 Option to Extend the Term of the Contract—Cost-No-Fee Contract.

As prescribed in 417.208(b), insert a clause substantially as follows:

Option to Extend the Term of the Contract—Cost-No-Fee Contract (Feb 1988)

(a) The Government has the option to extend the term of this contract for ——*—— additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This prelimiary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for the respective option periods as follows:

Period	Level of effort (direct labor hours)
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs for the respective option periods as follows:

Period	Estimated cost
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost items
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

(End of clause)

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

Alternate I (Feb 1988). As prescribed in 417.208(b) insert a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

§ 452.217-72 Option To Extend the Term of the Contract—Cost-Plus-Award-Fee Contract.

As prescribed in 417.208(c), insert a clause substantially as follows:

Option To Extend the Term of the Contract—Cost-Plus-Award-Fee Contract (Feb 1988)

(a) The Government has the option to extend the term of this contract for ——*—— additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contact modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for each respective option period as follows:

Period	Level of effort (direct labor hours)
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs and base fee and award fee pool for each respective option period as follows:

Period	Estimated cost	Base fee	Award fee pool	Total
Option Period I	—*—	—*—	—*—	—*—
Option Period II.	—*—	—*—	—*—	—*—
Option Period III.	—*—	—*—	—*—	—*—
Option Period IV.	—*—	—*—	—*—	—*—

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost items
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(End of Clause)

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

Alternate I (Feb 1988). As prescribed in 417.208(c), substitute a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

452.217-73 Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract.

As prescribed in 417.208(d), insert a clause substantially as follows:

Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract (Feb 1988)

(a) By issuing a contract modification exercising the option, the Government may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——*——
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(b) The Government may issue a maximum of ——*—— orders to increase the level of effort in blocks of ——*—— hours during any given period.

(c) The estimated cost of each block of hours is as follows:

Period	Estimated cost	Fixed fee	Total cost
Base Period	*$—	*$—	*$—
Option Period I	*$—	*$—	*$—
Option Period II	*$—	*$—	*$—
Option Period III	*$—	*$—	*$—
Option Period IV	*$—	*$—	*$—

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" clause (452.242-70) will be modified accordingly.

(End of Clause)

**Contracting Officer shall insert appropriate quantities as well as amounts of hours and dollars.*

452.217-74 Option for Increased Quantity—Cost-No-Fee Contract.

As prescribed in 417.208(e), insert a clause substantially as follows:

Option for Increased Quantity—Cost-No-Fee Contract (Feb 1988)

(a) By issuing a contract modification exercising the option, the Government may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——*——
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(b) The Government may issue a maximum of ——*—— orders to increase the level of effort in blocks of ——*—— hours during any given period.

(c) The estimated cost of each block of hours is as follows:

Period	Estimated cost
Base Period	$——*——
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" clause (452.242-70) will be modified accordingly.

(End of Clause)

**Contracting Officer shall insert appropriate quantities as well as amounts for hours and dollars.*

452.217-75 Option for Increased Quantity—Cost-Plus-Award-Fee Contract.

As prescribed in 417.208(f), insert a clause substantially as follows:

Option for Increased Quantity—Cost-Plus-Award-Fee Contract Feb (1988)

(a) By issuing a contract modification exercising the option, the Government may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——*——
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(b) The Government may issue a maximum of ——*—— orders to increase the level of effort in blocks of ——*—— hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

(c) The estimated cost, base fee, and award fee pool of each block of hours is as follows:

Period	Estimated cost	Base fee	Award fee pool	Total
Base	$—*—	$—*—	$—*—	$—*—
Option I	$—*—	$—*—	$—*—	$—*—
Option II	$—*—	$—*—	$—*—	$—*—
Option III	$—*—	$—*—	$—*—	$—*—
Option IV	$—*—	$—*—	$—*—	$—*—

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" (452.242-70) clause will be modified accordingly.

(End of Clause)

**Contracting Officer shall insert appropriate quantities as well as amounts for hours and dollars.*

452.217-76 Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract.

As prescribed in 417.208(g), insert a clause substantially as follows:

Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract (Feb 1988)

(a) The Government has the option to extend the effective period of this contract for ——*—— additional period(s). If more than 60 days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercise the option.

(b) Exercise of an option will result in the following modifications:

(1) The "Ceiling Price" clause (452.216-75) is modified to reflect new and separate ceiling prices for each respective option period as follows:

Period	Ceiling price
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

(2) The "Effective Period of the Contract" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(End of Clause)

**Contracting Officer shall insert appropriate number and dates.*

452.217-77 Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract.

As prescribed in 417.208(h), insert a clause substantially as follows:

Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract (Feb 1988)

(a) The Government has the option to extend the effective period of this contract for ——*—— additional period(s). If more than 60 days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following modifications:

(1) The "Minimum and Maximum Contract Amount" Clause (452.216-75) is modified to reflect new and separate maximum amounts as follows:

Period	Minimum amount	Maximum amount
Option Period I	$——*——	$——*——
Option Period II	$——*——	$——*——
Option Period III.	$——*——	$——*——
Option Period IV.	$——*——	$——*——

(2) The "Effective Period of the Contract" Clause (452.212-73) will be modified as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(End of Clause)

**Contracting Officer shall insert appropriate quantity as well as other amount of hours or dollars and dates.*

452.217-78 Option to Extend the Term of the Contract—Fixed-Price Contract.

As prescribed in 417.208(i), insert a clause substantially as follows:

Option to Extend the Term of the Contract—Fixed-Price Contract (Feb 1988)

(a) The Government has the option to extend the term of this contract for ——*—— additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

The "Period of Performance" clause will be modified as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(End of Clause)

Contracting Officer shall insert appropriate number and dates.

452.217-79 Option for Increased Quantity—Fixed-Price Contract.

As prescribed in 417.208(j), insert a clause substantially as follows:

Option for Increased Quantity—Fixed-Price Contract (Feb 1988)

(a) The Government may increase the quantity of work called for under this contract as follows:

Optional Items ——*——

Quantity ——*——

Unit Price ——*——

Delivery Date ——*——

(b) The Contracting Officer may exercise an option by written notice to the Contractor within the following time periods:

Optional Items ——*——

Time Period for Exercising Option —— *——

Contracting Officer shall insert appropriate data in paragraphs (a) and (b).

452.219-70 Set-Aside/Size Standard Information.

As prescribed in 419.304, insert the following provision:

Set-Aside/Size Standard Information (Feb 1988)

This solicitation includes the following set-aside and/or size standard criteria:

(a) Percent of the set-aside ——*——

(b) Type of set-aside ——*——

(c) Small business size standard or other criteria ——*——

(d) Standard Industrial Classification (SIC) Code ——*——

(End of Clause)

Contracting Officer shall insert appropriate data.

452.222-70 Service Contract Act of 1965—contracts of $2,500 or less.

As prescribed in 422.7002, insert the following clause:

Service Contract Act of 1965—Contracts of $2,500 or Less (Feb 1988)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of $2,500, the contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965 are contained in 29 CFR Part 4.

(End of Clause)

452.222-71 Service Contract Act of 1965.

As prescribed in 422.200, insert the following clause:

Service Contract Act of 1965 (Feb 1988)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq).

"Contractor," as used in this clause in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The contractor shall submit a report of the proposed conforming action including information whether the authorized representative of the employees or nonrepresented employees on their own behalf agree with the action proposed, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the Contractor's conforming action report and all other pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subparagraph (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2), the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) above by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective-bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.10 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in 29 CFR 4.10, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding or substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subparagraph (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of

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the work, charging the Contractor in default with any additional costs.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract. In the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings an Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations.* Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the fair labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annual, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registerd with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any Employee who is not registered as an apprentice in an approval program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards* The United States Department of Labor has set forth in 29 CFR Parts, 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

452.222-72 Statement of Equivalent Rates for Federal Hires.

As prescribed in 422.7003(b), insert the following clause in solicitations and contracts.

Statement of Equivalent Rates for Federal Hires (Feb 1988)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees exected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMAITON ONLY: IT IS NOT A WAGE DETERMINATION

Employee Class:

Monetary Wage—Fringe Benefits:

(End of Clause)

452.222-73 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 422.7003(b), insert the following clause:

Fair Labor Standards Act and Service Contract Act— Price Adjustment (Feb 1988)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of Clause)

452.224-70 Confidentiality of Information.

As prescribed in 424.104(b), insert a clause substantially as follows:

Confidentiality of Information (Feb 1988)

(a) Confidential information, as used in this clause, means: (1) Information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45 day period, the contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of Clause)

452.225-70 English Language and U.S. Currency Requirements.

As prescribed in 425.407, insert the following provision:

English Language and U.S. Currency Requirements (Feb 1988)

An offer of a designated country end product or a Caribbean Basin country end product permitted under the provisions of the Trade Agreements Act of 1979, shall be submitted in the English language in in U.S. dollars.

(End of Clause)

452.228-70 Notice of Required Bid Guarantee.

As prescribed in 428.102-3(a), insert the following provision:

Notice of Required Bid Guarantee (Feb 1988)

If a bid exceeds $25,000 the bidder must submit a bid guarantee in the amount of —*— percent of the total bid price, but in no event shall the penal sum exceed $3 million. If a bid bond is sumbitted, it should be on Standard Form 24. Money orders, cashiers checks, or certified checks, if used, shall be drawn payable to: —**—.

(End of Provision)

**Contracting Officer shall insert appropriate percentage, but not less than 20 percent.*

***Contracting Officer shall insert the name of the USDA contracting activity.*

452.228-71 Notice of Required Performance Security.

As prescribed in 428.102-3(b), insert the following provision:

Notice of Required Performance Security (Feb 1988)

If the contract exceeds $25,000, the successful offeror shall furnish security to guarantee faithful performance of the contract in the amount of —*— percent of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a certified or cashier's check, bank draft, U.S. Postal service money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: —*—.

(End of Clause)

**Contracting Officer shall insert appropriate percentage.*

***Contracting Officer shall insert the name of the USDA contracting activity.*

452.228-72 Notice of Required Payment Security.

As prescribed in 428.102-3(c), insert the following clause:

Notice of Required Payment Security (Feb 1988)

If the contract exceeds $25,000, the successful offeror shall furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract. Such security may be in the form of a payment bond on Standard Form 25A (furnished on request) or in the form of a certified or cashier's check, bank draft, U.S. Postal Service money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: —*—. The penal sum of the payment bond shall equal:

(a) 50 percent of the contract price, if the contract price is not more than $1 million;

(b) 40 percent of the contract price, if the contract price is more than $1 million but not more than $5 million; or

(c) $2½ million, if the contract price is more than $5 million.

(End of Clause)

*Contracting Officer shall insert the name of the USDA contracting activity.

452.228-73 Insurance Coverage.

As prescribed in 428.310, insert the following provision:

Insurance Coverage (Feb 1988)

Pursuant to FAR clause 52.228-5, Insurance—Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of Clause)

Alternate I (Feb 1988). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) Property Damage liability insurance shall be required in the amount of ——*——.

**Contracting Officer shall insert amount required.*

452.232-74 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111(b), insert the following clause:

Reimbursement for Bond Premiums—Fixed-Price Construction Contracts (Feb 1988)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under paragraph (e) of the clause at FAR 52.232-11, Payments Under Fixed-Price Construction Contract, shall not cover any amount therefor not included in the contract price.

(End of Clause)

452.236-70 Additive or Deductive Items.

As prescribed in 436.370, insert the following provision:

Additive or Deductive Items (Feb 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of Clause)

452.236-71 Prohibition Against the Use of Lead-Based Paint.

As prescribed in 436.571, insert the following clause:

Prohibition Against the Use of Lead-Based Paint (Feb 1988)

(a) For paints manufactured prior to or on June 23, 1977, the following restriction applies:

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(b) For paints manufactured after June 23, 1977, the following restriction applies:

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of Clause)

452.236-72 Use of Premises.

As prescribed in 436.572, insert the following clause:

Use of Premises (Feb 1988)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA lands or lands administered by the USDA, the Contractor shall obtain written permission through the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall: (i) provide and maintain sanitation facilities for the workforce at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of Clause)

452.236-73 Archaeological or Historic Sites.

As prescribed in 436.573, insert the following clause:

Archaeological or Historic Sites (Feb 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of Clause)

452.236-74 Control of Erosion, Sedimentation and Pollution.

As prescribed in 436.574, insert the following clause:

Control of Erosion, Sedimentation and Pollution (Feb 1988)

(a) Operations shall be scheduled and conduct to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or near rivers, streams, and impoundments; or into natural or man-made channels. Wash water or waste from

concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in live streams without written approval by the Contracting Officer.

(End of Clause)

452.236-75 Maximum Workweek—Construction Schedule.

As prescribed in 436.575, insert a clause substantially as follows:

Maximum Workweek—Construction Schedule (Feb 1988)

Within 10 days after receipt of a written request from the Contracting Officer, the Contractor must submit the following information in writing for approval:

(a) A construction schedule as required by FAR clause 52.236-15, Schedules for Construction Contracts, and

(b) The hours and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is ——*——. The Contractor's proposed hours of work are to include daily starting and stopping times.

(End of Clause)

**Contracting Officer shall insert appropriate number of hours and/or days.*

452.236-76 Samples and Certificates.

As prescribed in 436.576, insert the following contract clause:

Samples and Certificates (Feb 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of Clause)

452.236-77 Energy Control.

As prescribed in 436.577, insert the following clause:

Emergency Control (Feb 1988)

(a) *Contractor's Responsibility for Fighting Fire.* The Contractor, under the direction of the Forest Supervisor or, in the absence of said officer, acting independently, shall immediately extinguish all fires on or in the vicinity of the project. If it is determined subsequently by the Contracting Officer that a fire was caused by the Contractor or the Contractor's agents or employees, whether caused directly or indirectly as a result of contractor operations, the Contractor's costs relating to extinguishing the fire shall not be reimbursed by the Government and shall be the sole responsibility of the Contractor. In addition the Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Controlling Other Emergencies.* When requested by the Contracting Officer, the Contractor shall allow the Forest Service to temporarily use employees and equipment for emergency work. Payment will be made at not less than the current area rates established by the Forest Service. Employees and equipment will be released from emergency operations when other labor and equipment adequate for the protection of the area are obtained.

Note: See Fire Plan Requirements referenced in Section J.

(End of Clause)

452.236-78 Forest Service Standard Specifications for Construction of Roads and Bridges.

As prescribed in 436.578, insert the following clause:

Forest Service Standard Specifications for Construction of Roads and Bridges (Feb 1988)

These specifications are included by reference only. The requirements contained in these Standard Specifications are hereby made a part of this solicitation and any resultant contract.

(End of Clause)

452.236-79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

Opted Timber Sale Road Requirements (Feb 1988)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Forest Service construct. The Forest Service is obligated to make these roads available to the timber sale purchaser by ——*——. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should he fail to complete this contract within the specified and allowed contract time.

(End of Clause)

**Contracting Officer shall insert appropriate date.*

452.237-70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

Loss, Damage, Destruction and Repair (Feb 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed a total of $——*——, except that no reimbursement will be made for loss, damage or destruction due to (1) Ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within ——**—— hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

**Contracting officer shall insert amount available in current funds to cover potential liability.*

***Contracting Officer shall insert appropriate number of hours.*

452.237-71 Pre-Bid/Pre-Proposal Conference.

As prescribed in 437.110(b), insert a provision substantially as follows:

Pre-Bid/Pre-Proposal Conference (Feb 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation

amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: ——*——

Time: ——*——

Location: ——*——

(End of clause)

Contracting Officer shall insert appropriate information.

452.237-72 Pre-Bid/Pre-Proposal Conference and Site Visit.

As prescribed in 437.110(c), insert a provision substantially as follows:

Pre-Bid/Pre-Proposal Conference and Site Visit (Feb 1988)

(a) The Government is planning a pre-bid/pre-proposal conference and site visit during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are strongly urged to visit this site during the conference to fully inform themselves about the location and conditions under which the work is to be performed.

(c) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to, or during, the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(d) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(e) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(f) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(g) The conference will be held:

Date: ——*——

Time: ——*——

Location: ——*——

(End of clause)

Contracting Officer shall insert appropriate information.

452.237-73 Equipment Inspection Visit.

As prescribed in 437.110(d), insert the following provision in solicitations:

Equipment Inspection Visit (Feb 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the *—— at ——*—— by telephoning ——*—— on ——*—— for an appointment.

(End of clause)

Contracting Officer shall insert appropriate information.

452.237-74 Key Personnel.

As prescribed in 437.110(e), insert a clause substantially as follows:

Key Personnel (Feb 1988)

(a) The Contractor shall assign to this contract the following key personnel: *——.

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of Clause)

Contracting Officer shall insert appropriate information.

452.237-75 Restrictions Against Disclosure.

As prescribed in 437.110(f), insert a clause substantially as follows:

Restrictions Against Disclosure (Feb. 1988)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of Clause)

452.237-76 Progress Reporting.

As prescribed in 437.270(a), insert a clause substantially as follows:

Progress Reporting (Feb 1988)

The Contractor shall submit a progress report ——*——, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

(a) A cover page containing:

(1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

(3) Contractor's name and address;

(4) Author(s); and

(5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost. Data shall include:

(1) The total estimated cost budgeted (fee excluded)

(2) The estimated cost expended during the current reporting period

(3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable

(4) Total project to-date expenditures

(5) Total remaining funds.

(End of Clause)

**Contracting Officer shall insert frequency of reporting requirement.*

425.237-77 Identification of Contract Deliverables.

As prescribed in 437.270(b), insert the following clause:

Identification of Contract Deliverable (Feb 1988)

Unless otherwise specified by the Contracting Officer in writing, all documents prepared and submitted by the Contractor to the Government under this contract shall include the following information on the cover page of each document:

(a) Name and business address of the contractor

(b) Contract number

(c) Total dollar amount of contract including any modifications thereto

(d) Whether the contract was subject to full and open competition

(e) Name, position, and office location of the USDA Contracting Officer's Representative

(f) Date of report.

(End of Clause)

425.237-78 Contracts with Consulting Firms for Services.

As prescribed in 437.270(c), insert a clause substantially as follows:

Contracts With Consulting Firms for Services (Feb 1988)

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a contract to perform ——*——.

End of Clause)

**Contracting Officer shall insert the appropriate information.*

425.242-70 Estimated and Allowable Costs.

As prescribed in 442.704, insert a clause substantially as follows:

Estimated and Allowable Costs (Feb 1988)

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs and $——*—— for fixed fee. These costs shall be subject to the provisions of FAR clauses: 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and clause 52.216-8, Fixed Fee.

(b) Allowable Costs. (1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the appropriate Government Representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows: ——**——

(End of Clause)

**Contracting Officer shall insert appropriate dollar amounts.*

***Contracting Officer shall insert billing rate data.*

Alternate I (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-no-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——. This cost shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost and 52.216-7, Allowable Cost and Payments.

**Contracting Officer shall insert appropriate dollar amount.*

Alternate II (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-plus-incentive-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs, $——*—— for base fee, and $——*—— for incentive fee. These costs shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and 52.216-10, Incentive Fee.

**Contracting Officer shall insert appropriate contract amounts.*

Alternate III (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-plus-award-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs, $——*—— for base fee, and $——*—— for award fee. These costs shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and 52.216-10, Incentive Fee.

**Contracting Officer shall insert appropriate contract amounts.*

452.245-70 Government-Furnished Property.

As prescribed in 445.106, insert the following clause:

Government-Furnished Property (Feb 1988)

The Government will provide the following item(s) of Government property to the contractor for use in the performance of this contract. This property shall be used and maintained by the Contractor in accordance with the provisions of the "Government Property" FAR clause contained elsewhere in the contract.

Item No. ——*——
Description ——*——
Quantity ——*——
Delivery Date ——*——

(End of Clause)

**Contracting Officer shall insert appropriate data.*

452.245-71 Government Property—Facilities Use.

As prescribed in 445.302-7, insert a clause substantially as follows:

Government Property—Facilities Use (Feb 1988)

In the performance of this contract, the Contractor is authorized to use on a no-charge, noninterference basis, the following Government-owned facilities. The facilities shall be used and maintained in accordance with the provisions of the "Government Property (Facilities Use)" FAR clause contained elsewhere in the contract.

(End of Clause)

452.246-70 Inspection and Acceptance.

As prescribed in 446.370, insert a clause substantially as follows:

Inspection and Acceptance (Feb 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: ——*——

(End of Clause)

**Contracting Officer shall insert appropriate identifying data.*

Alternate I (Feb 1988). As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: ——*——

(c) Acceptance will be performed at: ——*——

(End of Clause)

**Contracting Officer shall insert appropriate identifying data.*

552.247-70 Delivery Location.

As prescribed in 447.302, insert a clause substantially as follows:

Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to: ——*——

(End of Clause)

**Contracting Officer shall insert appropriate identifying data.*

452.247-71 Marking Deliverables.

As prescribed in 447.305-10, insert a clause substantially as follows:

Marking Deliverables (Feb 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: ——*——

(End of Clause)

**Contracting Officer shall insert the appropriate information.*

452.247-72 Packing for Domestic Shipment.

As prescribed in 447.305-10(b), insert the following clause:

Packing for Domestic Shipment (Feb 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of Clause)

452.247-73 Packing for Overseas Shipment.

As prescribed in 447.305-10(c), insert the following clause:

Packing for Overseas Shipment (Feb 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of Clause)

452.252-70 List of Attachments.

To meet the requirement of FAR 14.201-4, insert a listing in all solicitations and contracts where there will be attachments listed in Section J.

List of Attachments (Feb 1988)

The Contracting Officer shall insert appropriately identified list of documents, exhibits and other attachments by title, date, and number of pages.

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Monday
February 29, 1988

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Final Regulation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program to include the deferment provisions of Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985.

EFFECTIVE DATE: These regulations are effective February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: On October 28, 1986, the Department published a Notice of Proposed Rulemaking (NPRM) (51 FR 39460) to establish criteria for the HPSL deferment provisions contained in Pub. L. 99–129. The Department received 11 comments on this NPRM from schools and professional associations. The comments and the Department's responses to the comments are discussed below.

Section 57.210 Repayment and collection of health professions student loans.

Section 57.210(a)(2)(iv)—Interruption of Studies:

Two respondents opposed § 57.210(a)(2)(iv)(A), which stated that an HPSL borrower may receive deferment when he or she interrupts his or her studies to participate in an activity which is part of a joint-degree program in conjunction with the health profession for which the borrower is preparing at the school. These respondents suggested that this criterion should be expanded to include any formal program of joint study, including interdisciplinary programs, rather than being limited exclusively to joint-degree programs. In response to these comments, the Department has amended this criterion to include formal programs of joint study.

Two respondents opposed the requirement that the borrower must request a deferment for interruption of studies prior to leaving school to engage in the deferment activity. These respondents suggested that the procedures for requesting deferment for interruption of studies be consistent with the procedures for requesting deferment for other eligible activities (i.e., require the borrower to file for deferment at the time repayment otherwise would commence). In response to these comments, the Department clarifies that the HPSL statute, as amended by Pub. L. 99–129, requires that the school must determine, prior to the borrower's leaving school, whether an educational activity for which the borrower proposes to interrupt his or her studies qualifies for deferment under this provision. Therefore, this provision has been retained as proposed.

One respondent requested that the Department explain how this type of deferment affects the grace period and what happens if the borrower fails to return to school. The respondent also requested that the deferment form be modified to accommodate this type of activity and that the borrower be required to renew his or her deferment status annually. In response to this comment, the Department has revised this provision to clarify that a borrower who qualifies for this type of deferment receives the grace period upon completion or termination of his or her studies leading to the first professional degree in the health discipline being pursued. If the borrower fails to return to school, the school retroactively must begin the borrower's grace period based on the date the borrower terminated his or her studies at the school, and must begin the repayment period immediately following the end of the grace period. The Department also notes that the requirement in paragraph (a)(3) that a borrower must notify the school annually of continued deferment status to all deferment activities, including the interruption of studies. The Department will be revising the deferment form to accommodate this type of deferment.

Section 57.210(a)(2)(v)(A)—Fellowships:

One respondent requested that this provision be deleted since the existing HPSL statute and regulations permit borrowers to defer during any period of "advanced professional training" with no time limit. It was also suggested that the 2-year limit on fellowship deferments be removed. The Department clarifies that Pub. L. 99–129 requires the establishment of regulations to implement a 2-year deferment for fellowships; therefore, this provision has been retained with the 2-year limit.

Six respondents opposed the proposed criterion which restricted fellowship deferments to full-time research or research training activities. These respondents believed that this restriction could have the effect of discouraging talented men and women from pursuing additional training that would allow them to make contributions to new knowledge in health care policy and medical science. The respondents favored expanding this criterion to include clinical, health policy, legislative, public health, scientific, and teaching fellowships, and any other fellowships directly related to the discipline for which the borrower received the HPSL loan.

In response to these comments, the Department clarifies that it did not intend to limit research activities and research training to "bench" or "pure" research, but rather to allow fellowships in applied research as well. Further, the legislative history indicates that Congress intended that these fellowships be oriented in research, but include health policy. The Department does not agree that including activities other than research, research training, or health care policy is consistent with the Congressional intent of encouraging talented men and women to pursue additional training that would allow them to make contributions to new knowledge in health care policy and medical science. Therefore, the Department has amended this provision to state that the fellowship must be "a full-time activity in research or research training or in health care policy."

There was also concern that the proposal did not indicate how a school was to determine whether a fellowship activity met the research or research training criterion. In response to this comment, the Department clarifies that the Program Director or other authorized official would be required to certify on the deferment form that the activity meets the deferment requirements. The Department has added language clarifying this certification requirement to § 57.210(a)(3).

Seven respondents opposed the proposed criterion which required that the fellowship training program must pay no stipend or one which does not exceed the stipend levels established by the Public Health Service (PHS) for trainees receiving graduate and professional training under PHS grants. Four respondents suggested that this criterion be deleted. Two respondents were concerned that this criterion fails to consider a borrower's total debt in determining ability to pay, and suggested that, if implemented, it should

compare a borrower's total educational debt (including loans such as Health Education Assistance Loans (HEAL), Guaranteed Student Loans (GSL), etc.) with the stipend level to determine whether a deferment should be granted. Other respondents indicated that this criterion discriminates against psychiatry, that the PHS stipend levels are too low to use as a guide, that such a restriction is unnecessary and burdensome, and that this type of restriction was not intended by the Congress.

In response to these comments, the Department clarifies that this criterion was proposed to conform with a criterion proposed for the Health Education Assistance Loan (HEAL) program, which includes a similar deferment provision. Since HEAL loans are very expensive (interest accrues from the day the loan is made, including periods of deferment, and may be compounded as frequently as semi-annually), the Department is especially concerned that borrowers who are capable of making payments begin to repay their HEAL loans as soon as possible, thus avoiding additional interest accrual and increased indebtedness.

After further consideration, the Department has determined that since interest on HPSL loans does not accrue during in-school or deferment periods (and thus the borrower's HPSL indebtedness does not increase during these periods), there is not the same adverse impact on a borrower if he or she receives additional periods of deferment for an HPSL loan. Granting fellowship deferments for HPSL loans, regardless of stipend level, will further benefit the borrower, the school, and the Federal Government by helping to assure that borrowers are better able to make payments on their educational loans which are more expensive or do not allow deferment for fellowships. Therefore, the Department has deleted this criterion.

Five respondents opposed the proposed criterion which required that the fellowship training program must select recipients through a nationally-competitive process. Two respondents believed that any formal training program should be approvable, and one noted that this criterion would eliminate many legitimate fellowship activities which should be allowable under this provision, including approximately 50 percent of the National Research Service Award (NRSA) fellowships. One repondent believed that this criterion was inconsistent with the intent of the provision. Two respondents suggested that this criterion be reworded to disallow fellowship activities that were created for specific individuals. In response to these comments, the Department has revised this criterion to state that the fellowship must be part of a formally established fellowship program which was not created for a specific individual.

Section 57.210(a)(2)(v)(B)—Full-Time Education Activity:

One respondent requested that this provision be deleted since the existing HPSL statute and regulations permit borrowers to defer during any period of "advanced professional training" with no time limit. The Department clarifies that Pub. L. 99-129 requires the establishment of regulations to implement a 2-year deferment for full-time educational activities, and therefore this provision has been retained.

One respondent opposed this provision, stating that it would be difficult for a borrower to qualify for deferment based on these criteria and believing they were overly restrictive. As an alternative, it was suggested that borrowers should be eligible for deferment under this provision if they are in any of the following educational programs: public health, the preclinical medical sciences, and those cognate to them, or health policy administration. In response to this suggestion, the Department has revised this provision to include public health, health administration, or a health care discipline directly related to the health profession for which the borrower received the loan. The Department has also deleted the reference to activities required as part of an internship or residency program, since these are already covered by the existing provision which allows deferment for internships and residencies.

Section 57.210(a)(3)—Procedures for Granting Deferment:

Three respondents opposed this paragraph, which set forth procedures for administering the deferment provisions. Two respondents believed these procedures should be the same for all deferment activities. The Department clarifies that this paragraph would apply to all deferment activities, including those previously authorized. One respondent believed that these requirements were too stringent, and one suggested that deferment requests should be submitted after completion of the deferment activity rather than prior to the beginning of deferment.

In response to these comments, the Department believes that it is necessary for the school to have documentation of a borrower's participation in a deferment activity at the beginning of the deferment, and notes that borrowers must also provide documentation at the end of the deferment to verify that he or she completed the activity. This provision has been clarified to indicate that the borrower must notify the school upon completion of the deferment period. The Department further clarifies that this provision has been added to strengthen a school's authority to deny a deferment request that is not filed on a timely basis, but does not preclude a school from accepting late deferment forms, at its own discretion.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. The small entities affected are small health professions schools. The regulation merely establishes criteria for determining whether HPSL borrowers qualify for deferment. Further, the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

Section 57.210(a)(3) contains an information collection requirement which has been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and assigned control number 0915-0111.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as follows.

Dated: December 28, 1987.

Steven A. Grossman,

Acting Assistant Secretary for Health.

Approved: February 10, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance,* No. 13.342, Health Professions Student Loan Program)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for Subpart C continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–744, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532 (42 U.S.C. 294m–q).

2. Section 57.210 is amended by revising paragraphs (a)(2)(ii) and (a)(2)(iii), redesignating paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(5), adding paragraphs (a)(2)(iv), (a)(2)(v), and (a)(3), and adding the OMB Control number at the end of the section to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

(a) * * *

(2) * * *

(ii) All periods for up to a total of 3 years of service as a volunteer under the Peace Corps Act;

(iii) All periods of advanced professional training including internships and residencies, except as specified in paragraph (a)(2)(v) of this section;

(iv) A period not in excess of 2 years during which a borrower who is a full-time student in a health professions school leaves the school, with the intent to return to such school as a full-time student, to engage in a full-time educational activity which is directly related to the health profession for which the individual is preparing. To qualify for such deferment, the full-time educational activity must be one which:

(A) Is part of a joint-degree program or a formal program of joint study in conjunction with the health profession for which the borrower is preparing at the school; or

(B) Is an activity which will enhance the borrower's knowledge and skills in the health profession for which the borrower is preparing at the school, as determined by the school.

The borrower must request such deferment from the school in which he or she is enrolled no later than 60 days prior to leaving such school to engage in the full-time educational activity. The school must then determine, no later than 30 days prior to the borrower's leaving such school, whether the borrower qualifies for such deferment. A borrower who qualifies for this type of deferment receives the grace period upon completion or termination of his or her studies leading to the first professional degree in the health discipline being pursued. If the borrower fails to return to school, the school retroactively must begin the borrower's grace period based on the date the borrower terminated his or her studies at the school, and must begin the repayment period immediately following the end of the grace period; and

(v) A period not in excess of 2 years during which a borrower who is a graduate of a health professions school participates in:

(A) A fellowship training program which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of such borrower's participation in such training. To qualify for such deferment, the fellowship training program must be one which:

(*1*) Is a full-time activity in research or research training or in health care policy; and

(*2*) Is a formally established fellowship program which was not created for a specific individual; or

(B) A full-time educational activity which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of the borrower's participation in such training. To qualify for such deferment, the full-time educational activity must be one which:

(*1*) Is part of a joint-degree program in conjunction with the health profession for which the borrower prepared at the school; or

(*2*) Is required for licensure, registration, or certification in the health profession for which the borrower received the HPSL loan; or

(*3*) Is a full-time educational program in public health, health administration, or a health care discipline directly related to the health profession for which the borrower received the loan.

(3) To receive a deferment, a borrower must, no later than 30 days prior to the onset of the activity (or no later than 30 days prior to the due date of the first payment if the borrower begins the activity during the grace period), and annually thereafter, provide the lending school with evidence of his or her status in the deferrable activity, and evidence that verifies deferment eligibility of the activity. This evidence must include certification by the Program Director or other authorized official that the borrower's activity meets the deferment requirements. The borrower must also notify the school upon completion or termination of the activity. It is the responsibility of the borrower to provide the lending school with all required information or other information regarding the requested deferment. The school may deny a request for deferment if it is not filed in accordance with the requirements of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0111.)

[FR Doc. 88–4169 Filed 2–26–88; 8:45 am]

BILLING CODE 4160-15-M

federal register

Monday
February 29, 1988

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 60
Health Education Assistance Loan Program; Final Regulation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: This rule amends existing regulations governing the Health Education Assistance Loan (HEAL) program to include the deferment provisions of Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985.

EFFECTIVE DATE: These regulations are effective February 29, 1988, except § 60.12(c) which will be effective upon Office of Management and Budget (OMB) approval. A document announcing the effective date of § 60.12(c) will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–4540.

SUPPLEMENTARY INFORMATION: On October 28, 1986, the Department published a Notice of Proposed Rulemaking (NPRM) (51 FR 39464) to establish criteria for the HEAL deferment provisions contained in Pub. L. 99–129. The Department received 10 comments on this NPRM from educational institutions, professional associations, and 1 lender. The comments and the Department's responses to the comments are discussed below.

Section 60.11 Terms of repayment.

One respondent believed that paragraph (a)(1)(i) was unclear because it did not state whether student borrowers are also eligible for the 9-month grace period following the end of the fourth year of the internship or residency program. In response to this comment, the Department notes that section 731(a)(2)(B) of the statute provides that the repayment period may not begin earlier than 9 months after the borrower: (1) Ceases to be a participant in an accredited internship or residency program of no more than 4 years or completes the fourth year of a program greater than 4 years in duration; (2) Ceases to be a full-time student at a HEAL school; or (3) Ceases to be a participant in an approved fellowship training program not in excess of 2 years or a participant in an approved full-time educational activity not in excess of 2 years. HEAL regulations in effect since 1983 have provided the borrower a 9-month grace period after the borrower ceases to be an intern or resident if the borrower began the internship or residency program within 9 full months after leaving school. This provision remains unchanged, except that a borrower who receives his or her first HEAL loan on or after October 22, 1985 is limited to a maximum of 4 years for postponement of the beginning of the repayment period for participation in an internship or residency program.

Section 60.12 Deferment.

Paragraph (b) proposed criteria for fellowship training and full-time educational activities as required by Pub. L. 99–129. All HEAL loans received on or after October 22, 1985, are eligible to have repayments deferred. One respondent was concerned that paragraph (b) would eliminate all deferments for loans received prior to October 22, 1985. The Department clarifies that paragraph (b) would introduce new deferment provisions for loans received on or after October 22, 1985, in addition to existing deferment provisions described in paragraph (a), which are available for all HEAL loans regardless of the date on which they were received.

One respondent indicates that deferments for fellowships should not be limited to HEAL loans received on or after October 22, 1985, as stated in paragraph (b), but should be retroactive to all HEAL loans to assure administrative consistency. The statute, however, applies only to HEAL loans made on or after the date the provision was enacted. Consequently, the provision is retained as proposed.

One respondent objected to the limitation of the deferment period to 2 years under paragraph (b) as overly restrictive. The regulations are restricted by the statute, which limits both the postponement of the onset of the repayment period and the deferment period for fellowship training programs to 2 years. Therefore, the provision is retained as proposed.

Paragraph (b)(1)(i) proposed that, to be a fellowship training program for which an individual may receive a deferment, the program must be directly related to the discipline for which the borrower received the HEAL loan.

One respondent asked if it were possible for a borrower who had changed disciplines to receive a deferment although the activity would not be directly related to the discipline for which the HEAL loan was received. The statute provides that the eligible fellowship training program must be directly related to the health profession for which the student was preparing when the HEAL loan was received. Thus, a borrower could not receive a HEAL loan in one discipline, switch to an educational program in another discipline and then receive a deferment (or a postponement) in a fellowship training program related to the second discipline.

Another respondent was concerned that the restriction that research training be limited to that which is directly related would prohibit cross-discipline training. As indicated above, the statute provides that postponement or deferment for fellowship training activities must be directly related to the discipline for which the HEAL loan was received. Consequently, this provision has been retained as proposed.

Paragraph (b)(1)(iii) would require that the eligible fellowship training program be a full-time research or research training activity. All commenters on this provision recommended a broader approach than the proposal to require that the fellowship training period be a full-time research or research training activity. Two recommended that teaching be included in addition to research; three suggested that health policy be included; one asked that clinical activities be included; and another suggested that other scientific fellowships be added as an approvable category.

As noted in the NPRM, Congress stated that it amended the HEAL legislation to allow deferment for fellowship training because it recognized the need to encourage talented men and women to pursue additional training that will allow them to make contributions to new knowledge in health care policy and medical science. In accordance with this, the Department clarifies that it did not intend to limit research activities and research training to "bench" or "pure" research, but to allow fellowships in applied research and health policy as well. However, in view of the concerns expressed, the Department has amended this provision to state that the fellowship must be "a full-time activity in research or research training or in health care policy."

One commenter suggested that the Department provide a listing of all approvable fellowships. However, it would not be feasible for the Department to formulate and maintain an up-to-date list of all fellowships

which might meet the criteria. Further, an approvable fellowship for one discipline might not be directly related to another discipline and, consequently, not approvable for the second discipline.

General comments suggested that paragraph (b)(1)(iv), which require that the fellowship training program not be an internship or residency program as described in § 60.11(a)(2), needed to be clarified. In response, the provision has been amended to state that the fellowship training program must not be a part of, an extension of, or associated with an internship or residency program, as described in § 60.11(a)(2). Thus, chief resident positions or residency subspecialty training would not be eligible for deferment under this provision. These positions may be eligible for deferment as internship or residency positions, as described in § 60.11(a)(2), and under the terms of each borrower's promissory note.

The Department received several comments on paragraph (b)(1)(v), which proposed that the approvable fellowship training program pay no stipend or one which does not exceed the annual stipend levels established by the Public Health Service (PHS) for the payment of uniform levels of financial support for trainees receiving graduate and professional training under PHS grants, as in effect at the time the borrower requests the deferment. Two respondents thought the proposal was a good idea and very much needed. One commenter thought the PHS stipend levels were too low and may discriminate against one discipline, which "generally has fellows which pay higher stipend levels." Four respondents recommended that the criterion be eliminated—one because it would be administratively burdensome to track the PHS levels; others because the accruing interest should be adequate to encourage the borrower to make payments although a deferred status does not mandate such payments. One commenter noted that the criterion was inconsistent with other deferment activities, which do not consider stipend or income levels of the borrower, and suggested that the criterion be eliminated or that the total educational load indebtedness of the borrower that will be due for payment during the period be compared to the amount of the stipend to determine if a deferment is appropriate.

Because interest on the HEAL loan continues to accrue and be compounded during these periods, it is of utmost importance to encourage HEAL borrowers to begin repaying their loans as soon as possible. In response to these comments, the Department believes that the PHS stipend levels provide adequate support to allow trainees and fellows to make payments on their educational loans. Several of the regulatory amendments published on January 8, 1987 (52 FR 730) were made because the accruing interest had proven to be inadequate as an incentive for borrowers to begin repayment. Further, the Department believes that it would be overly burdensome to require loan holders to determine the borrower's ability to repay the loan by contrasting the educational debt load against the borrower's stipend income or total resources for every request for deferment under this provision. Borrowers who are experiencing problems with repaying their loans may request forbearance, which, with graduated repayment schedules, are options available to all HEAL borrowers (in accordance with the terms of their promissory notes).

One respondent indicated that the restriction that the fellowship activity must begin within 12 months after completion or prior to the completion of the borrower's participation in an approved internship or residency program would probably preclude fellowships that pay more than a modest stipend, and therefore a stipend cutoff is not necessary. However, the Department continues to believe that the stipend cutoff will benefit borrowers by assuring that they do not defer payments unless absolutely necessary.

As an alternative to the use of the PHS stipend levels, one commenter suggested that the National Institues of Health's (NIH) Intramural Research Training Award stipend levels be used. The Department notes that these levels were established for individuals who are working at NIH and may not be appropriate in other areas of the country. On the other hand, the PHS stipend levels apply to traineeship grants at institutions throughout the country. Thus, the Department has retained the provision as proposed.

One commenter requested that the Department publish the PHS stipend levels in the **Federal Register** on an annual basis. The Department does not believe it is necessary to publish the levels annually because all HEAL lenders and schools will be notified directly by the Department each time these levels are revised. However, in response to this comment, the Department has included the current PHS stipend levels below:

Years of relevant experience:	*Amount*
0	$15,996
1	17,004
2	21,996
3	23,004
4	24,000
5	26,004
6	27,996
7 or more	30,000

Five respondents opposed the proposed criterion which required that the fellowship training program must select recipients through a nationally-competitive process. Two respondents believed that any formal training program should be approvable, and one noted that this criterion would eliminate many legitimate fellowship activities which should be allowable under this provision, including approximately 50 percent of the National Research Service Award fellowships. One respondent believed that this criterion was inconsistent with the intent of the provision. Two respondents suggested that this criterion be reworded to disallow fellowship activities that were created for specific individuals. In response to these comments, the Department has revised this criterion to state that the fellowship must be part of a formally established fellowship program which was not created for a specific individual.

Several comments were received on the provisions in paragraph (b)(2), which would specify criteria for determining whether a full-time educational activity was eligible for deferment under the new deferment authority. One respondent suggested that the Department eliminate this provision because deferment for full-time educational activities is already authorized under existing provisions. Another respondent was concerned that these provisions place additional restrictions on existing deferment provisions.

The Department clarifies that the deferment provisions implemented under paragraph (b)(2) of this section are in addition to the previously existing deferment options described in paragraph (a)(1). Further, the Department believes that the full-time educational activity described in paragraph (b)(2) offers new HEAL recipients another deferment option because it has been proposed to occur at an institution defined by section 435(b) of the Higher Education Act of 1965. Paragraph (a)(1) allows for a deferment during which the borrower is pursuing a

full-time course of study at a HEAL school or at an institution of higher education that is a "participating school" in the Guaranteed Student Loan (GSL) program. The Department of Education has indicated that it is possible for an institution to meet the definition found in section 435(b) and not be a "participating school" in the GSL program. Thus, these are two different deferment options and the deferment provision described in paragraph (a)(1) continues to be available to HEAL borrowers. Therefore, the provision in the introductory paragraph (b)(2) has been retained as proposed.

Two comments were received regarding paragraph (b)(2)(i) which would require that the full-time educational activity be directly related to the discipline for which the borrower received the HEAL loan. One respondent asked if it was possible for a borrower who had changed disciplines to receive a deferment although the activity would not be directly related to the discipline for which the HEAL loan was received. As discussed previously, the statute does not allow a borrower to defer his or her loan under this paragraph to pursue any activity not directly related to the loan-supported discipline. A second respondent proposed that public health, preclinical medical sciences, and health administration be added as studies generically approvable as educational activities under this provision. The Department notes that these fields of study are already approvable for deferment under the existing provision included in paragraph (a)(1). Therefore, the provision is retained as proposed.

No comments were received on paragraph (b)(2)(iii), which would require that the educational activity must not be an internship or residency program which is available under § 60.11(a)(2). However, in view of the concerns expressed on the same restriction for the fellowship training activity in paragraph (b)(1)(iv), this provision has been similarly amended to state that the full-time educational activity must not be a part of, an extension of, or associated with an internship or residency program, as described in § 60.11(a)(2).

Two comments were received on paragraph (b)(2)(iv), which would require that the educational activity be required by the approved accrediting agency as part of the internship or residency program, as described in § 60.11(a)(2), or for licensure, registration, or certification in the State in which the borrower intends to practice the discipline for which the borrower received the HEAL program loan.

One respondent commented that the proposed criterion would serve to limit rather than expand the deferment opportunities for HEAL borrowers. The Department agrees that this criterion is not appropriate since deferments for internship and residency programs are authorized elsewhere in this section and in § 60.11(a)(2). The Department has amended this paragraph accordingly.

Several comments were received on paragraph (c), which would require that to receive a deferment, including a deferral of the onset of the repayment period (see § 60.11(a)), a borrower must at least 30 days prior to, but not more than 60 days prior to, the onset of the activity and annually thereafter, submit to the lender of the note evidence of his or her status in the deferment activity and evidence that verifies deferment eligibility of the activity. Two respondents interpreted the provision to apply only to fellowship training program and full-time educational activities and suggested that the timing be the same for all deferment provisions. The Department clarifies that this paragraph does apply to all deferment activities under the HEAL program. Another respondent commented that an institution cannot confirm that the individual is participating in a particular program until that individual has actually begun that program; thus, the time requirement is not feasible. The Department clarifies that this provision was not intended to require the dean or other authorized official to verify that the individual is participating in the program, but rather that the activity and the borrower are eligible for the deferment. The Department believes the point of termination of one activity and the commencement of another to be a critical time because the addresses of many HEAL borrowers change and lenders may be unable to contact the borrowers. To require reporting after rather than before this point may predispose some borrowers to a default status if they fail to immediately notify the lender after a change of address. In view of the expressed concerns, however, the provision has been amended to require that the written evidence must be submitted at least 30 days prior to, but not more than 60 days prior to, the onset of the activity, with the full expectation that the borrower will begin the activity.

Two respondents commented on the provisions which would provide that a lender may rely in good faith upon statements of the borrower, except where those statements or other information conflict with information available to the lender. Further, if there is a conflict, the lender may not approve the deferment request and the Secretary will not review the decision of the lender. One respondent asked for clarification of the paragraph. The Department clarifies that, for all deferment activities described in paragraph (a), if any lender has information which conflicts with statements made by a borrower, it is incumbent upon the lender to seek additional information to resolve the conflict. If the conflict cannot be resolved, the request should be denied.

One respondent commented that this provision may have the effect of not allowing any opportunity for borrowers to appeal lender's decisions. The Department anticipates, however, that in most situations in which the deferment would be denied there will have been no conflicting statements made, but that the lender will have determined that the deferment activity does not meet the deferment criteria or that the borrower is not eligible for deferment. These situations would be appropriate for review by the Secretary upon request by the borrower.

One commenter suggested that the director of the fellowship activity or other authorized official certify rather than merely submit written evidence that the proposed deferment activity meets the eligibility requirements for approval. The Department intended that this written evidence be evaluated as a certification statement since the lender may rely in good faith upon the statement. To clarify the Department's intent, this provision has been amended to require written certification from the appropriate official as a part of the written evidence. To further clarify this provision, the Department has restructured paragraph (c) to eliminate redundant language.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the new requirements in these regulations are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance wi[illegible] the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this rule is not a major rule under

Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

Section 60.12(c) contains information collection requirements which are subject to Office of Management and Budget (OMB) review. We have submitted an information request to OMB for approval under section 3504(h) of the Paperwork Reduction Act of 1980. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

Accordingly, the Department of Health and Human Services amends 42 CFR Part 60 as follows:

Dated: December 28, 1987.

Steven A. Grossman,

Acting Assistant Secretary for Health.

Approved: February 10, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance,* No. 13.108, Health Education Assistance Loan Program)

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for Part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532 (42 U.S.C. 294–294*l*).

2. Section 60.11 is amended by revising paragraph (a)(1) to read as follows:

§ 60.11 Terms of repayment.

(a) *Commencement of repayment.* (1) The borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be a full-time student at a HEAL school. The 9-month period before the repayment period begins is popularly called the "grace period."

(i) *Postponement for internship or residency program.* However, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, then the borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be an intern or resident. For a borrower who receives his or her first HEAL loan on or after October 22, 1985, this postponement of the beginning of the repayment period for participation in an internship or residency program is limited to 4 years.

(ii) *Postponement for fellowship training or educational activity.* For any HEAL loan received on or after October 22, 1985, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, and subsequently enters into a fellowship training program or an educational activity, as described in § 60.12(b)(1) and (2), within 9 months after the completion of the accredited internship or residency program or prior to the completion of such program, the borrower's repayment period begins on the first day of the 10th months after the month he or she ceases to be a participant in the fellowship training program or educational activity. Postponement of the commencement of the repayment period for either activity is limited to 2 years.

(iii) *Nonstudent borrower.* If a nonstudent borrower obtains another HEAL loan during the grace period or period of internship, residency, or deferment (as defined in § 60.12), the borrower must begin to repay this loan when repayment on the borrower's other HEAL loans begins or resumes.

* * * * *

3. Section 60.12 is amended by redesignating paragraph (b) as paragraph (c); by revising newly redesignated paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 60.12 Deferment.

* * * * *

(b) For any HEAL loan received on or after October 22, 1985, after the repayment period has commenced, installments of principal and interest need not be paid during any period for up to 2 years during which the borrower is a participant in:

(1) A fellowship training program, which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is a full-time activity in reasearch or reserch training or health care policy;

(iv) Is not a part of, an extension of, or associated with an internship or residency program, as described in § 60.11(a)(2);

(v) Pays no stipend or one which is not more than the annual stipend level established by the Public Health Service for the payment of uniform levels of financial support for trainees receiving graduate and professional training under Public Health Service grants, as in effect at the time the borrower requests the deferment; and

(vi) Is a formally established fellowship program which was not created for a specific individual; or

(2) A full-time educational activity at an institution defined by section 435(b) of the Higher Education Act of 1965 which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is not a part of, an extension of, or associated with an internship or residency program, as described in § 60.11(a)(2); and

(iv) Is required for licensure, registration, or certification in the State in which the borrower intends to practice the discipline for which the borrower received the HEAL program loan.

(c)(1) To receive a deferment, inlcuding a deferral of the onset of the repayment period (see §60.11(a)), a borrower must at least 30 days prior to, but not more than 60 days prior to, the onset of the activitiy and annually thereafter, submit to the lender evidence of his or her status in the deferment activity and evidence that verifies deferment eligibility of the activity (with the full expectation that the borrower will begin the activity). It is the responsibility of the borrower to provide the lender with all required information or other information regarding the requested deferment. If written evidence that verifies eligibility of the activity and the borrower for the deferment, including a certification from an authorized official (e.g., the director of the fellowship activity, the dean of the school, etc.), is received by the lender within the required time limit, the lender must approve the deferment. The lender may rely in good faith upon statements of the borrower and the authorized official, except where those statements or other information conflict with information available to the lender.

When those verification statements or other information conflict with information available to the lender, to indicate that the applicant fails to meet the requirements for deferment, the lender may not approve the deferment until those conflicts are resolved.

(2) For those activities described in paragraphs (b)(1) or (2) of this section, the borrower may request that the Secretary review a decision by the lender denying the deferment by sending to the Secretary copies of the application for deferment and the lender's denial of the request. However, if information submitted to the lender conflicts with other information available to the lender, to indicate that the borrower fails to meet the requirements for deferment, the borrower may not request a review until such conflicts have been resolved. During the review process, the lender must comply with any requests for information made by the Secretary. If the Secretary determines that the fellowship or educational activity is eligible for deferment and so notifies the lender, the lender must approve the deferment.

[FR Doc. 88-4168 Filed 2-26-88; 8:45 am]

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federal register

Monday
February 29, 1988

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 340

Stimulant Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 340

[Docket No. 75N-0244]

Stimulant Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) stimulant drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on stimulant drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 1, 1989.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 8, 1975 (40 FR 57292), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC stimulant drug products, together with the recommendations of the Advisory Review Panel on OTC Sedative, tranquilizer, and Sleep-aid Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by March 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by April 8, 1976.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC stimulant drug products was published in the **Federal Register** of June 13, 1978 (43 FR 25544). Interested persons were invited to file by August 14, 1978, written objections and/or requests for an oral hearing before the Commissioner of Food and Drugs regarding the proposal. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC stimulant drug products.

In the **Federal Register** of October 26, 1979 (44 FR 61610), the agency published a notice reopening the administrative record for OTC stimulant drug products from October 26, 1979 to March 26, 1980 to permit manufacturers to submit, prior to the establishment of a final monograph, new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Interested persons were invited to submit comments on the new data on or before May 27, 1980. Data and information received after the administrative record was reopened are on display in the Dockets Management Branch.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18399), the agency advised that it had also reopened the administrative record for OTC stimulant drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch during the period from August 14, 1978 to October 26, 1979. The agency concluded that any new data and information filed prior to March 21, 1980 should be available to the agency in developing a final monograph.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

The agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after March 1, 1989, no OTC drug products that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. further, any OTC drug products subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the tentative final monograph for OTC stimulant drug products, the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products may have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling

and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is providing an effective date of 12 months after the date of publication of the final monograph in the **Federal Register**.

In response to the proposed rule on OTC stimulant drug products, three consumers, two consumer groups, three drug manufacturers, one soft-drink manufacturer, one drug manufacturer association, and one consultant representing a drug manufacturer submitted comments. Requests for oral hearing before the Commissioner were also received on three different issues. Copies of the comments and the hearing requests received are on public display in the Dockets Management Branch. Any addition information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered all objections, requests for oral hearing, and the changes in the procedural regulations. In those cases where the agency has agreed with submitted objections and has revised the final monograph accordingly, the Commissioner concludes that any accompanying requests for hearing are moot. Therefore, such hearing requests are not discussed in the following responses to comments.

One comment requested hearings on several aspects of the rule if the Commissioner, in making his decisions, relied upon evidence that was not in the public domain. The Commissioner advises that the agency's decisions in this rulemaking have been based entirely on the administrative record, publicly available in the Dockets Management Branch. Therefore, the Commissioner concludes that the comment has not requested hearings on those issues. The Commissioner also concludes that, even if the comment had not conditioned its requests on the existence of unknown evidence, hearings on those issues would not be warranted.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments on Stimulant Drug Products

1. One comment concurred with the agency's recommendations for establishing conditions for the safety and labeling of OTC stimulant drugs.

2. One comment contended that the Commissioner's conclusion in the tentative final monograph that flavors and sugars or their substitutes should not be included in stimulant drug products containing caffeine was unreasonable, arbitrary, capricious, and not supported by substantial evidence. The comment argued that there was no showing on the part of the agency that lesser measures short of banning flavors, such as safety caps or limitation of the number of caffeine tablets in a package, could not provide the protection desired against accidental ingestion by children. Another comment argued that there are numerous OTC drug products on the market that contain flavors, that no factual showing has been made that the inclusion of flavors in stimulant drug products encourages their ingestion by children, and that no reason is presented by the agency as to why stimulant drug products should be treated differently than other OTC drug products; that chewable flavored caffeine tablets would be convenient when water is not available; that banning flavors in caffeine tablets would discourage adult use because caffeine tablets would be bitter to the taste and that sugars and flavors are pharmaceutical necessities and meet the criteria for safe and suitable inactive ingredients.

Based on the list of food ingredients generally recognized as safe (the GRAS list), or approved food additives, codified in 21 CFR Parts 172, 182, and 184, the agency agrees that sugars and flavors are safe and suitable inactive ingredients that may be added to OTC drug products as specified in 21 CFR 330.1(e). In the tentative final monograph (43 FR 25599), the Commissioner strongly recommended that these substances not be included in OTC stimulant drug products. This recommendation appeared only in the preamble and was not included in the tentative final monograph. No such restriction appears in this final monograph. Thus, manufacturers have the option to decide whether or not to add flavors and sweeteners to their OTC stimulant drug products and the responsibility to assure that such inactive ingredients meet the criteria set forth in § 330.1(e).

3. One comment urged that FDA should immediately mount an educational campaign to warn women who are pregnant, or who expect to become pregnant, to avoid all caffeine-containing drug products as well as other products that contain caffeine, such as coffee and tea.

FDA has carried out a number of educational activities related to caffeine, whether used as a drug or in food products such as coffee and tea. These activities have included the establishment in 1980 of a Caffeine Education Working Group to further the agency's educational effort to increase public and professional awareness of the possible link between caffeine consumption and birth defects. Members of this group were policy-level executives from FDA's Center for Food Safety and Applied Nutrition, Center for Drugs and Biologics, Office of Legislation and Information, Office of Consumer Affairs, and others. The group reviewed issuance of consumer memos; news releases and talk papers to the press, television, and radio; and articles for consumer-related journals, such as the *FDA Consumer*. Significant educational activities included the widely distributed consumer memo, entitled "Caffeine and Pregnancy" (1981); a radio spot announcement, entitled "Caffeine and Pregnancy" (October 1980); and a statement by Jere E. Goyan, then Commissioner of Food and Drugs, summarizing the agency's current caffeine recommendations (September 1980) (Ref. 1). An article on caffeine appeared in the November 1980 *FDA Drug Bulletin*, advising practitioners (Ref. 2). In May 1981, the Center for Food Safety and Applied Nutrition issued a report of a 1980 multipurpose survey conducted to determine public awareness of the potential dangers of consumption of alcohol and caffeine by pregnant women (Ref. 3). In addition, the FDA Office of Consumer Affairs *Consumer Update* for April 1982 included an article dealing with caffeine and alcohol use in pregnancy. The caffeine situation was updated in the March 1984 issued of *FDA Consumer* with the article "The Lastest Caffeine Scoreboard" (Ref. 4), which was converted into a newspaper column (Ref. 5) and also distributed in Spanish (Ref. 6). The most recent FDA update on caffeine appeared in the December 1987/January 1988 issue of the *FDA Consumer* (Ref. 7). A detailed list of the agency's educational activities on caffeine has been placed on file in the Dockets Management Branch (Ref. 1). Thus, it can be seen that the agency

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has implemented an educational campaign to inform the American public about the status of caffeine. (See also comment 7 below.)

References

(1) "Accomplished Caffeine Education Activities" and "Planned Caffeine Education Activities," June 1981, OTC Volume 05AFM, Docket No. 75N-0244, Dockets Management Branch.

(2) "Caffeine and Pregnancy," *FDA Drug Bulletin*, 10:19-20, 1980.

(3) Heimbach, J.T., "Alcohol, Caffeine, and Pregnancy: The Public View," Report issued by the Division of Consumer Affairs, Bureau of Foods, May 1981, OTC Volume 05AFM, Dockets Management Branch.

(4) Lecos, C., "The Lastest Caffeine Scorecard," *FDA Consumer*, 18:14-15, 1984, OTC Volume 05AFM, Dockets Management Branch.

(5) "Caffeine," draft of newspaper article, Communications Staff, Food and Drug Administration, April 1984, OTC Volume 05AFM, Dockets Management Branch.

(6) "Cafeina," draft of newspaper article, Communications Staff, Food and Drug Administration, April 1984, OTC Volume 05AFM, Dockets Management Branch.

(7) Lecos, C.W., "Caffeine Jitters: Some Safety Questions Remain," *FDA Consumer*, 21:22-27, 1987 OTC Volume 05AFM, Dockets Management Branch.

4. One comment urged the government to examine further the teratogenic potential of caffeine in experimental animals. Two comments urged FDA to include in the labeling of OTC stimulant drug products containing caffeine a warning to pregnant women not to consume these products. In support of this recommendation, one comment submitted a selected bibliography on human and animal studies in which caffeine was reported to be associated with birth defects (Ref.1) and a published journal article reporting a limited human epidemiology study on human birth defects and pregnancy complications associated with the consumption of coffee by pregnant women (Ref. 2).

In the proposed rule for OTC stimulant drug products published in the **Federal Register** of June 13, 1978, the agency extensively discussed the teratogenicity of caffeine (43 FR 25563) and will not repeat that discussion here. In the **Federal Register** of October 21, 1980 (45 FR 69817), the agency announced that it had reviewed the human and animal studies reported in the literature and found that these studies did not demonstrate a clear association between caffeine consumption during pregnancy and human birth defects. The agency also noted that the authors of the journal article cited by one of the comments subsequently acknowledged that the data they obtained were preliminary in nature and that further epidemiology studies were needed to assess birth defects as related to caffeine and coffee consumption in humans (45 FR 69826). In a retrospective study of over 12,000 women, no association was found between coffee consumption and adverse outcomes of pregnancy (Ref. 3). In another case-control study of more than 2,000 malformed infants, six specific congenital malformations were evaluated in relation to ingestion by the mothers of caffeine from tea, coffee, and cola beverage during pregnancy. The results of this study did not reveal any relationship between caffeine intake during pregnancy and birth defects in human infants (Ref. 4). A large number of studies have been completed and submitted to FDA. The data assembled since 1980 include studies on teratology, reproduction, behavior, carcinogenicity, and cardiovascular effects. Recently the agency announced the results of its review of these data in discussing the safety of added caffeine in nonalcoholic carbonated beverages. (See the **Federal Register** of May 20, 1987; 52 FR 18923.)

In the **Federal Register** of December 3, 1982 (47 FR 54570), the agency published a final rule requiring the following warning in the labeling of all OTC drug products that are intended for systemic absorption: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." This general warning is required for all OTC drug products, including stimulant drug products containing caffeine, that are intended for systemic absorption into the body. (See 21 CFR 201.63(a).)

The agency recognizes that caffeine is a broad issue involving foods and food additives as well as drugs. Consequently, should additional data and information demonstrate and need for significant changes in the regulation of caffeine as an OTC stimulant drug, the agency will amend the final monograph at that time.

References

(1) Comment No. 0B0006, Docket No. 75N-0244, Dockets Management Branch.

(2) Borlee, L., et al., "Coffee, Risk Factor During Pregnancy?" *Louvain Medical*, 97:279-284, 1978.

(3) Linn, S., et al., "No Association Between Coffee Consumption and Adverse Outcomes of Pregnancy," *New England Journal of Medicine*, 306:141-145, 1982.

(4) Rosenberg, L., et al., "Selected Birth Defects in Relation to Caffeine-Containing Beverages," *Journal of the American Medical Association*, 247:1429-1432, 1982.

B. Comments of Labeling of Stimulant Drug Products

5. One comment contended that FDA does not have the authority to legislate the exact wording of OTC drug labeling claims. The comment contended that such a policy is overly restrictive, lacks supporting evidence, and constitutes a prior restraint on First Amendment rights. The comment concluded that to ban alternative truthful language is unjustified. The comment also requested a hearing on this issue.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g. 21 CFR 201.63 or 330.1(g). The final rule in this document is subject to the final rule revising the labeling policy.

6. One comment objected to the agency's denial of a prophylactic indication for OTC stimulant drug products, contending that no rational basis was given for the denial of this claim. The comment argued that the agency did not satisfactorily explain its distinction between the consumers' supposed inability to anticipate initially the need for a prophylactic dose of a stimulant (e.g., in situations where they had previously experienced highway hypnosis, boredom, or mental dullness) and their acknowledged ability to recognize, after the onset of symptoms of fatigue, the need for a repeated dose to ward off the recurrence of such

problems. The comment further contended that a prophylactic labeling claim is appropriate because it would allow consumers to use a stimulant drug product to prevent mental fatigue rather than to counteract it after it has occurred. For this purpose, the comment proposed labeling claims such as "to help ward off drowsiness (dullness); (mental fatigue), when expected to occur," and contended that the phrase "when expected to occur" will inform consumers that the prophylactic use is for occasional use only. The comment requested a hearing if the agency, in refusing to approve a claim for prophylactic use, based its action on any facts of which the comment is unaware.

The agency disagrees with the comment that no rational basis was given for the denial of a prophylactic claim. The agency's position on the prophylactic use of OTC stimulant drugs was set forth in comment 95 of the tentative final monograph at 43 FR 25561. In that document, the agency affirmed the Panel's view that OTC stimulant drugs could be used safely and effectively to restore mental alertness or wakefulness when fatigue or drowsiness was being experienced, but that there was no basis for recommending general prophylactic use.

Caffeine is the only ingredient included in the stimulant final monograph. The Panel noted that chronic ingestion of caffeine in larger than recommended doses can lead to "habituation," which is a mild form of addition (40 FR 57324; December 8, 1975). The Panel therefore recommended that caffeine-containing stimulant drug products be used only occasionally and included the statement "for occasional use only" in a recommended warning. The agency concurs, and this statement is included in the warning in § 340.50(c)(2) of the final monograph. A drug that is limited to occasional use should be taken for a real and present need, not for a need that is not certain to occur. The agency disagrees with the comment that the phrase "when expected to occur" would indicate to consumers that prophylactic use is for occasional use only because an individual may expect fatigue to occur daily. Further, the agency finds no rationale for prophylactic use of caffeine in view of the action of this drug to restore alertness within a reasonable period of time once fatigue or drowsiness has occurred. The agency concludes that a hearing on this issue is not warranted because its action in denying the suggested labeling claim is not based on any facts of which the comment is unaware.

7. One comment objected to the following warning in proposed § 340.50(c)(1): "Caution: Do not exceed recommended dose since side effects may occur which include increased nervousness, anxiety, irritability, difficulty in falling asleep, and occasionally disturbances in heart rate and rhythm called palpitations." The comment stated that the proposed warning is too wordy, that the terms "nervousness" and "anxiety" are perceived by the lay public as being largely synonymous and therefore are redundant, and that the phrase "occasional disturbances in heart rate and rhythm called palpitations" would be unnecessarily frightening to consumers. The comment argued that changes in heart rate are harmless, transitory, occur rarely, and would be accompanied, in any event, by nervousness or irritability about which consumers are already informed. The comment requested that the proposed warning be deleted from the monograph.

Two comments requested changes in the warning statement in proposed § 340.50(c)(4): For products containing caffeine: "The recommended dose of this product contains about as much caffeine as a cup of coffee. Take this product with caution while taking caffeine-containing beverages such as coffee, tea, or cola drinks because large doses of caffeine may cause side effects as cautioned elsewhere on the label." One of these comments argued that many consumers customarily drink more than one cup of coffee at a time and that a caution implying that as little as two cups of coffee may cause occasional disturbances in heart rate and rhythm, increased nervousness, excitability, and irritability would seriously detract from the credibility of all warning statements. The comment recommended that the warning be revised to read: "Do not exceed recommended dose."

The other comment contended that the warning was misleading because it mentioned only tea, coffee, and cola drinks without mentioning the amount of caffeine in each. The comment stated that an 8-ounce serving of a cola drink generally contains less than half the amount of caffeine found in an 8-ounce serving of coffee or tea. The comment also contended that the listing was incomplete because there are other beverages, foods, and medications that contain caffeine. The comment further noted the relatively short half-life of caffeine and stated that exceeding the recommended dose of caffeine would only pose a danger when other sources of caffeine would be ingested together with, or within several hours of, the caffeine drug product. The comment requested that the proposed warning be changed to read "Contains caffeine. Do not take this product with large amounts of caffeine-containing foods, beverages, or medication because large doses of caffeine may cause side effects as cautioned elsewhere on the label."

The agency does not believe that the warning statements in proposed § 340.50(c)(1) should be deleted or that the warning statement in proposed § 340.50(c)(4) is misleading. The agency believes it is important for consumers to know that caffeine drug products should not be taken along with large amounts of other caffeine-containing products because side effects will occur when too much caffeine is ingested at one time. The agency also believes it is important for consumers to know what these side effects are, but believes it is possible to state them more clearly and succinctly than they are stated in the proposed warning. The terms "anxiety" and "nervousness" are sufficiently synonymous in the minds of consumers to be adequately covered by the term "nervousness;" therefore, "anxiety" is deleted from the list of side effects. The phrase "disturbances in heart rate and rhythm called palpitations" is changed to "rapid heart beat" because the agency believes this language is more readily understandable and potentially less disturbing to consumers. The agency is also combining the warning statement in § 340.50(c) (1) and (4) into a revised warning under § 340.50(c)(1) that reads as follows: "The recommended dose of this product contains about as much caffeine as a cup of coffee. Limit the use of caffeine-containing medications, foods, or beverages while taking this product because too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart beat."

In addition, the agency believes that consumers should be warned that caffeine drug products are not intended for use as a substitute for sleep, and proposed § 340.50(c)(2) is accordingly revised to read: "For occasional use only. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor"). As previously proposed, this warning advised consumers to consult a doctor "if fatigue or drowsiness persists continuously for more than 2 weeks." The agency finds no basis for specifying a time period of more than 2 weeks in this instance and concludes that it is

more helpful to advise consumers to consult a doctor if fatigue or drowsiness persists or continues to recur.

C. Comments on Combination Drug Products

8. One comment objected to the agency's proposed Category II classification of ammonium chloride for use as a stimulant both as a single active ingredient and in combination with caffeine as discussed in comments 93 and 94 of the tentative final monograph (43 FR 25561). The comment pointed out that its submission to the Panel had been made in response to the request for data on OTC drug products containing stimulants and that its product contained caffeine as a stimulant and ammonium chloride as a diuretic with the claim "helps relieve premenstrual symptoms: swelling, weight gain, and fatigue." The comment stated that the fatigue part of the claim was based on the caffeine component only, and that no stimulant action was attributed to the ammonium chloride. The comment requested that classification of the combination drug product, as labeled, be deferred until the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel) had completed its review of ammonium chloride as a diuretic agent.

The agency concurs. After reviewing the comment's original submission (Ref. 1) again, the agency accepts the comment's explanation that ammonium chloride was not intended for use as a stimulant drug ingredient, but rather as a diuretic, and therefore finds no need to classify ammonium chloride in Category II for use as a stimulant. Further, since the tentative final monograph was published, the Miscellaneous Internal Panel has reviewed OCT orally administered menstrual drug products. Because the product in question is labeled for use in relieving premenstrual symptoms, the agency deferred this combination of ingredients to the Miscellaneous Internal Panel for review. That Panel's recommendations were included in the advance notice of proposed rulemaking for OTC menstrual drug products, published in the **Federal Register** of December 7, 1982 (47 FR 55076). The agency will state its position on the combination of ammonium chloride and caffeine for relief of premenstrual symptoms in the tentative final monograph for OTC menstrual drug products, to be published in a future issue of the **Federal Register.**

Reference

(1) OTC Volume 180009.

II. Summary of Significant Changes From the Proposed Rule

1. The agency has redesignated proposed Subpart D as Subpart C and has placed the labeling sections of the monograph in Subpart C.

2. Based on the definition of a stimulant in § 340.3 and the indications in § 340.50(b) which state that a stimulant drug product helps restore mental alertness, the agency is providing for an alternate statement of identity, i.e., "alertness aid," for these products. This term is reflective of the intended use of the products to which it applies in the same way as are other statements of identity developed in the OTC drug review, such as "digestive aid,' "first aid antibiotic," and "nighttime sleep-aid." Accordingly, § 340.50(a) in this final monograph reads "*Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an 'alertness aid' or a 'stimulant'."

3. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulations will give manufacturers the option of using either the word "Physician" or the word "doctor." This final monograph includes that option.

4. The agency is combining proposed § 340.50(c) (1) and (4) in § 340.50(c)(1) to read as follows: "The recommended dose of this product contains about as much caffeine as a cup of coffee. Limit the use of caffeine-containing medications, foods, or beverages while taking this product because too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart beat." The agency is also revising the warning in § 340.50(c)(2) to read as follows: "For occasional use only. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor"). (See comment 7 above.)

5. The agency is evaluating the combination of ammonium chloride and caffeine used for relieving symptoms of premenstrual tension in the rulemaking for OTC menstrual drug products. Because ammonium chloride is claimed to act as a diuretic and not a stimulant in this instance, the agency is withdrawing its proposed Category II classification of this ingredient for use as a stimulant. (See comment 8 above.)

III. The Agency's Final Conclusions on OTC Stimulant Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC stimulant drug products are generally recognized as safe and effective and not misbranded. specifically, the agency has determined that the only ingredient that meets monograph conditions is caffeine. All other ingredients considered in this rulemaking, i.e., ammonium chloride, ginseng, and vitamins (especially vitamin E), have been determined to be nonmonograph conditions. Any drug product marketed for use as an OTC stimulant that is not in conformance with the monograph (21 CFR Part 340) may be considered a new drug within the meaning of section 310(p) of the Fedral Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352 and may not be marketed for this use unless it is the subject of an approved application.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC stimulant drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, the requirement for a Regulatory Flexibility Analysis under the Regulatory Flexibility Act does not apply to this final rule for OTC stimulant drug products because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a

type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 340

Labeling, Over-the-counter drugs, Stimulant drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 340, to read as follows:

PART 340—STIMULANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
340.1 Scope.
340.3 Definition.

Subpart B—Active Ingredient

340.10 Stimulant active ingredient.

Subpart C—Labeling

340.50 Labeling of stimulant drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 335, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 340.1 Scope.

(a) An over-the-counter stimulant drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part and each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 340.3 Definition.

As used in this part:

Stimulant. A drug which helps restore mental alertness or wakefulness during fatigue or drowsiness.

Subpart B—Active Ingredient

§ 340.10 Stimulant active ingredient.

The active ingredient of the product consists of caffeine when used within the dosage limits established in § 340.50(d).

Subpart C—Labeling

§ 340.50 Labeling of stimulant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "altertness aid" or a "stimulant."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "Helps restore mental alertness or wakefulness when experiencing fatigue or drowsiness." Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the Act relating to misbranding and the prohibition in section 301(d) of the Act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the Act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "The recommended dose of this product contains about as much caffeine as a cup of coffee. Limit the use of caffeine-containing medications, foods, or beverages while taking this product because too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart beat."

(2) "For occasional use only. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor").

(3) "Do not give to children under 12 years of age."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Adults and children 12 years of age and over: Oral dosage is 100 to 200 milligrams not more often than every 3 to 4 hours.

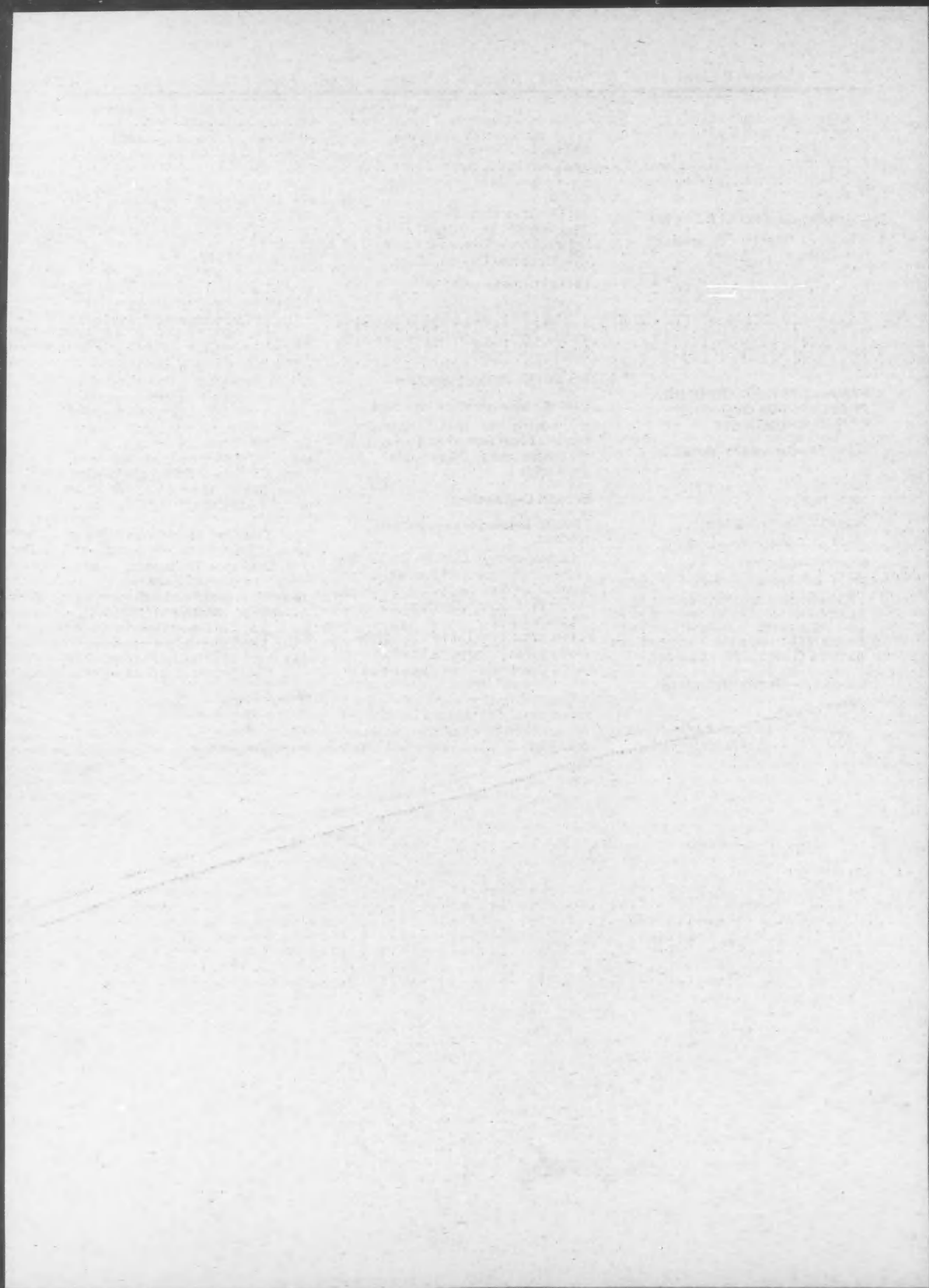
Dated: December 2, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-4190 Filed 2-26-88; 8:45 am]

BILLING CODE 4160-01-M



federal register

Monday
February 29, 1988

Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations to revise the need analysis methodologies used to determine eligibility for student assistance under the Higher Education Act of 1965, as amended. These proposed regulations clarify what is meant by "substantial number of years" as used in the definition of a displaced homemaker for purposes of these need analysis methodologies.

DATE: Comments must be received on or before March 30, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Fred Sellers, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4318, Regional Office Building 3, 7th and D Streets, SW.), Washington DC 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4318, Regional Office Building 3, 7th and D Streets, SW.), Washington, DC 20202. Telephone number (202) 732–4888.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations (General Provisions) apply to all institutions that seek to participate in the student financial assistance programs administered under Title IV of the Higher Education Act of 1965, as amended.

There are two need analysis methodologies used to determine a student's expected family contribution (EFC) under the Title IV student financial assistance programs. One methodology is the Family Contribution Schedule under which the EFC (known as the Student Aid Index) for the Pell Grant Program is determined. The other methodology is the Title IV, Part F, Congressional Methodology under which the EFC for the campus-based and Guaranteed Student Loan Program is determined. These regulations are necessary to modify these need analysis methodologies.

Sections 411E and 478 of the Higher Education Act of 1965, as amended, provide for modification of the statutory need analysis methodologies through the regulations. Furthermore, section 482 of that Act establishes a series of deadlines by which modifications must be published in order for the modifications to be effective for an award year. To change a need analysis provision for the 1989–90 award year, the Secretary must publish a notice of proposed rulemaking in the **Federal Register** by March 1, 1988 detailing the proposed change. The proposed change may become effective only if Congress, by May 1, 1988, approves the proposed change by joint resolution. If the Congress passes a joint resolution approving the proposed change, the Secretary must publish the final regulations making the change by June 1, 1988 for the change to be effective for the 1989–90 award year.

These proposed regulations clarify what is meant by "substantial number of years" as used in the definition of a displaced homemaker for purposes of these need analysis methodologies.

A summary of the proposed changes follows:

Section 668.7 Eligible Student.

The Secretary proposes to (1) amend paragraph (a)(10) to reference an appendix at the end of that section; and (2) add an appendix at the end of that section which defines "substantial number of years" as at least five years for the purpose of a displaced homemaker. This definition clarifies whether an applicant qualifies as a displaced homemaker.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These proposed regulations merely modify a definition used to determine the eligibility of applicants for Title IV, HEA program assistance at all institutions.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: February 19, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.185 Robert C. Byrd Honors Scholarship Program)

The Secretary proposes to amend Part 668 to Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1992, 1094, and 1141, unless otherwise noted.

2. Section 668.7 is amended by revising paragraph (a)(10), adding an

Appendix, and revising the authority citation to read as follows:

§ 668.7 Eligible student.

(a) * * *

(10) Has financial need, if applicable in accordance with the requirements of—

(i) The Title IV, HEA program under which he or she has applied for assistance; and

(ii) Appendix to this section; and

* * * * *

Appendix to Section 668.7—Need Analysis Methodologies

For purposes of the Pell Grant Family Contribution Schedule (20 U.S.C. 1070a-1—1070a-6) and the Title IV, Part F, Congressional Methodology (20 U.S.C. 1087—1087vv), not withstanding section 480(e) of the HEA (20 U.S.C. 1087vv(e)), the Secretary considers a "displaced homemaker" to be an individual who—

(1) Has not worked in the labor force during the five year period preceding the date that the student applies to have his or her eligibility for Title IV, HEA program determined but has, during those years, worked in the home providing unpaid services for family members;

(2)(i) Has been dependent at any time during that five-year period on public assistance or on the income of another family member but is no longer supported by that income, or

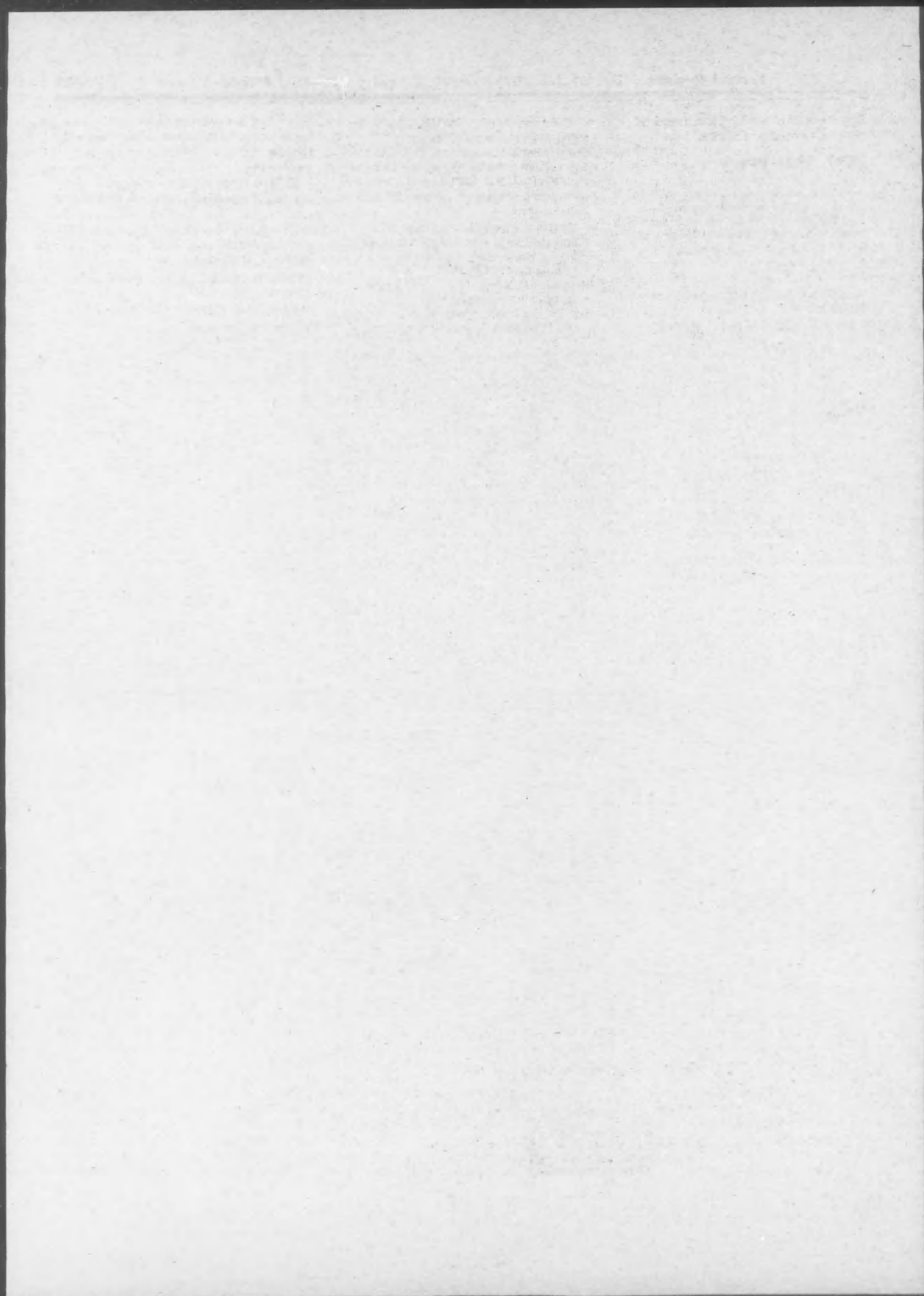
(ii) Is receiving public assistance on account of dependent children in the home; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(Authority: 20 U.S.C. 1070a-5, 1087rr, and 1088)

[FR Doc. 88-4339 Filed 2-26-88; 8:45 am]

BILLING CODE 4000-01-M



federal register

Monday
February 29, 1988

Part VII

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Beaufort Sea Oil and Gas Lease Sale; Amendment Notice

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Beaufort Sea
Oil and Gas Lease Sale 97

AGENCY: Minerals Management Service

ACTION: Amendment Notice

On Friday, February 12, 1988, at 53 FR 4356, the Notice for the Beaufort Sea Outer Continental Shelf Oil and Gas Lease Sale 97 was published in the Federal Register.

Changes have occurred in the listing of hectares offered in split blocks and bidding units for Official Protraction Diagrams NR 5-4, Harrison Bay (revised January 20, 1988), NR 6-3, Beechey Point (revised April 23, 1984), and NR 6-4, Flaxman Island (revised November 10, 1983). These blocks are listed as part of paragraph 12(b), appearing at pages 4359 through 4362 of the Notice.

The Notice is amended as follows to record the revised areas of the affected blocks and bidding units:

Official Protraction Diagram NR 5-4, Harrison Bay

SPLIT BLOCKS WITH THEIR REVISED AREAS:

Blocks	Hectares
414 G	2,284.48
500 G	291.43

BIDDING UNITS WITH THEIR REVISED AREAS:

Blocks	Hectares	Total Hectares
375 G	1,252.27	
376 G	169.88	1,422.15
415 G	2,201.55	
459 G	3.27	2,204.82
416 G	1,797.96	
417 G	480.82	2,278.78
457 G	1,162.31	
458 G	90.64	1,252.95

Official Protraction Diagram NR 6-3, Beechey Point

BIDDING UNITS WITH THEIR REVISED AREAS:

Blocks	Hectares	Total Hectares
330	467.37	
331	349.90	
332	290.15	
333	780.77	1,888.19
373 G	166.78	
374 G	843.70	1,010.48
375 G	704.69	
376 G	683.38	1,388.07

Official Protraction Diagram NR 6-4, Flaxman Island

BIDDING UNITS WITH THEIR REVISED AREAS:

Blocks	Hectares	Total Hectares
755 G	98.15	
756 G	696.27	794.42

Also, under Stipulation No. 4--Industry Site-Specific Bowhead Whale Monitoring Program, four blocks were inadvertently listed (under Official Protraction Diagram NR 5-4) which are not offered in Sale 97. This stipulation is published on pages 4366 and 4367 of the Notice. The Notice is amended as follows to delete reference to those four blocks:

Central Blocks - September 1 through October 31

Official Protraction Diagram	Blocks Included
NR 5-4	1, 8, 9, 11, 16-23, 49, 50, 53, 55-57, 60-67, 96-111, 148-152, 154, 155, 191-194, 228-230, 235, 237, 273-276, 318-320, 331, 332, 362-369, 375, 376, 407-412, 414-417, 453-459, 499, 500.

All other terms and conditions in the Notice referenced above remain unchanged.

Director, Minerals Management Service

Wm. D. Bettenberg

2/25/88

Date

[FR Doc. 88-4379 Filed 2-26-88; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Monday
February 29, 1988

Part VIII

The President

Executive Order 12626—National Defense Stockpile Manager

Federal Register
Vol. 53, No. 39
Monday, February 29, 1988

Presidential Documents

Title 3—

The President

Executive Order 12626 of February 25, 1988

National Defense Stockpile Manager

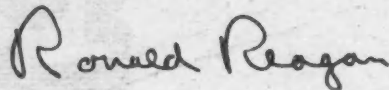
By the authority vested in me as President by the Constitution and laws of the United States of America, including the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), as amended, section 3203 of the National Defense Authorization Act for Fiscal Year 1988 (Public Law 100-180), and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Secretary of Defense is designated National Defense Stockpile Manager. The functions vested in the President by the Strategic and Critical Materials Stock Piling Act, except the functions vested in the President by sections 7, 8, and 13 of the Act, are delegated to the Secretary of Defense. The functions vested in the President by section 8(a) of the Act are delegated to the Secretary of the Interior. The functions vested in the President by section 8(b) of the Act are delegated to the Secretary of Agriculture.

Sec. 2. The functions vested in the President by section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are delegated to the Secretary of Defense.

Sec. 3. The functions vested in the President by section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)), are delegated to the Secretary of Defense.

Sec. 4. In executing the functions delegated to him by this Order, the Secretary of Defense may delegate such functions as he may deem appropriate, subject to his direction. The Secretary shall consult with the heads of affected agencies in performing the functions delegated to him by this Order.



THE WHITE HOUSE,
February 25, 1988.

[FR Doc. 88-4427
Filed 2-26-88; 10:58 am]
Billing code 3195-01-M

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Last List February 22, 1988

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
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0-45	25.00	Jan. 1, 1987
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1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
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200-End	16.00	Jan. 1, 1987
10 Parts:		
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200-399	13.00	Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
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300-499	13.00	Jan. 1, 1987
500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

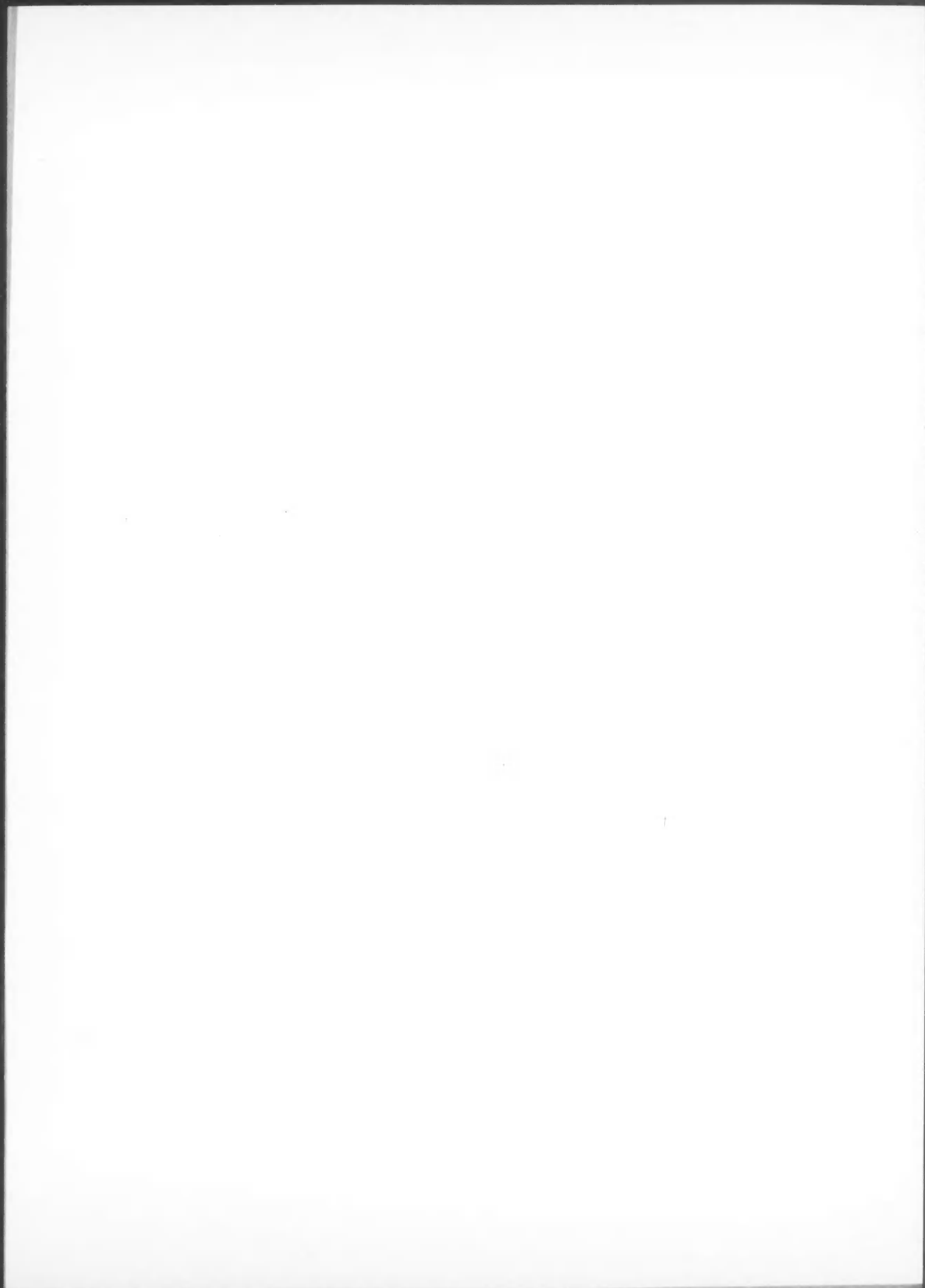
[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

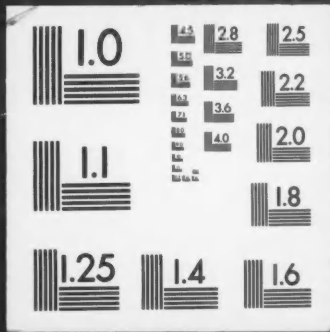
[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

** Note: The original version of 46 CFR Parts 41–69, revised as of October 1, 1987, was printed incorrectly. A corrected edition will be issued in the near future.

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