8-18-89
Vol. 54 No. 159

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Friday
August 18, 1989

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

ATLANTA, GA

WHEN: September 20; at 9:00 a.m.
WHERE: Room 808, 74 Spring Street, SW.
Richard B. Russell Federal Building
Atlanta, GA
RESERVATIONS: Call the Federal Information Center
404–331–6895

WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register

Vol. 54, No. 159

Friday, August 18, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

Presidential Documents

Title 3—

The President

Proclamation 6010 of August 15, 1989

Women's Equality Day, 1989

By the President of the United States of America

A Proclamation

On August 26, 1989, we will commemorate the 69th anniversary of the ratification of the 19th Amendment to the Constitution. The adoption of that amendment secured for women an equal voice in our representative system by guaranteeing their right to vote. Its ratification in 1920 marked a watershed in American history by ensuring that women, equally with men, could enjoy fully the rights and responsibilities of citizenship.

The active role of women during World War I was one important factor in gathering the force of public opinion behind the women's suffrage movement. Women already had the vote in some States, but during the war, as they became essential workers in many industries, women gained increasing voice and stature throughout the country. Thus, after years of hard work and persistent lobbying by women's rights groups, the Congress passed the 19th Amendment in June 1919. It was finally ratified by the Tennessee legislature on August 18, 1920, and proclaimed as part of our Constitution on August 26.

By securing for women the right to vote—and allowing them full participation in the political life of our country—the 19th Amendment affirmed the principles upon which our Nation was founded. In essence, it called us to remain faithful to the vision of our Founders, who had pledged their lives and fortunes to defending the belief "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The ratification of the 19th Amendment was a poignant reminder that the civil and political rights enshrined in our Constitution are the birthright of all.

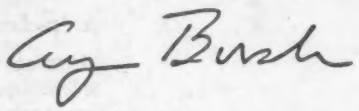
By recognizing previously disenfranchised members of our society, the 19th Amendment took a place among other great landmarks in American history, such as President Lincoln's Emancipation Proclamation and the 13th, 14th, and 15th Amendments. These legal milestones, and others that have since followed, such as the 1964 Civil Rights Act, have marked our Nation's progress in ensuring that all members of our society have the opportunity to reach their full potential.

In recent years, women have continued their remarkable achievements in virtually every field of endeavor, gaining positions of leadership in government, education, business, medicine, and the arts. During our Nation's record peacetime economic expansion these past 80 months, 53 percent of the increase in employment has been among women; the wage gap has been closing; and today, increasing numbers of women are obtaining undergraduate and professional degrees.

On this 69th anniversary of the 19th Amendment, it is appropriate that we recognize the many accomplishments of women, as well as their unique role in keeping our families, communities, and Nation strong. But today let us also renew our commitment to protecting the rights of all Americans, so that the United States might truly be a land of "liberty and justice for all."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1989, as Women's Equality Day—a day to commemorate the 69th anniversary of the ratification of the 19th Amendment. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19631
Filed 8-16-89; 2:28 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6011 of August 15, 1989

National Drive for Life Weekend, 1989

By the President of the United States of America

A Proclamation

Although the proportion of traffic deaths related to alcohol has declined during the past few years, alcohol-impaired driving remains our Nation's number one highway safety problem.

Approximately one-half of all fatal motor vehicle crashes in the United States continue to be alcohol-related. Some 80 percent of these crashes involve a legally intoxicated driver or pedestrian. During 1988 alone, alcohol played a role in more than 23,000 traffic deaths. The personal losses and suffering of the thousands injured by drunk driving and of those whose loved ones are killed in alcohol-related crashes are inestimable.

Drugs other than alcohol also pose a significant threat to our highway safety. Studies show that certain drugs—legal as well as illegal, and either alone or in combination with alcohol—contribute to highway crashes. All of us should be aware of the safety risks of driving after taking prescribed medications or over-the-counter drugs—especially those that have labels warning against operating a motor vehicle. We should also be mindful that combining drugs and alcohol increases those safety risks.

Two years ago, a coalition headed by Mothers Against Drunk Driving sponsored the first National Drive for Life Day and campaigned for all Americans to pledge not to drink and drive on that day. By pausing on National Drive for Life Day to demonstrate their commitment to the fight against drunk driving, Americans underscored the importance of keeping that pledge throughout the year. The success of that first day prompted calls for an expanded campaign, to which the Congress responded in 1988 by designating Labor Day weekend as National Drive for Life Weekend. By Senate Joint Resolution 127, the Congress has again called for a national campaign by designating the Labor Day weekend beginning September 2, 1989, as "National Drive for Life Weekend" and has authorized and requested the President to issue a proclamation in observance of this weekend.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the Labor Day weekend, September 2 through 4, 1989, as National Drive for Life Weekend. I ask all Americans to help improve the safety of our Nation's highways by pledging not to drink and drive that weekend. I also call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe that weekend with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-19632
Filed 8-16-89; 2:29 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6012 of August 15, 1989

National Pledge of Allegiance Day, 1989

By the President of the United States of America

A Proclamation

On September 8, 1892, the Pledge of Allegiance to the Flag first appeared in print. Today, nearly a century later, the words penned by Francis Bellamy in observance of the 400th anniversary of the discovery of America are among the most widely recited verses of American literature.

The simple yet eloquent words of the Pledge of Allegiance capture both the character of the American people and the principles upon which our Nation was founded. They are a fitting tribute to our Flag.

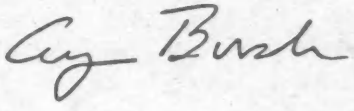
The Flag is the unique symbol of our Republic and the freedom that we cherish. It embodies the faith and unity of the men and women who have carried forth this bold experiment in self-government, and it stands in honor of those who have sacrificed their lives to defend it. This proud emblem, the glorious banner of a great and blessed Nation, is worthy of our abiding respect and loyalty.

A diverse people, we Americans are united by what we believe. We believe in God; we believe that all men are created equal; we believe in freedom; and we believe in equal opportunity and justice for all. We rededicate ourselves to these eternal truths every time we pledge allegiance to the Flag of the United States.

In recognition of the significance of the Pledge of Allegiance, the Congress, by House Joint Resolution 253, has designated September 8, 1989, as "National Pledge of Allegiance Day" and has authorized and requested the President to issue a proclamation calling for the observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 8, 1989, National Pledge of Allegiance Day. I call upon the people of the United States to observe this day by displaying the United States Flag, by reciting publicly the Pledge of Allegiance, and by participating in other appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19633
Filed 8-16-89; 2:30 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6013 of August 15, 1989

The Bicentennial Anniversary of the First U.S. Patent and Copyright Laws, 1990

By the President of the United States of America

A Proclamation

Our Nation's Founding Fathers recognized not only the need to protect the rights and property of individual Americans, but also the importance of providing incentives to stimulate the economic and cultural growth of the United States. Thus, in Article I, Section 8 of the Constitution, they gave the Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Under this provision, the Federal Government can encourage the work of authors and inventors by protecting their right to reap the fruits of their labor.

In his first Annual Message to the Congress, President George Washington reminded its members of the importance of progress in science and the arts, proclaiming that "there is nothing which can better deserve your patronage than the promotion of science and literature." Less than 6 months later, the Congress passed two landmark laws: the first Patent Act, which President Washington signed on April 10, 1790, and the first Copyright Act, which he signed on May 31, 1790. These two Acts have played an important role in establishing the United States as an economic and cultural leader among nations.

During the past 200 years, our Nation's patent and copyright laws have, as Abraham Lincoln once observed, "added the fuel of interest to the fire of genius." American inventors have left their mark on industry and everyday life, and the world's history books include their names alongside those of other great pioneers. Our standard of living, which is in part the result of American technology and innovation, has long been the highest in the world.

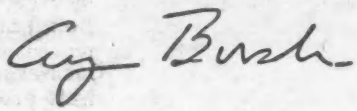
Advances in technology have also produced new forms of authorship, and we have expanded our copyright laws accordingly. Copyright protection now covers such works as photographs, phonograms, motion pictures, and computer programs. These changes have enabled fledgling enterprises to become enduring industries. The success of new industries has, in turn, given aspiring authors, inventors, and artists greater faith in their dreams and further incentive to share the fruits of their talents with others.

As our patent and copyright laws enter their 3rd century, it is fitting that we recognize the role they have played in the scientific, economic, and cultural development of our Nation. On this occasion, it is also fitting that we encourage America's young people to follow in the footsteps of the many inventors and artists who have enriched our lives with their vision and creativity.

In recognition of the importance of the patent and copyright laws to the United States, the Congress, by Public Law 99–523, has authorized and requested the President to issue a proclamation commemorating the bicentennial anniversary of the first patent and copyright laws.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby call upon the people of the United States to foster recognition of the importance of our patent and copyright systems through appropriate educational and cultural programs and activities during 1990, the bicentennial year of our Nation's first patent and copyright laws.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19834
Filed 8-16-89; 2:31 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12687 of August 15, 1989

President's Education Policy Advisory Committee

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on the education policy of the United States, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Education Policy Advisory Committee. The Committee shall be composed of members appointed by the President.

(b) The President shall designate a Chairman from among members of the Committee. The Assistant to the President for Economic and Domestic Policy shall serve as the Secretary of the Committee.

Sec. 2. *Functions.* (a) The Committee shall advise the President with respect to the objectives and conduct of the overall education policy of the United States.

(b) In the performance of its advisory duties the Committee shall conduct a continuing review and assessment of education policy and shall report thereon to the President whenever requested.

Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to education policy matters as the Committee requires for the purpose of carrying out its functions.

(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, they shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) Any expenses of the Committee shall be paid from funds available for the expenses of the Office of Policy Development.

Sec. 4. *General.* Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, shall be performed by the Assistant to the President for Economic and Domestic Policy or his designee, except that the Administrator of General Services shall, on a reimbursable basis, provide such administrative services as may be required.

(b) The Committee shall terminate on December 31, 1990, unless sooner extended.

George Bush

THE WHITE HOUSE,
August 15, 1989.

[FR Doc. 89-19635
Filed 8-16-89; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12688 of August 15, 1989

Transfer Authority Choctawhatchee National Forest, Florida

By the authority vested in me as President by the Constitution and laws of the United States of America, including Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to ensure that excess property under the control of the Department of Defense within and adjacent to the Choctawhatchee National Forest, Florida, is transferred to the Department of Agriculture for inclusion in the National Forest, it is hereby ordered as follows:

The Secretary of Defense is hereby delegated the President's authority under Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to transfer such property within or adjacent to the boundaries of Choctawhatchee National Forest, Florida, that is no longer required for military purposes, to the Secretary of Agriculture to be restored to national forest status. To the extent this order delegates the President's authority under Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to the Secretary of Defense, it supersedes Executive Order No. 10355, which delegates the President's authority to revoke withdrawals and reservations of public lands to the Secretary of the Interior. The Secretary of Defense will document the transaction by letter of transfer between the Departments. The Secretary of Defense, 30 days prior to taking any action to transfer property pursuant to this order, shall notify the Secretary of the Interior of the effective date and time for "opening" of the lands to relevant land laws. The authority delegated by this order may be further redelegated within the Department of Defense.

George Bush

THE WHITE HOUSE,
August 15, 1989.

[FR Doc. 89-19668
Filed 8-16-89; 4:27 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12689 of August 16, 1989

Debarment and Suspension

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to protect the interest of the Federal Government, to deal only with responsible persons, and to insure proper management and integrity in Federal activities, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Procurement activities" refers to all acquisition programs and activities of the Federal Government, as defined in the Federal Acquisition Regulation.

(b) "Nonprocurement activities" refers to all programs and activities involving Federal financial and nonfinancial assistance and benefits, as covered by Executive Order No. 12549 and the Office of Management and Budget guidelines implementing that order.

(c) "Agency" refers to executive departments and agencies.

Sec. 2. *Governmentwide Effect.*

(a) To the extent permitted by law and upon resolution of differences and promulgation of final regulations pursuant to section 3 of this order, the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order No. 12549, shall have governmentwide effect. No agency shall allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity.

(b) An agency may grant an exception permitting a debarred, suspended, or otherwise excluded party to participate in procurement activities of that agency to the extent exceptions are authorized under the Federal Acquisition Regulation, or to participate in nonprocurement activities of that agency to the extent exceptions are authorized under regulations issued pursuant to Executive Order No. 12549.

Sec. 3. *Implementation.*

(a) The Office of Management and Budget may assist Federal agencies in resolving differences between the provisions contained in the Federal Acquisition Regulation and in regulations issued pursuant to Executive Order No. 12549. The Office of Management and Budget may determine the date of resolution of differences and then shall notify affected agencies of that date.

(b) To implement this order, proposed regulations amending the Federal Acquisition Regulation and the agency regulations issued pursuant to Executive Order No. 12549 shall be published simultaneously within 6 months of the resolution of differences.

(c) Final regulations shall be published simultaneously within 12 months of the publication of the proposed regulations, to be effective 30 days thereafter.

George Bush

THE WHITE HOUSE
August 16, 1989.

[FR Doc. 89-19669
Filed 8-16-89; 4:28 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89-140]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning foreign quarantine notices by adding a plant inspection station at the port of Houston, Texas. Adding a station through which certain plants and plant products may be imported will facilitate the importation of these plants and plant products into the United States.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

We are amending the regulations concerning foreign quarantine notices contained in 7 CFR part 319, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products (referred to below as the regulations).

On June 5, 1989, we published a proposal in the **Federal Register** (54 FR 23989-23990, Docket Number 88-073) to amend the regulations by adding a plant inspection station at the port of Houston, Texas. This new station has the special inspection and treatment facilities needed to import certain restricted articles, including certain plants and plant products, that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations.

Our proposal invited the submission of written comments, which were required to be received on or before July 5, 1989. We received two comments. One comment, from a plant importing business in Texas, supported the proposed rule because it would benefit the business itself as well as the economy of Texas. The other comment, from the California Department of Food and Agriculture, supported the proposed rule provided that the new plant inspection station in Houston, Texas, would not divert funding or manpower from United States Department of Agriculture (USDA) programs in California. USDA programs in California should not be affected by the new plant inspection station in Houston, Texas.

Based on the rationale in the proposal and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

The addition of a plant inspection station in Houston, Texas, will facilitate the importation of restricted articles, including certain plants, into the United States. We believe the addition of this facility will have a positive but small economic impact on importers, since Texas already has three inspection stations through which plants requiring written permits pursuant to § 319.37-3(a) (1) through (6) of the regulations may be imported. We have no way of projecting how heavily the new plant inspection station will be used, but we estimate that between 5 and 20 commercial importers—most of them small entities—will use this new facility on a regular basis. Most of them will realize small savings in transportation costs since they will now have access to a fourth plant inspection station. The primary impact on these importers, therefore, will be increased convenience.

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

Executive Order 12372

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products is revised to read as follows:

Authority: 7 U.S.C. 150dd-150ff, 154, 155, 157, 159, 160, 162, and 164a; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37-14(b), the entry for Texas is amended by adding an asterisk immediately before the word "Houston", and by adding, immediately under the word "Houston", the information as shown below:

§ 319.37-14 Ports of entry.

* * * * *

(b) * * *

Lists of Ports of Entry

* * * * *

Texas

* * * * *

(Airport) Houston Plant Inspection Station, 3016 McKaughan, Houston, TX 77032.

* * * * *

Done in Washington, DC, this 14th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19473 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 679]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 679 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period August 20 through August 26, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 679 (§ 910.979) is effective for the period August 20 through August 26, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 15, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.979 is revised to read as follows:

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

§ 910.979 Lemon Regulation 679.

The quantity of lemons grown in California and Arizona which may be handled during the period August 20, 1989, through August 26, 1989, is established at 300,000 cartons.

Dated: August 16, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-19626 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[AMS-FV-88-106; Docket No. AO-198-A14]

Raisins Produced From Grapes Grown in California; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing agreement and order for California raisins. The amendments will: (1) Add a production cap under the Raisin Diversion Program (RDP), (2) authorize payments of expenses for alternate Raisin Administrative Committee (Committee) members; (3) establish mail balloting procedures for nominating independent producer members to the Committee; (4) modify reserve pool procedures; and (5) authorize interest and late payment charges when handlers fail to pay for reserve pool raisins on time. These changes are intended to improve the operation of the raisin marketing order program.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing

Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing issued on July 16, 1987, and published in the July 21, 1987, issue of the Federal Register (52 FR 27369); Recommended Decision issued on July 21, 1988, and published in the July 28, 1988, issue of the Federal Register (53 FR 28405); and Secretary's Decision and Referendum Order issued on March 20, 1989, and published in the March 24, 1989, issue of the Federal Register (54 FR 12205).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This final rule was formulated on the record of a public hearing held August 5 and 6, 1987, at Fresno, California, to consider the proposed further amendment of Marketing Agreement and Order No. 989 (7 CFR part 989) regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained five amendment proposals submitted by the Committee which locally administers the order. Those proposals pertained to changing the RDP, nomination procedures for independent producer representatives on the Committee, expenses for alternate Committee representatives, reserve pool procedures, and handler compliance with the marketing order. Mr. John D. Pakchoian, former chairman of the Committee, submitted a proposal which would have required that independent producer representatives not have an interest in handler operations. This proposal was not included in the Recommended Decision. The notice also included three proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to limit Committee tenure, add authority for continuance referenda, and provide authority to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on July 21, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by August 29, 1988. Three exceptions were filed and were discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued on March 20, 1989, directing that a referendum be conducted during the period April 24 through May 3, 1989, among producers of California raisins to determine whether they favored the proposed amendments to the order. This final order includes the amendments which received the requisite approval of two-thirds by number of the California raisin producers who voted in the referendum or producers representing two-thirds of the volume of raisins voted in the referendum. Of the eight proposals listed on the referendum ballot, California raisin producers favored the following five proposals: (1) Add a production cap under the RDP; (2) authorize payments of expenses for alternate Committee members; (3) establish mail balloting procedures for nominating independent producer members to the Committee; (4) modify reserve pool procedures; and (5) authorize interest and late payment charges when handlers fail to pay for reserve pool raisins on time.

The proposals that did not receive the requisite approval would have authorized handlers to set aside reconditioned raisins to satisfy reserve pool obligations, limited Committee members' tenure to six years, and added authority for continuance referenda every six years.

Small Business Considerations

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the amendment proposals on small businesses for the purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 21 handlers of California raisins subject to regulation under the order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which include handlers under the marketing agreement and order, are defined as those with gross annual revenues of less than $3,500,000. The majority of California raisin producers and a minority of raisin handlers may be classified as small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed rule on small businesses. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The amendments to the marketing agreement and order include a provision pertaining to a production cap of 2.75 tons per acre for production units approved for participation in the Raisin Diversion Program (RDP). The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates issued to the producers by the Committee, to sell to handlers as though the raisins were produced in the current crop year. The producer receives raisins from the previous year's reserve pool in an amount equal to the acreage removed or diverted under the RDP multiplied by the producer's previous year's production in tons per acre.

This amount is represented on the diversion certificate. The production cap is designed to prevent producers applying to participate in the RDP from reporting greater than actual raisin production. Since the RDP is a voluntary program, no producer is required to participate. If a producer historically produces above the production cap, such producer could choose to produce a crop rather than participate in the RDP.

This change will not adversely affect small entities.

The change to establish an average maturity quality level that reserve raisins must meet when delivered to the Committee is intended to improve the quality of reserve pool raisins and thus improve producers' returns on their equity. This change will not adversely affect small entities.

The change that will require the Committee to reimburse alternate Committee members their necessary expenses for attending Committee meetings is anticipated to have a positive effect on producers and handlers by increasing the level of expertise of Committee members.

This additional expense would be offset by assessments on handlers. Program operations benefit all handlers and producers and it is thus appropriate to provide a minimum level of compensation to alternate members, who serve in the industry's general interest. The change will have no adverse affect on small entities.

The change to add a late payment and interest charge for handlers who default on reserve pool sales would encourage prompt payment by handlers and discourage such defaults. Handlers will be required to pay such charges only if they are late in paying the Committee for raisins released to them from the reserve pool. In addition, prompt payment by handlers would ensure more timely payments to producers who have equity in the reserve pools. This change will not adversely affect small entities. The change to require that nominations for independent producer positions on the Committee be held by mail should increase independent producer participation in the nomination process. This change will not adversely affect small entities.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order and will not have a significant economic impact on small businesses.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the changes in the recordkeeping and reporting requirements that are included in the amendments to the order have been submitted for approval to the Office of Management and Budget (OMB). The OMB approved these requirements and assigned OMB No. 0581–0083. The change concerning the addition of a mail ballot for the purposes of nominating to the Committee independent producers and producers affiliated with cooperative marketing organizations handling less than 10 percent of the total raisin acquisitions during the preceding crop year is estimated to take 10 minutes to complete while the change concerning optional preparation of brief statements that nominees may submit to the Committee describing their qualifications to serve on the Committee is estimated to take 5 minutes to complete. These forms will not be used prior to OMB approval.

Order Amending the Order—Regulating the Handling of Raisins Produced From Grapes Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record, it is found that: (1) The order, as amended, and as hereby further amended, and all terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order amending the order effective on the date of publication in the Federal Register. Any delay beyond that date would interfere with the effective functioning and administration of the marketing order. The amendatory order authorizes changes in the operation and functioning of the marketing order which should be made effective as soon as possible. The specified effective date is necessary to meet these objectives.

The provisions of this amendatory order include authorization for adding a production cap under the RDP, authorizing payments of expenses for alternate Committee members, modifying reserve pool procedures, and authorizing interest and late payment charges when handlers fail to pay for reserve pool raisins on time. It is necessary to implement these changes as soon as possible as these provisions should be in place for the new crop year for raisins which begins August 1.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the Federal Register, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the Federal Register (sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, As Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1987, through July 31, 1988 handled not less than 50 percent of the volume of such raisins covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as

amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period August 1, 1987, through July 31, 1988, (which has been deemed to be a representative period), have been engaged within the State of California in the production of grapes which were sun-dried or dehydrated by artificial means until they became raisins for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of raisins produced from grapes grown in California shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order, amending the order, contained in the Recommended Decision issued by the Administrator on July 21, 1988, and published in the **Federal Register** (53 FR 28411, July 28, 1988), and in the Secretary's Decision issued on March 20, 1989, and published in the March 24, 1989, issue of the **Federal Register** (54 FR 12205) shall be and are the terms and provisions of this order, amending the order, and are set forth in full therein.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 989.29 is amended by revising paragraph (b)(2) and paragraph (b)(4) as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(1) * * *

(2)(i) Any producer representing independent producer and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which they are nominated to represent said district as a producer member or alternate producer member on the committee. In the event any such nominee is engaged as a producer in more than one district, such producer may be a nominee for only one district. One or more producers may be nominated for each such producer member or alternate member position.

(ii) Each such producer whose name is offered in nomination shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee or alternate member nominee, as the case may be, until nominees for all member and alternate member positions have been filled.

(iii) Each independent producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

(4) Each vote cast shall be on behalf of the person voting, the person's agent, subsidiaries, affiliates, and representatives. Voting at each handler meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting.

* * * * *

3. Section 989.39 is revised as follows:

§ 989.39 Compensation and expenses.

The members and alternate members of the committee shall serve without compensation, but shall be allowed their necessary expenses as approved by the committee.

4. Section 989.56 is amended by revising paragraphs (a) and (c) as follows:

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory, and other matters relating to the quantity of raisins of all varietal types. When the committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. A production cap of 2.75 tons of raisins per acre shall be established for any production unit approved for participation in a diversion program. The committee, with the approval of the Secretary, may recommend, at the same time that the diversion tonnage for that season is announced, a change in the production cap for that season's diversion program of less than 2.75 tons per acre for any production unit approved for the diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the committee announces a raisin diversion program, any producer may divert grapes of the producer's own production and receive from the committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates may only be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the committee shall apply to a specific production unit and shall be equal to the creditable fruit weight, not to exceed the production cap established pursuant to paragraph (a) of this section, of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through

vine removal or other means established by the committee, the committee may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced therein or the production cap applicable.

* * * * *

5. Section 989.66 is amended by revising paragraph (b)(4) as follows:

§ 989.66 Reserve tonnage generally.

* * * * *

(b) * * *

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by such handler. Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, in the form of natural condition raisins shall in the aggregate be not more than 2 percent less than the average maturity level of all raisins such handler acquired during the applicable crop year. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

* * * * *

6. Section 989.67 is amended by revising paragraph (g) as follows:

§ 989.67 Disposal of reserve raisins.

* * * * *

(g)(1) The committee may, subject to review by the Secretary, refuse to sell reserve tonnage raisins for export:

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee;

(ii) To any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) Handlers who are in default of timely payment under any purchase agreement are subject to an interest and late payment charge(s) recommended by the committee and approved by the Secretary on the delinquent amount that is owed the committee. The interest charge shall be the current prime rate plus 2 percent established by the bank in which the committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided,* That the committee, with the approval of the Secretary, may recommend changes in the rate of interest to another rate of interest. When the committee determines to change the rate of interest or a late payment charge is needed, and such change is approved by the Secretary, the committee shall announce the change in the rate of interest or the rate of late payment charge through a mailing by the committee to handlers.

(3) *Appeals.* If a determination is made by the committee that a handler has not complied with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the committee. If the handler disagrees with the subcommittee's decisions, the handler may request the committee to review the subcommittee's decision. The committee may, subject to the approval of the Secretary, establish additional procedures concerning appeals.

* * * * *

Dated: August 11, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 89-19474 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345-165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing revised Bulletin 345-165, General Specification for Digital Stored Program Controlled Central Office Equipment, REA Form 522. The latest revision of this specification was June 1984. Since that date, significant changes have occurred within the telephone industry, including the fast changing technology of electronic telephone central office equipment. The specification includes new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of digital central office equipment and eventually all the REA telephone borrowers and their consulting engineers will be impacted. This action makes it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

EFFECTIVE DATE: This final rule is effective August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250-1500, telephone (202) 382-8671. The final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing revised REA Bulletin 345-165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1983.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no reporting or record keeping provisions requiring Office of Management and Budget

approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851 "Rural Telephone Loans and Loan Guarantees" and 10.852 "Rural Telephone Bank Loans."

For the reasons set forth in the Final Rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is revising Bulletin 345–165 the REA General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522.

This specification was last revised in June 1984. Since that time there have been many technical changes in the technology of electronic switching that are advantageous to REA borrowers and their subscribers. Following is a list of the main changes in the specifications.

1. *Surge Protection and Grounding System* Provisions have been added to require supplemental surge protection in the bid proposal when such equipment is deemed necessary. Also, included is a requirement for a joint owner and supplier validation audit of the grounding system prior to a new central office being placed into service. This audit requires the use of Part VI of the specification and a possible REA pre-approved supplemental grounding checklist provided by the manufacturer.

2. *Spare Parts* Provisions have been added to accommodate the procedure of including the price of spare parts when determining the low bidder.

3. *Switched Access Service Arrangements* Requires the equipment be capable of providing Feature Groups A, B, C, and D signaling, including arrangements for Automatic Number Identification. Signaling protocols are as defined in the "Notes on the BOC Intra-LATA Networks—1988."

4. *Billing Data/Traffic Recording* Requires Automatic Message Accounting (AMA) capabilities by trunk group. Also, provisions have been added to accommodate the requirement of remote polling devices. REA Form 538 will no longer be a required reference when purchasing AMA recording equipment.

5. *Tandem Capabilities* Provisions have been added in Part III to permit the owner to specify intermediate tandem and access tandem capabilities.

6. *Reliability* A requirement has been added concerning the expected individual line downtime.

7. *Ringing Equipment* Part I has been modified to incorporate the requirements for ringing machines, which is now specified in PE–40. PE–40 will no longer be referenced in Form 522.

8. *System Clock* Specifications for system clocks have been made more definitive with regard to Stratum designation.

9. *Dialed Number* Requires the system to be capable of handling up to 20-digit dialed numbers to accommodate the equal access dialing to originate an international call.

10. *911 Emergency Calls* The requirements for the processing of 911 emergency calls have been made more definitive.

11. *Loaded Cable Pairs.* Provisions have been added to insure proper operations with nonloaded, D–66, and H–88 loaded cable pairs.

12. *Maintenance and Diagnostics Subsystem.* The requirement for automatic self-diagnostics has been made more definitive.

13. *Network Failure.* The use of redundant portions of the network has been made more definitive.

This revision will facilitate REA borrowers in purchasing equipment with build-in revenue producing features rather than having to purchase expensive add-ons to their central office equipment at a later date. It also improves the standards of reliability for central office equipment, thereby reducing maintenance cost to the borrowers and their subscribers.

Major central office manufacturers presently have the ability to support the significant changes contained in this revised REA specification. Therefore, there should be little impact on them in complying with the new requirements.

On December 20, 1988, at 53 FR 51119, REA published in the **Federal Register** Proposed Rule 7 CFR Part 1772, REA Bulletin 345–165, General Specification for Digital Stored Program Controlled Central Office Equipment, REA Form 522. In the proposed rule REA invited interested parties to file comments on or before January 19, 1989.

Comments

Public comments and recommendations were received from Northern Telcom Inc.; National Telephone Cooperative Association; Telephone and Data Systems Inc.; and Wesley Bull and Associates, Inc. The comments and recommendations are summarized as follows:

Part I—Line Circuit Requirements

One respondent commented that the performance requirements proposed in paragraphs 2.1.1, 2.1.2, and 2.2.1 for loop resistance, ring trip and dialing are no longer valid as various requirements included in Part 68 of the FCC Rules which now apply to customer premises equipment.

Response: The requirements contained in paragraph 2.1.1 are to ensure proper operation under maximum adverse environmental and manufacturing variation tolerance conditions. The resistance of the subscriber loop with loop extenders has been reduced to 3600 ohms. Paragraph 2.1.2 has been deleted. Paragraph 2.2.1 has been revised to delete the reference to paragraph 2.1.2.

One respondent commented that the loop limits for 24-gauge D–66 and 22-gauge D–66 loaded loops are reversed in paragraph 2.1.2.

Response: The references to 24-gauge and 22-gauge loaded loops were correct. However, because of new performance criteria that have been introduced since deregulation, this stringent requirement has been eliminated by deletion of paragraph 2.1.2 in order to avoid possible conflict with FCC Rules now governing subscriber premise equipment.

One respondent commented that a new paragraph 2.2.4 should be added to include an acceptable range for pushbutton dialing receive tone levels at the central office location.

Response: Paragraph 2.2.3 has been revised to require the Dial Tone Multi-Frequency (MTMF) central office receiver to comply with the operating parameters as described in section 6 of "Notes on its BOC Intra-LATA Networks—1988."

Two respondents commented that in paragraph 10.1 redundancy as a function should apply to centralized call processors.

Response: Paragraph 10.1 has been revised to permit greater latitude from a switch architect standpoint to provide redundancy in call processing such that failure of a call processing unit will not degrade the call processing capability ot

the switch nor result in its loss of established calls.

One respondent commented that paragraph 13.3.1.2, regarding line-to-line loss, should be changed for the purpose of requiring manufacturers to improve their product. The respondent feels that the line-to-line loss should be "between 0 and 0.5dB."

Response: The presently specified 0 to 2dB line-to-line loss is a very reasonable and acceptable digital switching system objective. It is not the intent of the specification to impose unnecessarily rigid requirements but rather those that are consistent with the telecommunications industry practices.

One respondent commented that paragraph 15.3.2 regarding the charging of batteries should be changed to strengthen the requirement for manually changing the output voltage of the rectifier to 2.25 volts, etc. The respondent felt the need to specifically state the requirement of a "normal/equalize" switch for the purpose of manually changing the output voltage of the rectifier to 2.25 volts.

Response: The present requirement clearly states that provisions are to be made to manually change the output voltage of the rectifier. A restatement of this requirement would serve no useful purpose; rather, there is perhaps a need that the suppliers be reminded of this requirement.

One respondent commented that paragraph 15.7.2 exempts the bidder from providing portable or panel mounted frequency meters, although specified by the borrower, under certain circumstances. The respondent feels the borrower should have the option of requiring the bidder to provide such meters.

Response: The integrated design of many digital switches is arranged to internally measure actual ringer voltages and frequency outputs and to print the results; thus, there is no need for portable or panel mounted frequency meters for such systems and manufacturers do not provide a means of bringing out discrete terminals for attaching them.

Two respondent commented that the description in paragraph 19.1.1 for a Remote Switching Terminal (RST) should be revised. One recommended it be described as a remotely located switching terminal. The other recommended the hardware be interchangeable *or compatible* with the host office.

Response: Paragraph 19.1.1 has been revised to clarify that an RST is a remotely located digital switching terminal for subscriber lines; is part of the host central office from a switching standpoint; and has hardware interchangeable with the host office, except for items that are applicable only to RST control and associated peripheral equipment.

One respondent commented that the language in paragraph 19.3.3 is confusing, that it should be revised to provide options for the borrower to specify its emergency stand alone capability requirements for an RST.

Response: Paragraph 19.3.3 has been revised to clarify that the RST shall have available an emergency call processing option and the related features that shall be included in the option. The hardware to place the option in service shall be provided only when specified by the borrower in the detailed specifications.

One respondent commented that an addition should be added to paragraph 20.9.1 to specify the requirements placed on equipment manufacturers or suppliers for a single-point grounding system when the equipment is to be provided on a "Furnish Only" basis.

Response: This requirement has been included in the revised 7 CFR Part 1765, Section 1765.27 Plans and Specifications for Central Office Equipment to be provided on a "Furnish Only" basis.

Part II—Installation Specifications

One respondent commented that paragraph 2.1.6 should be revised to state testing is at the owner's expense as it is listed under the "Responsibilities of Owner."

Response: This paragraph has been revised to reflect this change.

Part III—Host Office Detailed Equipment Requirements

One respondent commented that the equipment in 10.8.2 probably should have the capability to restrict call forwarding to the local calling area of the telephone company if LAMA is not available.

Response: There does not appear to be sufficient evidence that there is a serious network deficiency; therefore, there is no justification to change the specification at this time.

One respondent commented that paragraph 12.1.1.1 should be revised to ensure the output capacity of the standby generator is sufficient to include air conditioning equipment needed for proper operation of the switching equipment.

Response: Paragraph 12.1.1.1 has been revised to make this a requirement.

Part IV—Remote Switching Terminals (RST's) Detailed Requirements

One respondent commented that the ringer frequency and wattage specified in paragraphs 5.6.2 and 5.6.3 should consider that most FCC Registered Equipment functions at 20 hz with varying total number of Ringer Equivalences per line.

Response: This comment appears to be a general observation. The intent of these specification items is to gain information on the frequencies to be used at the central office site as well as an estimate of its wattage requirements.

One respondent commented that paragraph 6.1 should provide for the borrower to specify "Back Door Trunking" between RST's as another possible means of providing emergency calling.

Response: Back door trunking does not serve the same purpose as the emergency stand alone feature. The RST must also be equipped with the emergency stand alone features in order to have any switching capability to reach trunk links when the control links to the host office fail.

One respondent commented that paragraph 6.1 should be amended to provide the borrower the options of (1) immediate requirement, (2) future requirement, or (3) no requirement for emergency stand alone capability for an RST.

Response: REA believes that no emergency stand alone capability ever would be an imprudent decision by the borrower and very expensive, if at all possible, to later retrofit the system if this feature became necessary. Since manufacturers have to design their systems to provide immediate and future options for emergency stand alone capability, the savings, if any, for a "no requirement" option would be very nominal.

Part V—Information To Be Supplied by Bidders

One respondent commented that an addition should be made to paragraph 6.1 to require the bidder to provide details concerning memory capacity of its proposed switching system as it relates to the ultimate line size.

Response: This requirement has been included in the revised 7 CFR part 1765, section 1765.28 Procurement Procedures for Central Office Equipment.

Other Revisions

Revisions, in addition to those in response to public comments, deemed necessary by the REA staff are included in the final specification as follows:

1. Part I, paragraph 11.1.1, to clarify that an alarm is classified as "Major" when one or both redundant units fail.

2. Part I, paragraph 15.4.2, added to clarify that power converters are to be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

3. Part I, paragraph 19.6.2, to specify ringing sources rather than ringing machines shall be supplied in duplicate.

4. Part I, paragraph 19.6.3, added to require power converters used for the purpose of providing operating voltage to printed circuit boards or similar equipment to be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

5. Part I, figures 1 and 2, reference to Northeast Electronics Transmission Test Sets has been deleted.

6. Part VI, item 10.5, added to require grounding of a metal spare parts cabinet when located in the central office building.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA hereby amends 7 CFR part 1772 by issuing revised Bulletin 345–165.

PART 1772—[AMENDED]

1. The authority cited for part 1772 continues to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 is amended by revising the entry for Bulletin 345–165 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345–165 . . . Form 522 . . . February 1989 . . . REA General Specification for Digital, Stored Program Controlled Central Office Equipment.

* * * * *

Dated: August 14, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–19472 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS Number: 1055–89]

RIN Number: 1115–AB01

Acceptance by Overseas Immigration and Naturalization Service Offices and United States Consulates of Jurisdiction of Relative Petitions Based on Residence of Petitioners

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises and clarifies the process used by overseas Immigration and Naturalization Service (INS) offices and by United States (U.S.) consulates in accepting jurisdiction of Form I–130, Petition for Alien Relative. This regulatory change is necessary to inform petitioners that they must now meet the residence rather than the physical presence criteria in order to be eligible to file a Form I–130 abroad. In emergent or humanitarian cases as well as those in the national interest, the Service and the U.S. consulates abroad may continue to use their discretionary authority to accept relative petitions submitted by non-residents. By providing clear and consistent procedures, INS will be better able to process certain immigrant visa petitions abroad.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K. Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, (202) 633–5014.

SUPPLEMENTARY INFORMATION: On February 21, 1989, the Immigration and Naturalization Service, published in the **Federal Register** (54 FR 7433) a proposed rule to revise and clarify the process used by overseas INS offices and U.S. consulates in accepting jurisdiction of Form I–130, Petition for Alien Relative. This proposal was made available for public comment for a thirty (30) day period ending on March 23, 1989. INS published a correction to the proposed rule on March 7, 1989 at 54 FR 9459, and also extended the comment period for an additional thirty (30) days ending on April 6, 1989.

This rule has been promulgated to revise and clarify procedures for accepting jurisdiction for processing certain relative petitions abroad. The authority to adjudicate Forms I–130 for petitioners and beneficiaries who are physically present in a consular jurisdiction was extended to U.S. consular officers of October 11, 1968. As overseas Service offices were opened abroad, this authority was revised to permit processing of Forms I–130 by consular officers only when an INS office is not located in their jurisdictional area. This resulted in the establishment of one set of requirements for acceptance of these cases by consular officers, and another set of requirements for acceptance by the Service; and finally to confusion by prospective applicants.

To standardize procedures, the Service is promulgating this rule which will clarify for the Immigration and Naturalization Service, the U.S. Consulates abroad, and the public, the process for filing and accepting relative petitions abroad. Like requirements established for acceptance by Service officers abroad, a petitioner will have to reside in the consular jurisdiction before a consular officer may accept his/her Form I–130 for processing by its office. When there is an INS presence, the Form I–130 will be submitted to INS. If the petitioner is unable to show residence abroad for which the INS or consular officer has jurisdiction, the Form I–130 will be forwarded to the Service office which has jurisdiction over the petitioner's place of residence in the United States. Discretionary authority to accept petitions submitted by non-residents in humanitarian or emergent cases and those in the national interest will remain in effect for both INS and consular offices.

During the comment period, the Service received five comments. Two comments were received from private law firms, one from a Service employee, one from an employee from the State Department, and one from a citizen's group. Most of the comments suggested minor changes and/or clarification in the rulemaking which have been incorporated in the final regulation. All of the comments were carefully reviewed and given full consideration. A summary of these comments and the Service response follow:

(1) *Comment:* Two commentors requested that the countries listed in 8 CFR 204.1(a)(3)(ii) be revised to include the United Kingdom and that England be deleted since the INS office in London, England has jurisdiction over all countries in the United Kingdom.

Response: Since the Service office in London has jurisdiction for England, Wales, Scotland and Northern Ireland,

the final regulation is amended to include the United Kingdom rather than England.

(2) *Comment:* One commentor requested clarification of the residence criteria for the beneficiary. It was recommended that if residence was required of both the petitioner and beneficiary, the regulation should reflect said requirement. If the beneficiary is not so required, the regulation should reflect that the beneficiary need not be physically present or residing in the same consular district as the petitioner.

Response: Although the proposed regulation requires residence of both the petitioner and beneficiary for the consular officer to accept jurisdiction, this issue has been reviewed once more by both the Service and the Department of State. Both agencies have agreed that, to standardize procedures, the residence requirement should be amended to permit a petitioner to file a petition with the INS or consular office having jurisdiction over the petitioner's place of residence, regardless of the beneficiary's residence or physical presence. The final rule is amended accordingly.

(3) *Comment:* One commentor complained about the changes in the list of countries where consular officers are not authorized to accept jurisdiction for processing relative petitions without notice in the Federal Register.

Response: Although normal procedure is to announce changes such as openings and closings of Service overseas offices in the Federal Register, the Service took this opportunity to update its Service Office Listing in an effort to avoid further confusion by petitioners.

(4) *Comment:* One commentor complained that the proposed rule was overly restrictive and that because processing in the United States may take six to nine months, the consulate which is able to approve a petition and issue a visa within days or weeks of filing should be allowed, under special circumstances, to accept an I–130 relative petition although the petitioner does not reside in his/her jurisdiction. The following are examples of cases cited: (a) Where beneficiary is a very young child or very old parent who needs petitioner to care for them; (b) so-called "orphan" cases, where the beneficiary may not obtain a visa from his/her country of nationality but must find a third country to voluntarily accept jurisdiction; and (c) cases in which the qualifying marriage takes place abroad, as it makes no sense to require petitioners who are already abroad to return to the U.S. to file.

Response: Since the authority to process petitions remains, by statute, with the Attorney General, adjudication is chiefly done in the United States. The authority to process abroad was extended to consular officers in an effort to assist United States citizens and lawful permanent residents who were temporarily residing abroad due to employment, and who required expeditious processing due to emergent or humanitarian reasons. It was not intended to encourage petitioners to travel abroad to file petitions.

With development of numerous automated systems which will cut processing time of relative petitions and aid in clearing up backlogs at Service offices in the U.S., the final regulations have been written to permit consular officer processing of Form I–130 only if there is no INS presence and if the petitioner resides in the consular jurisdiction, or if humanitarian of emergent circumstances exist.

The Service and the State Department have considered various special circumstances and have agreed to continue the acceptance of Form I–130 processing in special humanitarian cases. The decision to accept these cases will continue to be determined on an individual basis. The examples cited by this writer may be considered as special humanitarian cases, except for orphan cases which do not involve Form I–130 processing.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act under control number #1115–0054.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for part 204 continues to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 8 CFR part 2.

2. In § 204.1, paragraph (a)(3) (ii) and (iii) are revised to read as follows:

§ 204.1 Petition.

(a) * * *

(3) * * *

(ii) *Petitioner residing abroad.* When the petitioner resides in Austria, Federal Republic of Germany, German Democratic Republic, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Republic of Panama, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland, the petition must be filed with the overseas office of the Service designated to act on the petition. The beneficiary need not reside in the same jurisdiction as the petitioner for Service acceptance of the petitioner's Form I–130. In addition, the overseas Service officer may accept a Form I–130 filed by a petitioner who does not reside within the office's jurisdiction when it is established that an emergent or humanitarian reason for acceptance exists or when it is in the national interest.

(iii) *Jurisdiction assumed by United States consular officers.* United States consular officers assigned to visa-issuing posts abroad, except those in countries listed in paragraph (a)(3)(ii) of this section, are authorized to approve any relative petition filed on Form I–130 if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary's residence or physical presence at the time of filing. In emergent or humanitarian cases as well as those in the national interest, the U.S. consular officers may use discretion in accepting a Form I–130 filed by a petitioner who does not reside within the consulate's jurisdiction. While these consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office for a decision. Consultation with the appropriate Service office abroad may be sought prior to stateside referral, if applicable.

* * * * *

Dated: July 17, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–19422 Filed 8–17–89; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 546, 561, 563, 563b, 563c, 570, and 571

[No. 89-2346]

RIN 3068-AA90

Conforming and Technical Amendments to the Classification of Assets System

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations so that they conform with the Board's classification of assets system. The amendments include removing references to the terms "scheduled items" and "specified assets."

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Ross Williams, Attorney, (202) 906-6559, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, or Francis E. Raue, Policy Analyst, (202) 331-4586, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006; for accounting related amendments, Dave Martens, Chief Accountant, (202) 331-4579, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background and the Proposed Rule

The Board, on February 2, 1989, proposed to amend its regulations so that they would conform to the classification of assets system that the Board, under the Competitive Equality Banking Act of 1987 ("CEBA"), had previously adopted. The proposed changes included the removal of references in the regulations to the terms "scheduled items" and "specified assets." Board Res. No. 89-104, 54 FR 6685 (February 14, 1989) ("proposed rule").

On August 10, 1987, CEBA was signed into law. (Pub. L. No. 100-86, 101 Stat. 552). Sections 402 and 407 of CEBA required the Board to establish an asset classification scheme consistent with the classification practices of the Federal banking agencies and to remove its scheduled items system. Accordingly, the Board, on December 21, 1987, adopted rules establishing a classification of assets system consistent with the asset classification practices of the Federal banking agencies, including consistency with generally accepted accounting principles, and removed its scheduled items regulation, 12 CFR 561.15 (1987). *See* 53 FR 338 (January 6, 1988). Although the Board removed § 561.15, eighteen other regulations continue either to contain the term "scheduled items" or to refer to § 561.15.

Before adopting the classification of assets system as directed by CEBA, the Board used a measure of an insured institution's ratio of scheduled items to specified assets to determine whether to approve such institution's application to engage in certain activities. Since CEBA removed the scheduled items system, the Board proposed to remove § 561.17 and to revise those regulations that refer to a specified assets ratio, consistent with CEBA and the Board's regulations promulgated pursuant to CEBA. *See* 54 FR 6685 (February 14, 1989). The Board proposed to replace that ratio with a requirement that insured institutions demonstrate compliance with the minimum capital requirements of § 563.13 and the individual minimum capital requirements of §§ 563.14 and 563.14-1. This proposed change would provide supervisory personnel with the flexibility to restrict an institution's activities on the basis of overall capital strength, as determined on a case-by-case basis, rather than on a scheduled items formula that simply measured problem assets. Moreover, because there is no longer any reason to compute specified assets, the Board proposed removing § 561.17 which had defined the term "specified assets." 12 CFR 561.17 (1988).

The Board also proposed technical amendments to §§ 563.17-2 and 571.1a in an effort to ensure that this regulatory provision and Statement of Policy are consistent with the asset classification system adopted by the Board. These amendments reflect the Board's conclusions that a properly conducted appraisal may be an important factor in an examiner's evaluation of an asset, but that the risk of nonpayment is dependent upon several factors. *See* 53 FR 348, 350. These amendments clarify existing language, not addressed by the final rule adopted in December, 1987, that incorrectly suggests that an appraisal is required in the evaluation of real estate or real estate collateral for the purpose of establishing valuation allowances. Consistent with the Board's classification of assets system, the proposed revision to § 563.17-2(a) did not alter the requirement that an appraisal be conducted with respect to real estate owned ("REO") at the earlier of foreclosure or in-substance foreclosure.[1]

The proposed rule also provided that if real estate collateral has been in-substance foreclosed, the re-evaluation shall be based on the fair value of the real estate. 12 CFR 563.17-2(b). Finally, the Board proposed a technical amendment to § 545.112 providing that a Federal institution may carry REO at fair market value, which may include uncollected interest to the extent the inclusion of such interest is supported by the fair market value of the property.

II. Discussion of Comments

The Board received a total of three written comments: One from a trade association representing thrift institutions, and two from insured institutions. Their comments were brief and were limited to the following regulatory sections.

A. Section 545.112: Real Estate Owned

One of the commenters agreed with the proposal to permit Federal institutions to include uncollected interest in the book value of REO to the extent that the interest is supported by the fair market value of the property. One commenter objected to the proposal and the other commenter suggested that the regulation should permit a Federal institution to account for REO including uncollected interest, at less than fair market or net realizable value when appropriate.

One of the commenters suggested that the Board clarify its regulation governing the accounting treatment for REO. This commenter suggested that the accounting treatment for REO now located in § 545.112, and which is applicable only to Federal associations, be applied to all insured institutions. The Board agrees with this suggestion and is therefore removing § 545.112 entirely and including the provision in the Insurance Regulations at § 563.17-2(a) to be applicable to all insured institutions. This amendment complies with the CEBA requirement that asset classification practices be consistent with the asset classification practices of the Federal banking agencies. The federal banking agencies' asset classification practices are generally

[1] For purposes of the Board's regulations, the terms "in-substance foreclosure" and "repossession in substance" have the same meaning. *See* Board Statement of Policy, Accounting for Troubled Debt Restructuring, 12 CFR 571.18(b)(1) (1988), for a description of when the Board will deem a "repossession in substance" to have occurred.

consistent with generally accepted accounting principles. In order to comply with this CEBA requirement, the Board has determined to adopt the amendment as proposed, but include it in § 563.17–2(a). The Board notes that institutions are expected, under generally accepted accounting principles, to account for REO, including uncollected interest, at fair market or net realizable value. Inasmuch as fair market or net realizable value should already reflect appropriate disposition and holding costs, there does not seem to be any appropriate reason to account for REO at less than fair market or net realizable value.

B. Section 563.13: Regulatory Capital Requirement

One commenter objected to the continued use of the term "scheduled item factor" in calculating the contingency component of an institution's regulatory capital requirement. *See* 12 CFR 563.13(b)(4)(i)(F) (1988). This commenter contended that such continued use requires an undue calculation burden, deals with a portion of old risks, and is in effect a "double counting." The commenter questioned how long the Board intends to continue use of the scheduled item factor.

The immediate effect of the Board's removal of the scheduled items regulation, absent some continued recognition of the risks posed by items formerly deemed scheduled items, would have been to greatly reduce insured institutions' contingency components, thereby reducing the industry's required minimum regulatory capital level even though the quality of the industry's asset portfolio did not change. Thus, in order to counter what would have been an unreasoned and superficial enhancement of the industry's capital position, the Board found it necessary to implement use of the scheduled item factor.

In response to the commenter's objection to the continued use of the scheduled item factor, the Board does not view the use of the scheduled item factor as an undue or unreasonable calculation burden because institutions have already calculated their scheduled items as of September 30, 1987. While the Board acknowledges that the factor does deal with a portion of old risks, this is offset because the factor does not include existing risks that were not scheduled items as of September 30, 1987. The Board restates that the use of the scheduled item factor is an interim, transitional device that is a reasonable measure of asset risk for the industry as a whole, while the Board considers substantial modifications to its minimum regulatory capital requirements. *See* 53 FR 51800 (December 23, 1988). Moreover, there is no "double counting." The amount of general valuation allowances that an institution establishes for current substandard and doubtful assets that are also included in the institution's calculation of the scheduled item factor count as regulatory capital. Current assets classified loss, which an institution has either charged off or for which it maintains a one hundred percent specific valuation allowance, may be deleted from the scheduled item factor, as may assets included in the scheduled item factor that have been paid-off or sold without recourse to a nonaffiliate. *See* 12 CFR 563.13 (1988); Office of Regulatory Activities ("ORA") Memorandum #R 72 (April 26, 1988).

C. Section 563.17–2: Re-evaluation of Assets; Adjustment of Book Value; Adjustment Charges

1. Section 563.17–2(a): Real Estate Owned

One commenter interpreted this proposed amendment to provide that an institution may adjust the book value of real estate owned only on the basis of periodic re-appraisals. This is an incorrect interpretation of § 563.17–2(a). Paragraph (a) of this section is intended to pertain to appraisals of REO and requires an appraisal at the earlier of in-substance foreclosure or acquisition. The Board notes that the first part of the penultimate sentence of proposed § 563.17–2(a) mistakenly reads, "*Re-evaluations* of parcels of real estate * * *" (emphasis added). In this final rule, the Board has corrected the phrase to read, "*Appraisals* of parcels of real estate * * *" (emphasis added).

2. Section 563.17–2(b): Re-evaluation of Loans and Other Assets

Section 563.17–2(b) is intended to address re-evaluations of REO. Pursuant to generally accepted accounting principles, paragraph (b) provides that re-evaluations of real estate or real estate collateral shall be based on net realizable value.

A commenter questioned why the Board proposed to transfer to this section the availability of private mortgage insurance as a consideration in classifying assets. As described in the proposed rule, the Board believes that the availability of private mortgage insurance compensation is a re-evaluation factor rather than a classification of assets factor. The commenter also argued that the inclusion in this section of the private mortgage insurance provision indicates that such consideration is only available to examiners and not to institutions. The Board would like to emphasize that the inclusion of private mortgage insurance in this section indicates that consideration of private mortgage insurance compensation is not limited only to examiners. Rather, authority for the treatment of private mortgage insurance is prescribed by generally accepted accounting principles, which state that insured institutions are authorized to consider the availability of private mortgage insurance compensation when re-evaluating loans and other assets, including REO. Finally, this same commenter suggested that the proposed section that addresses private mortgage insurance be clarified to presume the probability of payment unless there is a substantial reason to believe that a denial of a claim will occur. The Board believes that some clarification of this section is warranted, but disagrees with the suggestion by this commenter. This final rule amends the provision regarding private mortgage insurance to state that a re-evaluation of loans or other assets should take into consideration the availability of compensation by private mortgage insurance to the extent of its probability of payment.

3. Section 563.17–2(d): Adjustment Charges

One commenter questioned why the Board proposed to modify the current requirement that an adjustment charge may be made against either earnings or reserves, by requiring that adjustment charges shall be made first against allowances, and then against earnings. The commenter believes that such a change unnecessarily removes an institution's discretion in accounting for adjustment charges, including such matters as timing and consolidation of entries.

The Board is revising this paragraph to be consistent with generally accepted accounting principles. Also, the Board does not view the changes as imposing any substantive requirements more exacting than the regulation previously contained. Requiring that adjustment charges be made first against an allowance and then against earnings has the same result as if the accounting entries were made in reverse. Moreover, paragraph (d) does not specify any requirements with respect to the consolidation or timing of entries.

D. Section 571.13: Participation Interests in Pools of Loans

One commenter recommended that the Board clarify the meanings of the term "pool of loans" and the phrases "maximum regulatory limitations, or 30 years" and "maximum regulatory limitations, or 90 percent of the security value" contained in paragraph (a)(3). *See* 12 CFR 571.13(a)(3) (1988). The Board agrees, and is amending the first sentence of the regulation to clarify that a pool of loans means a group of loans in the nature of mortgage-backed securities. The Board is also amending paragraph (a)(3) to clarify that the 30 year limitation applies when there is no otherwise applicable maximum regulatory limitation. Furthermore, the final rule clarifies that 90 percent of the security value applies when there is no regulatory maximum percentage of value limitation.

The same commenter also suggested that insured and guaranteed loans and loans with private mortgage insurance coverage be excluded from the originator/servicer reporting requirements of paragraph (a)(3). The Board agrees that insured and guaranteed loans should be excluded from these reporting requirements. Former § 571.13(a)(3), however, did not exclude loans with private mortgage insurance coverage. The Board believes that an amendment to exclude loans with private mortgage insurance from the originator/servicer reporting requirements would constitute a substantive amendment and is not appropriate at this time.

III. The Final Rule

In addition to the changes from the proposed rule described in the "Discussion of Comments," the final rule differs from the proposal in the following areas.

To be consistent with the Board's classification of assets system, § 563.17–2(a) is amended to direct that an institution's appraisal of REO shall be conducted at the earlier of in-substance foreclosure or at the time of acquisition.

Section 563.17–2(b) of this final rule provides that an examiner shall base re-evaluations of real estate and real estate collateral on net realizable value. This is in contrast to paragraph (b) as proposed, which provided that if real estate collateral has been in-substance foreclosed the re-evaluation shall be based on fair value. As a result of the issuance of Consensus No. 89–9 by the Emerging Issues Task Force of the Financial Accounting Standards Board, clarifying that in-substance foreclosures and actual foreclosures should be accounted for in the same way, the Board is not including this "fair value" prescription in the final rule. Paragraph (b) of the final rule also provides that the availability of private mortgage insurance compensation may be a re-evaluation factor, rather than a classification of assets factor, which the Board is removing from Section 571.1a. Paragraph (d) provides that adjustment charges shall be made against established allowances, if any, and then against earnings. Also, as a technical amendment the Board is removing language in Section 571.1a that incorrectly suggested that an appraisal must be used as a basis for establishing a valuation allowance.

As previously described, the Board proposed a technical amendment to § 545.112 providing that a Federal institution may carry REO at fair market value, which may include uncollected interest to the extent the inclusion of such interest is supported by the fair market value of the property. The Board has determined, however, to apply this provision to all insured institutions. Therefore, it has been included in § 563.17–2(a). Accordingly, the Board is removing § 545.112 entirely.

An exception to the proposed removal of regulatory references to "scheduled items" is the continued use of that term, and the use of a "scheduled item factor" in § 563.13(b)(4)(i)(F). *See* 12 CFR 563.13(b)(4)(i)(F) (1988). In adopting the classification of assets system, the Board developed and implemented the use of the scheduled item factor as an interim, transitional measure to calculate the contingency component of an institution's regulatory capital requirement. *Id.* The Board will continue to include the scheduled item factor as an interim device until the Board completes its review and consideration of appropriate revisions to the minimum regulatory capital regulation. *See* 53 FR 338, 345.

The Board wishes to note that it is continuing to review the proposed changes to the minimum regulatory capital requirement regulation. *See* 12 CFR 563.13 [1988]; 53 FR 51800 (December 23, 1988). The Board's proposed capital requirement is a risk-based system and does not use a scheduled items factor.

This regulation, effective immediately upon adoption by the Board, is being issued without the delayed effective date requirements of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(d)(2), and in accordance with the Board's regulations published at 12 CFR 508.14, the Board has determined that the regulation is not subject to the delayed effective date requirements of the APA because the regulations are conforming and technical amendments that impose no new requirements.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the Supplementary Information section.

2. *Small institutions to which the rule would apply.* The rule would apply to all insured institutions without regard to size.

3. *Impact of the rule on small institutions.* The rule would not have a disproportionate impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the rule.* The Board has not found any alternatives to date that would be less burdensome and adequately address its concerns.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Parts 546 and 561

Savings and loan associations.

12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings and Loan associations, Securities.

12 CFR Part 570

Bank deposit insurance, Savings and loan associations.

12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends parts 545

and 546, subchapter C, and parts 561, 563, 563c, 570, and 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 66 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, and 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 545.45 [Amended]

2. Section 545.45(e) is amended by removing the paragraph designation for paragraph (e)(1) and by removing paragraph (e)(2).

3. Section 545.73(a) is revised to read as follows:

§ 545.73 Inter-American Savings and Loan Bank.

* * * * *

(a) The association's regulatory capital meets the requirements of § 563.13 of this chapter, including any individual minimum capital requirement established under § 563.14 of this chapter or by a capital directive issued pursuant to § 563.14–1 of this chapter, and all losses have been offset by specific loss allowances to the extent required by § 563.17–2 of this chapter.

* * * * *

4. Section 545.74 is amended by removing paragraph (a)(4) and by redesignating existing paragraph (a)(5) as the new paragraph (a)(4); by revising the introductory text of paragraph (d)(2) to read as follows; and by removing paragraph (d)(4).

§ 545.74 Service corporations.

* * * * *

(d) *Amount of investment.* * * *

(2) In addition to amounts that it may invest under paragraph (d)(1) of this section, an association that meets the minimum regulatory capital requirements of § 563.13 of this chapter, including any individual minimum capital requirements established under § 563.14 of this chapter or by a capital directive issued under the authority of § 563.14–1 of this chapter, may lend additional amounts as follows:

* * * * *

§ 545.112 [Removed and reserved]

5. Section 545.112 is removed and reserved.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

6. The authority citation for Part 546 continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

7. Amend § 546.2 by removing the last two sentences of paragraph (h)(1)(xii) and adding in their place the following sentence:

§ 546.2 Procedure; effective date.

* * * * *

(h)(1) * * *

(xii) * * * For purposes of this provision, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this chapter, the Principal Supervisory Agent may exclude the scheduled item factor that will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities of the acquired association at the date of the merger;

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

8. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.17 [Removed and reserved]

9. Section 561.17 is removed and reserved.

PART 563—OPERATIONS

10. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.7–5 Mandatorily redeemable preferred stock.

11. Amend § 563.7–5 by removing paragraph (b)(2)(ii); and by redesignating paragraphs (b)(2)(iii) and (b)(2)(iv) as paragraphs (b)(2)(ii) and (b)(2)(iii), respectively.

12. Section 563.8(e)(1) is amended by revising the introductory text to read as follows:

§ 563.8 Borrowing limitations.

* * * * *

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the insured institution meets the regulatory capital requirement of § 563.13 of this chapter or any applicable individual minimum capital requirement of § 563.14 of this chapter or capital directive issued pursuant to § 563.14–1 of this chapter, it shall, at least ten business days prior to issuance, file with the Supervisory Agent a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the terms of the security, including: * * *

* * * * *

13. Amend § 563.8–1 by removing paragraph (b)(2)(ii) and by redesignating paragraphs (b)(2)(iii), (iv) and (v) as the new paragraphs (b)(2)(ii), (iii) and (iv), respectively.

14. Amend § 563.8–4 by revising the second sentence of paragraph (b)(7) to read as follows:

§ 563.8–4 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(7) *Eligibility requirements.* * * * An institution that does not have regulatory capital equal to the sum of one percent of all liabilities (*i.e.*, total assets minus regulatory capital) of the institution, plus an amount equal to 20 percent of the institution's assets classified under § 561.16c of this chapter, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements. * * *

* * * * *

15. Section 563.9–7(b) is revised to read as follows:

§ 563.9–7 Loans in excess of 90 percent of value.

* * * * *

(b) This section does not apply to loans to facilitate the sale of real estate owned as a result of foreclosure, or acquired by deed in lieu of foreclosure, or where a contract purchaser has defaulted and the contract canceled, nor to investments in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.38 of this chapter.

16. Amend § 563.9–8 by revising paragraph (g)(3)(ii) (A)(*1*)(*iii*) to read as follows:

§ 563.9–8 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(g) *Exceptions.* * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(*iii*) The level of assets classified under § 561.16c of this chapter.

* * * * *

17. Section 563.17–2 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the institution's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The Principal Supervisory Agent or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be retained in the institution's records. Appraisals of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. Appraisals required under this provision shall conform with § 563.17–1a of this Part. An insured institution may not carry real estate on its books for a sum in excess of the total amount invested by the institution on account of such real estate, including advances, costs, improvements, and uncollected interest to the extent that such carrying value is supported by the fair market value of the property at the date of the earlier of foreclosure or in-substance foreclosure.

(b) *Re-evaluation of loans and other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate or real estate collateral shall be based on net realizable value and should take into consideration the availability of compensation by private mortgage insurance to the extent of its probability of payment.

* * * * *

(d) *Adjustment charges.* Adjustment of the book value of an asset by an insured institution or service corporation pursuant to any provision of this section shall be made by a charge against such institution's or service corporation's previously established allowances, if any, and then against earnings for the period in which such charge is made. Any recovery of any portion of any amount previously charged against allowances established for the sole purpose of absorbing losses shall be credited to such allowances; such credit shall be in addition to all other required credits to such allowances. Any recovery of any portion of any amount previously charged against earnings shall be credited to earnings for the period in which such recovery is effected. For the purposes of this paragraph (d), any charge against a specific allowance established pursuant to any provision of this section shall be deemed to be a recovery on an asset, the book value of which was previously adjusted unless such charge is made for the purpose of concurrently writing down the book value of such asset.

18. Amend § 563.22(e)(1)(xii) by removing the semicolon located at the end of the paragraph and replacing it with a period and by adding a new sentence to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e) * * *

(1) * * *

(xii) * * * For purposes of this section, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this part, the Principal Supervisory Agent may exclude the scheduled item factor that would otherwise apply to the association that will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities, including averaged liabilities, of the acquired association at the date of the merger;

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

19. The authority citation for Part 563b continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, 48 Stat. 882, 894–895, 901, as amended (15 U.S.C. 78c, l–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

20. Amend § 563b.101 by adding a new sentence at the end of Item 7(c)(1)(C)(v) and revising Item 7(d)(7) to read as follows:

§ 563b.101—Form PS—Proxy Statement.

* * * * *

(7) * * *

(c) * * *

(1) * * *

(C) *Results of operations.* * * *

(v) * * * This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C).

* * * * *

(d) * * *

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) of this section and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in-substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

21. The authority citation for part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

22. Amend § 563c.14 by revising the first sentence of paragraph (a) to read as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years.

* * *

* * * * *

23. Amend § 563c.102 by revising Item I (7)(j)(ii) to read as follows:

§ 563c.102 Financial statement presentation.

* * * * *

I. Balance Sheet * * *

(7) * * *

(j) * * *

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C), so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the statements.

* * * * *

PART 570—BOARD RULINGS

24. The authority citation for part 570 continues to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(c)); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

§ 570.8 [Removed and reserved]

25. Section 570.8 is removed and reserved.

PART 571—STATEMENTS OF POLICY

26. The authority citation for part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

27. Amend § 571.1 by adding the following after the last sentence in paragraph (b); and by removing and reserving paragraph (d).

§ 571.1 Appraisal of real estate securing assets of insured institutions.

* * * * *

(b) *Authority of Supervisory Agent to obtain appraisals.* * * * When the trend of the ratio of assets classified under § 561.16c of this chapter to total assets is such that it raises a serious question as to an institution's financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the Supervisory Agent is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the insured institution's loans and contracts.

* * * * *

(d) [Reserved]

* * * * *

28. Amend § 571.1a by revising the introductory text of the section to read as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified.

* * * * *

29. Amend § 571.13 by revising the introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 571.13 Participation interests in pools of loans.

(a) When an insured institution purchases a participation interest in a pool of loans (in the nature of mortgage-backed securities), compliance with the documentation requirements of §§ 563.9 and 563.17 of this subchapter may be impractical.

* * * * *

(3) The originator/servicer has agreed to provide each insured institution investing in the pool a monthly report of loan delinquencies. The report shall separately indicate:

(i) The number and aggregate principal amount of loans delinquent one month and two or more months;

(ii) The book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of the originator/servicer's security interest in the collateral; and

(iii) The aggregate dollar amount of loans made by the pool, if any, on the security of the collateral acquired as described in paragraph (a)(3)(ii) of this section (other than insured loans, guaranteed loans, or contract or loans having the benefit of a guaranty by the Federal Savings and Loan Insurance Corporation) if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years when there is no maximum term limitation, or have unpaid principal balances in excess of maximum regulatory limitations or 90 percent of the security value when there is no maximum regulatory percentage of value limitation.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19174 Filed 8–17–89; 8:45 am]

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12 CFR Part 563

[No. 89–2345]

RIN 3068–AA76

Issuance and Use of Subordinated Debt Securities

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC" or the "Corporation"), is amending its regulations relating to issuance and regulatory capital treatment of subordinated debt securities by insured institutions found at 12 CFR 563.8–1. The changes are intended to increase the use of delegations, to codify certain interpretations of the rule, to add conditions of approval, and to interpretations of the rule, to add conditions of approval, and to make technical revisions in the rule. In addition, the final rule modifies the bases for supervisory objection to approval of a subordinated debt application now found at 12 CFR 563.8–1(b)(2) by authorizing the Office of Regulatory Activities of the Federal Home Loan Bank System ("Office of Regulatory Activities") to develop guidelines in consultation with the Office of District Banks and the Office of General Counsel and to specify the bases for supervisory objection to the issuance of subordinated debt (the "Guidelines"). The Guidelines developed by the Office of Regulatory Activities will be issued before the effective date of this final rule. The Board expects to limit the imposition of non-standard conditions in subordinated debt approvals. Accordingly, the Board is deleting certain of the bases for supervisory objection currently specified in the regulation, some of which have become obsolete, and the Office of Regulatory Activities will issue shortly Guidelines that specify supervisory bases for objection to subordinated debt applications. The Guidelines will implement the general standards contained in the final regulation.

Further, the rule now includes a set of standard conditions that will be applicable to approvals of applications to include subordinated debt in regulatory capital. Except in highly unusual circumstances or where supervisory objections are raised based on the Guidelines in effect at that time, the Board expects that such standard conditions will be the only conditions imposed by the Board or its delegates in the approval of subordinated debt applications.

Finally, the final rule gives the Principal Supervisory Agents ("PSAs") authority to deny as well as to approve subordinated debt applications. Coupled with this new authority, the regulation includes an appeal process designed to provide "final agency action."

The Board is aware that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt as a form of regulatory capital may become more limited than is the case today. Accordingly, to the extent that inclusion of subordinated debt as a form of regulatory capital is restricted, the revised regulatory provisions will apply to only that portion of an insured institution's subordinated debt that would be permitted to be treated as regulatory capital and to the extent such subordinated debt can be included in regulatory capital under the new legislation and new regulations issued pursuant thereto.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Glenn, Attorney, (202) 906–6203, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel; Cindy Miller, Financial Analyst, (202) 906–7492, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robyn Dennis, Financial Analyst, (202) 331–2660; or John F. Robinson, Managing Director for Surveillance and Oversight, (202) 331–4587, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Board proposed to amend its regulations concerning the issuance of subordinated debt by insured institutions found at 12 CFR 563.8–1. *See* Board Res. No. 88–1569, 54 FR 1379 (January 13, 1989). The Board invited comments on the proposed changes to the regulation at the time the proposed changes were issued. The comment period expired on March 15, 1989.

The Board has carefully studied the comments and the issues raised by the commentators in determining whether and in what manner to proceed in changing the subordinated debt regulation. As a result, while major elements of the final rule are substantially the same as the language proposed, some provisions have been changed in response to comments.

I. Background

Since 1973, the Board, as operating head of the FSLIC, has permitted insured institutions to include as part of their regulatory capital the proceeds of the sale of subordinated debt securities issued pursuant to 12 CFR 563.8–1. Initially, insured institutions were permitted to include as regulatory capital the principal amount of such debt securities up to a limit of 20 percent of their capital. In 1982, the Board amended its regulations to allow insured institutions to include the full amount of the proceeds of the sale of subordinated debt securities having a remaining maturity in excess of one year as part of their capital and statutory reserve.[1] On April 18, 1985, the Board further amended its regulations to require that the amount of qualifying subordinated debt with a remaining period to maturity of less than seven years that may be included as regulatory capital must be reduced annually pursuant to an amortization schedule set forth in § 561.13.[2] The principal rationale underlying the Board's decision to allow the inclusion in regulatory capital of the proceeds of the sale of subordinated debt securities issued under 12 CFR 563.8–1 is that subordinated debt meeting the requirements of the regulation has some of the characteristics of other types of permanent capital and reduces the risks to the FSLIC.

On August 10, 1987, the President signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100–86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory process. As required by CEBA, the Board on October 9, 1987, promulgated Applications Processing Guidelines as part of 12 CFR 571.12. The present regulatory proposal seeks to promote more efficient processing of subordinated debt applications, consistent with the objectives of CEBA and the requirements of the Applications Processing Guidelines, and also reflects an additional four years of experience with the subordinated debt regulation since the regulation was last amended. The Board is aware, however, that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt may be more limited than is the case today. Thus, the revised regulations will apply to only that

[1] See Resolution No. 82–581 (August 26, 1982). Under Generally Accepted Accounting Principles ("GAAP"), subordinated debt is treated as a liability.

[2] See Resolution No. 85–292, 50 FR 20550 (May 17, 1985).

portion of an insured institution's subordinated debt that is permitted to be treated as regulatory capital under the new legislation and new regulations issued thereunder.

The rule changes herein are effective September 18, 1989, and are applicable to subordinated debt applications in process but not yet deemed complete as well as those filed after the effective date of this rule.

The Board has followed the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 by publishing the proposed rules for notice and comment. *See* 54 FR 1379, January 13, 1989. The Board has determined that the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is appropriate in this instance.

II. Summary of Comments and Discussion of the Rule

The Board received two letters of comment on the Board's rule proposal—one from an insured institution and one from a thrift industry trade association. The letters were generally supportive of the rule proposal. The following paragraphs address the concerns raised in those letters as well as further insights of the Board and its staff.

1. Issuance of Guidelines

One commentator objected to authorizing the Office of Regulatory Activities to issue Guidelines. While the Board has considered this objection, the Board is of the opinion that, on balance, the industry and the agency are better served by having guidelines that can be changed as opposed to having no guidelines and that up-to-date specific guidelines are preferable to out-of-date vague regulations.

Guidelines will provide a mechanism to clarify and keep current the bases for supervisory objection to applications to include subordinated debt in regulatory capital of insured institutions. The use of uniform Guidelines also should increase efficiency in approving applications to include subordinated debt issues as part of regulatory capital.[3]

The Office of Regulatory Activities will prepare such Guidelines in consultation with the Board's Office of District Banks and the Board's Office of General Counsel. These Guidelines will be published in the near future before the effective date of this rule. In keeping with the Board's desire to have uniform national supervisory policies, the Office of Regulatory Activities, under the Board's oversight, will administer and maintain the Guidelines on an on-going basis. The format of Guidelines will allow for increased flexibility in future modifications, as needed. The Guidelines are designed to identify supervisory factors that PSAs may use in considering whether to approve or deny an application. Some of the current bases for supervisory objections now set forth at 12 CFR 563.8–1(b)(2) are obsolete and have been revised and/or expanded into Guidelines. The Guidelines are illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District banks and the Office of General Counsel will be able in the future to change the Guidelines as circumstances warrant, without the necessity for notice and comment rulemaking.[4]

2. Defaults and Other Events Providing for Mandatory Prepayment of Principal

One of the factors considered in the processing of a subordinated debt application is whether the issuance of the subordinated debt securities and any related transactions will result in a transfer of risk from the FSLIC to parties other than insured institutions. See 12 CFR 563.8–1(b)(3). The Board, on the basis of this provision, has objected to the inclusion in subordinated debt instruments of terms that provide for mandatory redemption of the debt or for events of default (which could give rise to acceleration of maturity of the principal of the debt) based on changes in control of the obligor (known in anti-takeover parlance as a "poisoned put"), or a failure of the obligor to comply with maintenance and operating covenants that were believed to be unreasonable in the circumstances. In this connection, the Board notes that one of the bases for permitting an insured institution to include an amount equal to the proceeds of the sale of subordinated debt securities in its regulatory capital is that the issuance of such securities represents a relatively long term commitment of capital to the insured institution. For this reason, the Board has not approved subordinated debt applications where the subordinated debt securities (or the indentures pursuant to which they were proposed to be issued) included provisions that might unduly accelerate payment of the debt prior to scheduled maturities, because such provisions could subject the FSLIC to a significant risk of precipitous decline in an institution's regulatory capital. The Board recognizes, however, that to effect a successful offering of debt securities, the securities, or the indentures pursuant to which they are issued, must include provisions that investors have come to accept as customary in offerings of such type, to the extent such provisions can be included without frustrating the purpose of the subordinated debt regulation. Thus, although provisions that require acceleration of maturity (through declaration, mandatory prepayments, or otherwise) following a change of control of the obligor will continue to be objectionable, the Board will not object to subordinated debt applications solely because the terms of the securities (or related indentures) include events of default such as failure to make timely payment of interest and principal, failure to comply with reasonable and customary financial maintenance and operating covenants, and certain events of bankruptcy or insolvency, receivership, and similar events. The final rule has been revised appropriately to add clarifying language to 12 CFR 563.8–1(b)(3) to address these considerations.

3. Voluntary Prepayments

The subordinated debt regulation provides that payment of principal may not be accelerated without approval of the FSLIC, if, after giving effect to such accelerated payment, the insured institution obligor would fail to meet its regulatory capital requirement. 12 CFR 563.8–1(d)(1)(iv). The Board has consistently taken the position that if any mandatory prepayment (such as payment upon acceleration of maturity following an event of default) is restricted to this extent, *a fortiori*, any voluntary prepayment should be similarly restricted. Further, an institution obviously should not be permitted to make such payments if the institution is already failing to meet its regulatory capital requirements. 12 CFR 563.8–1(d)(1)(iv) now reflects these long-standing interpretive positions.

4. Issuance of Subordinated Debt Securities Pursuant to an Indenture

While the Board proposed for comment the proposition that all insured institutions be subject to requirements based upon standards of the Trust Indenture Act of 1939, as amended, ("TIA") 15 U.S.C. 77aaa–77bbbb, the Board has decided to take a more

[3] In its release No. 87–1298 dated December 22, 1987, the Board similarly authorized the Office of Regulatory Activities to develop guidelines for administering the Board's new rule providing for individual minimum capital requirements. See 12 CFR 563.14.

[4] Such Guidelines will not form the basis for assertions of violations of statutes and regulations, but may be part of a finding that an institution is engaged in unsafe or unsound practices.

limited approach. The Board considers the benefits of the use of an indenture in certain circumstances to be beneficial to the discipline of the institution and for the institution in dealing with its debt holders. Thus the Board has determined to require an issuer to issue its subordinated debt securities pursuant to an indenture in certain circumstances. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or exceeds $5,000,000 in any consecutive thirty-six month period.

One commentator suggested that the proposed trust indenture requirement should "grandfather" any subordinated offerings already approved by the Board. The Board has followed that suggestion. The indenture requirement will be applicable to subordinated debt applications in process but not yet deemed complete as well as those applications filed after the effective date of the rule.

Another commentator objected to the requirement that some subordinated debt offerings would be required to use an indenture. That commentator opposed the requirement of using an indenture because of the added cost to an insured institution for the trust indenture and the related costs of the trustee's expenses over the life of the obligations.[5] The Board has considered the objections of this commentator, but has determined to adopt the limited requirement outlined above.

The TIA, which by its terms is inapplicable to securities issued by insured institutions, and the Rules and Regulations under the TIA provide, generally, that any debt securities offered and sold to the public by a single obligor in an amount in excess of $2,000,000 in any consecutive twelve month period must be issued pursuant to an indenture and that debt securities that are publicly offered and sold by the same obligor in an amount exceeding $5,000,000 in any consecutive thirty-sixty month period must be issued pursuant to an indenture that is "qualified" under the TIA. See 17 CFR 260.4(a)(1) and 260.4(a)(2). Although the TIA specifies in considerable detail the provisions that must be included in a qualified indenture (which required provisions relate principally to the qualifications, duties and powers of the trustee, the duties of the obligor, and the rights of the holders of the debt securities), neither the TIA nor the rules promulgated thereunder set forth any requirements with respect to the provisions of a non-qualified indenture. The Securities and Exchange Commission, however, for many years has taken the position that any indenture must, at a minimum, provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and provide some reasonable procedures for the collective enforcement of the rights of the holders of the debt securities.

The Board's experience has been that most publicly offered issues of subordinated debt securities of any significant size by insured institutions are offered and sold through underwriters, and in such cases the securities are invariably issued pursuant to an indenture that includes all or substantially all of the provisions that would be required to be included in an indenture qualified under the TIA. The use of an indenture in connection with the issuance of subordinated debt securities can be beneficial, since certain of the terms included in such an indenture may provide a framework of financial discipline for the obligor, which in some cases may further the interests of the Board and the FSLIC. Further, it may be more efficient and workable for the insured institution obligor to deal with a trustee (some actions may be subject to ratification by the holders of a specified majority in principal amount of the debt securities) if the debtor should desire to amend the terms of the securities or to obtain a waiver of any convenants provided therein, or in the related indenture, rather than to contend with a large number of individual security holders. The Board is aware that the requirement to use an indenture will result in additional expense to certain issuing institutions but has concluded that the additional expense is warranted by the benefit received.

5. Reports

One commentator noted that GAAP requires an institution to include as a balance sheet liability the entire amount of subordinated debt issued including any capitalized expenses and therefore this commentator argues that the Board should allow insured institutions to include as regulatory capital all subordinated debt, including the portion of the subordinated debt offset by the expenses of the debt offering. The Board agrees that GAAP requires the entire debt to be listed on the liability side of the balance sheet. However, under GAAP, no portion of debt is included as capital. The purpose of the Board's subordinated debt regulation is to specify the portion of subordinated debt the Board is willing to count as "capital" for regulatory purposes. Since capital is designed to provide protection for the FSLIC and since only net proceeds provide that protection, the Board is willing to give such credit for only the actual net amount of moneys raised by the issuer that are available for the insured institution's use and that meet the other requirements of 12 CFR 563.13 for inclusion as regulatory capital. Thus this aspect of the proposed regulation has not been changed.

To clarify this point, however, the Board has added the additional sentence to the requirement in 12 CFR 563.8–1(b) that an insured institution must file a report with the Board 30 days after completion of the sale of subordinated debt securities. This sentence clarifies that the amount to be included in regulatory capital is an amount net of all expenses incurred in connection with the sale of the subordinated debt securities. This revised provision requires the issuing institution to specify the actual amount of the proceeds from the sale of the subordinated debt securities that the insured institution initially intends to include in its regulatory capital.[6]

6. Delegations of Authority

Currently, PSAs are authorized to approve applications filed pursuant to 12 CFR 563.8–1 unless such applications involve significant issues of law or policy upon which the Board has not taken a formal position, or unless an offering circular will be required in connection with the public offering and sale of the securities that are the subject of any such application. The revised regulation eliminates the requirement that an application be forwarded to Washington solely because an offering circular is involved and gives the PSAs

[5] The Board notes that both bank holding companies and savings and loan holding companies would have to comply with all of the requirements of the TIA. Any related exemptions to the TIA would apply only to any debt securities issued by their subsidiary insured institutions and not to the holding company itself.

[6] On an ongoing basis, the insured institution must calculate the amount of subordinated debt including any unaccreted premiums or unamortized discounts as required by GAAP. This concept means essentially that as the capitalized expenses of the debt offering are amortized over the life of the obligations, the net amount of subordinated debt to be counted as capital will increase. Similarly, as any premium on the sale of the debt is amortized over the life of the obligations, the net amount of subordinated debt that will be counted as capital will decrease.

authority to deny applications as well as to approve them, subject to an appeal process. Applicants must be aware, however, that even though the PSA under the proposed regulatory amendments could approve a subordinated debt application where securities are to be sold pursuant to an offering circular even if such offering circular has not yet been declared effective, PSA approval would be conditioned upon the offering circular in the form declared effective not disclosing any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the subordinated debt application.

At the present time, the Board is concerned about so-called "retail" sales of subordinated debt securities by institutions on their own premises. Such sales present a variety of legal and policy concerns. Accordingly, where such sales of subordinated debt are proposed to be made by the institution itself in its offices or those of an affiliate, those applications will be carefully reviewed consistent with the guidance provided by the Office of Regulatory Activities (*see,* Thrift Bulletin 23, dated April 13, 1989) and the Corporate and Securities Division, Office of General Counsel. If such application fails to meet such standards, the PSA should deem the application to involve significant issues of law and policy and refer the application to Washington DC to be considered by the Board.

The revised regulation otherwise further delegates authority to approve or deny requests for extensions of time requested pursuant to 12 CFR 563.8–1(g) to whomever is authorized to approve an application. Such extensions of time could be granted for a period of time of up to six months. All such extensions of time taken together may not exceed one year from the date of the original approval of the subordinated debt application.

7. Appeals

The Board has considered an additional idea that the "appeal process" should include the right to appeal any non-standard conditions included in the approval of a subordinated debt application by the PSA pursuant to their newly delegated authority. While the Board does not expect the PSAs to be including non-standard conditions in their approvals of subordinated debt applications, the Board thinks that the idea is appropriate and has revised the final rule accordingly.

In connection with the delegation of authority to the PSA's to deny applications under 12 CFR 563.8–1, the Board is adopting an appeal process for the further consideration of denials of applications by the PSAs in the form originally proposed. In essence, the appeal process requires any applicant wishing to appeal a determination of the PSA to file with the Office of District Banks, within 30 days of the PSA's determination, a written request for review describing with specificity the action appealed from and the relief sought. The filing of such a request will be necessary to seek judicial review of an initial determination. Such appeals will be processed under the time-frames and other requirements of the Board's standard applications processing guidelines at 12 CFR 571.12.

The Director of the Office of District Banks, with the concurrence of the Executive Director of the Office of Regulatory Activities, and the General Counsel, or their respective designees shall consider appeals from denials by the PSAs unless the Director of the Office of District Banks in his or her sole discretion determines to refer the appeal to the Board on the basis that the appeal involves policy considerations that warrant resolution by the Board. In the event that the Director of the Office of District Banks fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities and the General Counsel, the Director of the Office of District Banks shall present the matter to the Board.

8. Standard Conditions of Approval

The Board has considered the concept that one of the "standard conditions" to be included in the regulation could require that before any offers or sales of the subordinated debt are made on the premises of the institution or any of its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of the subordinated debt satisfactory to the supervisory agent. Such policies and procedures would address the considerations set forth by the Office of Regulatory Activities in its Thrift Bulletin 23 issued on April 13, 1989. The Board has considered such an idea to have substantial merit and has included such a provision in the final regulation.

With the foregoing addition, the Board is adopting the proposed set of standard conditions that will apply to all approvals of subordinated debt applications. The Board anticipates that such conditions will, except in rare cases, be the only conditions applied to subordinated debt approvals. Other conditions would be imposed only where one or more of the bases for supervisory objection specified in the Guidelines developed by the Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel are present and where such non-standard conditions are necessary to address the areas of concern that would otherwise form a basis for denial of the application. These standard conditions of approval also will apply to any subordinated debt application that is approved automatically pursuant to the Board's Applications Processing Guidelines found at 12 CFR 571.12. For technical considerations, these conditions are now included in the text of the rule rather than in a separate appendix as proposed.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule applies.* The final rule will apply to all FSLIC-insured institutions without regard to size. However, the Small Business Administration defines a small financial institution as a "commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1987). Therefore, small entities to which the rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the final rule on small entities.* The Board believes that the revision to procedures for processing subordinated debt securities applications will not have a disparate effect on small entities. To the extent that under the revised regulations small entities will more likely be able to file their applications at their district Federal Home Loan Bank, the impact of the proposal will be liberalizing.

4. *Overlapping or conflicting Federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the final rule.* There are no alternatives that would be less burdensome than the rule changes addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set for above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.8–1 by revising paragraphs (b)(2), (b)(3), and (d)(1)(iv); by adding a new paragraph (d)(4); by revising paragraphs (e), (h), and (i); and by adding new paragraphs (j) and (k), to read as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.* * * *

(2) Whether in the opinion of the Corporation, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel shall establish Guidelines for the Principal Supervisory Agents to apply in exercising authority delegated to them in considering applications under this section. These Guidelines shall identify supervisory bases that may be used to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel may modify such Guidelines from time to time as appropriate. Any such changes to the Guidelines shall be effective for those applications filed after the date of the changes to the Guidelines and for those applications submitted for approval but not yet deemed "complete."

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions. In this connection, the issuance of subordinated debt securities shall be deemed to result in an insufficient transfer of risk from the Corporation if such securities or any indenture or related agreement pursuant to which such securities are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of (i) the obligor's failure to make timely payment of interest and principal, (ii) the obligor's failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and (iii) events of default relating to certain events of bankruptcy or insolvency, receivership, and similar events.

* * * * *

(d) * * *

(1) * * *

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the Corporation, if the institution is failing to meet its regulatory capital requirement or if after giving effect to such payment the institution would fail to meet its regulatory capital requirement; and

* * * * *

(4) *Indenture.* An issuer must use an indenture, as described herein, for subordinated debt securities offered pursuant to this section. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor (as defined in 12 CFR 563.15) and provide for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a private non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or $5,000,000 in any consecutive thirty-six month period.

(e) *Filing of application.* Applications for approval of the issuance of subordinated debt securities under this section shall be filed by transmitting the original and three copies of the application and all supporting documents to the institution's Principal Supervisory Agent.

* * * * *

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution. The institution's report shall clearly state the amount of subordinated debt, net of all expenses, that the institution initially intends to be counted as regulatory capital.

(i) *Delegation of authority.* Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the Principal Supervisory Agent is authorized:

(1) To approve an application filed pursuant to this section, if the application is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) *Appeals.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided for in this section, the applicant must file a written request for review with the Office of District Banks stating the applicant's desire to appeal the Principal Supervisory Agent's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Office of District Banks, Applications Policy Division, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. One copy of such request should be

addressed to the attention of "Office of District Banks;" one copy to the attention of "Office of General Counsel, Corporate and Securities Division;" and one copy to the attention of "Office of Regulatory Activities, Corporate Activities Section." Also, one copy shall be sent to the appropriate Principal Supervisory Agent. The Principal Supervisory Agent shall thereupon forward to the Office of District Banks his record or a copy thereof used as a basis for his determination together with any other information believed by the Principal Supervisory Agent to be helpful in reviewing his determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Principal Supervisory Agent is waived. A timely filing of a request for review with the Office of District Banks in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee shall decide each appeal from a denial of an application under 12 CFR 563.8–1 by a Principal Supervisory Agent or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee, shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Corporation. If the Director of the Office of District Banks, or his or her designee, in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Corporation, the Director, or his or her designee, shall submit the application to the Corporation for its determination. In the event that the Director, or his or her designee, fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director, or his or her designee, shall present the matter to the Corporation for its determination.

(k) *Conditions of approval.* Approvals of subordinated debt applications shall be subject to the following conditions:

(1) Where securities are to be sold pursuant to an offering circular required to be filed with the Corporation pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

(2) The applicant shall submit to the Supervisory Agent, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt securities;

(3) The applicant shall submit to the Supervisory Agent no later than 30 days from the completion of the sale of the securities, the report(s) required by § 563.8–1(h) of the Insurance Regulations and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement or indenture governing the issuance of the securities; and

(ii) A certificate from the principal executive officer of the applicant that states that to the best of his knowledge none of the securities issued pursuant to the subject application were sold to any institution whose accounts are insured by the FSLIC, or a corporate affiliate thereof, except as permitted by § 563.8–1 of the Insurance Regulations;

(4) That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Principal Supervisory Agent;

(5) The applicant shall submit an application and receive prior written approval of the Principal Supervisory Agent for any post-approval amendment to the subordinated debt securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the regulations as may then be in effect or would result in a transfer of risk to the applicant or the FSLIC; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment;

(6) The applicant shall submit to the Supervisory Agent promptly after execution one copy of each post-approval amendment to the securities or the related indenture and, if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required; and

(7) Before any offers or sales of the subordinated debt are made on the premises of the institution or its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of subordinated debt satisfactory to the Supervisory Agent.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19277 Filed 8–17–89; 8:45am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 122

RIN 1076–AB51

Management of Osage Judgment Funds for Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends part 122 of 25 CFR, Management of Osage Judgment Funds for Education and Socioeconomic Programs, by excluding all references to the "socioeconomic" provisions. At the request of the Osage Indian Tribe, on October 30, 1984, Congress enacted legislation which eliminated the numerous requests for an interpretation of the socioeconomic provision. In addition, this action assures the availability of funds for financial assistance to eligible Osage tribal members pursuing post secondary education degrees. Part 122 is retitled "Management of Osage Judgment Funds for Education."

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald Rodriguez, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3512, 18th & C Streets, NW., Washington, DC 20240, (202) 343–4871.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that this document is not a major rule and does not require regulatory analysis under Executive

Order 12291. This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. This regulation does not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations will not have an impact on small entities as defined in the Act.

The primary author of this document is Reginald Rodriguez, Education Specialist, Post Secondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 343–4871.

On October 30, 1984, Pub. L. 98–605 was enacted to clarify and to make technical amendments to the various acts pertaining to the Osage Indians. The amendment deletes the "socioeconomic" provisions.

Because of the time expended by the Osage Tribal Education Committee (OTEC) to resolve the numerous complaints and requests for interpretation of the "socioeconomic" provision, along with the limited availability of funds for both the "socioeconomic" programs and the educational demands of tribal members, the "socioeconomic" provision in § 122.7 of 25 CFR part 122, Management of Osage Judgment Funds for Education and Socioeconomic Programs, is removed. This removal will provide the Osage Tribal Education Committee the opportunity to concentrate its energies and monies on education, which the Osage Tribal members have established as a principal priority. Other deletions were made; i.e., the definitions of the point system and the ranking of applications. However, the Osage Tribal Education Committee is minimally obligated to obtain approval from the Assistant Secretary—Indian Affairs for proposed budget expenditures and for the overall program plan of operation.

On June 30, 1988, the Bureau of Indian Affairs published a proposed rule at 53 FR 24732, and the Bureau requested that interested persons submit written comments, suggestions, or objections on or before August 29, 1988. One commenter submitted three written recommendations. These recommendations reference § 122.6, Duties of the Osage Tribal Education Committee. The following is a summary of the recommended comments and the Bureau's responses are noted as follows:

Section 122.6 Duties of the Osage Tribal Education Committee

Comments. The commenter requested that this part limit the funding period for the pursuit of a Master's degree to "* * * six semesters, not to include summer sessions, * * *", and that Doctoral program candidates be considered on a case by case basis by the Osage Tribal Education Committee. In addition, it was recommended that the unused first and second semester funds be redistributed for summer school.

Response. The Bureau recommends that advanced degrees, i.e., Masters and Doctoral programs, be funded at the discretion of the Osage Tribal Education Committee contingent upon the availability of funds on a case by case basis; however, because the Bureau wishes to support tribal autonomy, the Bureau also declines to insert into the regulations the recommendation for the redistribution for summer school of unused first and second semester funds. This will remain a committee choice. The Bureau, therefore, has not incorporated the Commenter's recommendations.

Information Collection Statement

The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1078–0098 and 1076–0106, respectively.

List of Subjects in 25 CFR Part 122

Indian-claims, Indian-education, and Indian-judgment funds.

For the reasons set out in the preamble, title 25, chapter I, part 122 of the Code of Federal regulations is revised to read as follows:

PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.

Authority: 86 Stat. 1295, 98 Stat. 3103 (25 U.S.C. 331 note).

§ 122.1 Purpose and scope.

(a) The purpose of this part is to set forth procedures and guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members, along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 12950, as amended by Pub. L. 98–605) on October 30, 1984, provides that $1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

§ 122.2 Definitions.

Act means Osage Tribe by Act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98–605.

Allottee means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Osage Tribal Education Committee means the committee selected to administer the provisions of this part as specified by § 122.6.

Reverted funds means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than $20 due an individual from one or more shares of one or more Osage allottees.

Secretary means the Secretary of the Department of the Interior or his/her authorized representative.

§ 122.3 Information collection.

(a) The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively. The information collected in § 122.6 is used to determine the eligibility of Osage Indian student applicants for educational assistance grants. The information collected in § 122.9 provides summary review for program evaluation and program planning. Response to the information collections is required to obtain a benefit in accordance with 25 U.S.C. 883.

(b) Public reporting burden for this information collection is estimated to average 30 minutes per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337 SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington DC 20503.

§ 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe, to maintain its right of Tribal autonomy, shall, at the direction of the Bureau of Indian Affairs, establish the Osage Tribal Education Committee (OTEC) to fulfill the responsibilities and provisions of this part as set out in § 122.6.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendents of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

§ 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to serve on the Osage Tribal Education Committee.

(2) Nominees for committee membership shall include a brief statement of interest and qualifications for serving on the committee.

(b) Nominations may be made by any Osage organization, including the Osage village communities of Greyhorse, Hominy and Pawhuska, by requesting its candidates to follow procedures outlined in paragraph (a)(2) of this section.

(c) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office—Room 152, 5th & W, Okmulgee, Muskogee, Oklahoma 74401.

(d) A Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process, the Nominee Selection Committee will forward its recommendations for final consideration to the Assistant Secretary.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

(f) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve for a temporary period not to exceed 120 days.

§ 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational assistance, the Osage Tribal Education Committee shall maintain an office and retain all official records at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination which incorporates a systematic sequential process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system appropriate to applications for education assistance. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request, and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student, with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

§ 122.7 Budget.

(a) By August 1 of each year, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restrictions by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars appropriated by the Act and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the Federal Government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or sayings institution or invested in the same obligations of the United States Government for the same period of time.

§ 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Recordkeeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

§ 122.9 Annual Report.

The Osage Tribal Education Committee shall submit an annual report on OMB approved Form 1076–0106, Higher Education Annual Report, to the Assistant Secretary or his/her designated representative on or before November 1, for the preceding 12 month period.

§ 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR Part 2, Appeals from Administrative Action.

§ 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-19340 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 1359-89]

Redress Provisions for Persons of Japanese Ancestry

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice hereby adopts rules for the enforcement of section 105 of the Civil Liberties Act of 1988, Pub. L. 100-383, 102 Stat. 903, codified at 50 U.S.C. app. 1989b-4, which authorizes the Attorney General to identify, locate, and when funds are appropriated, make payments of $20,000 to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection at the Office of Redress Administration facility at 1100 Connecticut Avenue NW., Washington, DC in Suite 825 from 9:30 a.m. to 5:30 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Valerie O'Brian, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 633-5119 (Voice) or (202) 786-5986 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988 enacts into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980 (Pub. L. 96-317). This bipartisan Commission was established to review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive Order on American citizens and permanent resident aliens of Japanese ancestry; to review directives of United States military forces requiring the relocation, and in some cases, detention in internment camps of these American citizens and permanent resident aliens; and to recommend appropriate remedies. The Commission submitted to Congress in February, 1983, a unanimous report, *Personal Justice Denied,* which extensively reviewed the history and circumstances of the decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of the Aleuts during World War II. The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations,* concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by the Congress and the President.

On August 10, 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 into law. The purposes of the Act are to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future.

Section 105 of the Act assigned the Attorney General the responsibility and duties for the restitution provisions. The Attorney General delegated the responsibilities and duties assigned him by the Act to the Assistant Attorney General for Civil Rights, who, in turn, established the Office of Redress Administration in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act.

The Office of Redress Administration (ORA) is charged with the responsibility of identifying and locating persons eligible under the Act, without requiring any application for payment, within twelve months after the date of enactment of the Act (August 10, 1988), or within twelve months after the appropriation of funds necessary to complete the identification process. To date no appropriations have been made. It was estimated by the Commission on Wartime Relocation and Internment of Civilians that approximately 120,000 American citizens and permanent resident aliens of Japanese ancestry were affected by the exclusion. Of these, an estimated 60,000 individuals survive and are eligible for redress payment.

In its efforts to identify and locate these individuals, the Office of Redress Administration has initiated a highly publicized outreach program to the Japanese American community to encourage those persons thought to be eligible to notify the Office with information concerning their eligibility and current residences. On September 19, 1988, the Office of Redress Administration announced the establishment of a toll free telephone number and a U.S. Post Office Box designed to accommodate individuals wishing to ask questions or volunteer information concerning their eligibility. This announcement also was publicized in Japanese American newspapers. The Office also placed its West Coast staff in San Francisco, California, for ninety days in order to establish close working relationships with the leaders of Japanese American organizations to ensure that the Office would reach as many eligible persons as possible.

Section 105 of the Act also requires the Attorney General to notify each eligible individual in writing as to a determination of eligibility, and to authorize the payment of $20,000 to each eligible individual. Payment will be made in the order of the date of birth pursuant to Section 105(b).

Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988 (or his or her statutory heirs), who has been located by the Administrator at that time. Payments will continue to be made until all eligible persons have received payment. For this purpose, the Act specifies that a total of $1,250,000,000 is to be placed in the United States Civil Liberties Public Education Fund from which payments may be made. Because the Act specifies that no more than $500,000,000 may be appropriated in any one year, not all payments can be made at one time.

During the period of drafting the proposed regulations, many individuals and organizations in the Japanese American community contacted the Civil Rights Division to ask questions and express concern regarding the determination of eligibility. In response to these concerns the Division published a Notice in the **Federal Register**, 53 FR 41252 (October 20, 1988), inviting the public to submit comments during the proposed regulation's drafting period on three issues that seemed to be of major concern to the public. These issues pertained to the eligibility of minors who were relocated to Japan between

December 7, 1941 and September 2, 1945, persons of Japanese ancestry sent to the United States from other American republics during World War II as a result of international agreements, and voluntary evacuees who did not file "Change of Residence"cards.

In response to this Notice, the Office of Redress Administration received one hundred forty-eight comments regarding these and other issues of eligibility, all of which have been placed for public inspection in the public reading room of the ORA office. Some respondents were United States citizens of Japanese ancestry who were relocated to Japan without consent as minors during World War II. These individuals expressed the belief that their constitutional rights had been violated at the time and to exclude them now from compensation would brand them as disloyal Japanese Americans. Most other comments concerned the plight of individuals of Japanese ancestry from other American countries who were interned in the United States. Letters from those so interned, and others who were not, generally supported compensation to these persons. Comments regarding voluntary evacuees who did not file "Change of Residence" cards provided further evidence that verification of the status of these individuals will need to be done on a case by case basis in order to determine if such persons evacuated as a result of government action. Finally, the Office of Redress Administration received letters from Japanese American World War II veterans whose families had been evacuated. Some of these soldiers had been unable to return to unauthorized zones to protect their property, while others had been prohibited from visiting their families in relocation centers. These veterans voiced the concern that the Act might not include them as eligible.

In drafting the proposed regulations, the Division read and considered each comment. The decisions that the Division made in response to these comments were made on a thorough consideration of the merits of each point of view expressed in the comments.

On June 14, 1989, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the implementation of section 105 of the Civil Liberties Act of 1988. 54 FR 25291. By July 14, 1989, the close of the comment period, the Division had received 157 comments, 146 from individuals, 9 from organizations representing the interests of Japanese Americans, and 2 from members of Congress. Of these comments, 130 were based on two form letters supporting eligibility for three groups determined ineligible in the proposed regulation: Japanese American minors who were relocated to Japan during World War II, children of parents who had voluntarily evacuated from the excluded zones, and Latin American Japanese brought to the United States for internment during World War II. Thirteen other comments expressed concern that the requirements for documents for verification of identity were unduly burdensome.

The Division read and analyzed each comment. In response to these comments the Office of Redress Administration made changes to the proposed regulations incorporating suggestions where appropriate. However, such changes were not made on the basis of the number of comments addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Other non-substantive changes were made in order to provide further clarification of the implementation procedures.

II. Responses to Comments and Summary of the Regulations and Revisions

These regulations, which consist of five subparts, implement section 105 of the Act. Subpart A states the purpose of the regulation and defines key terms; subpart B lists the categories of individuals determined to be eligible or ineligible in accordance with the statute; subpart C establishes a procedure through which the Office of Redress Administration will identify and locate all eligible individuals; subpart D establishes the procedures for payment; and subpart E establishes an appeals process whereby an individual who is determined by the Redress Administrator to be ineligible may petition for a reconsideration of that finding.

The first issue of eligibility is concerned with the statutory threshold requirement that an eligible person be an individual of "Japanese ancestry." Records of the evacuation period indicate that there were approximately 80 non-Japanese who were interned with their Japanese American spouses or children. (It is estimated that perhaps 40 such persons are still living.) The Government required these persons to sign a waiver of their rights as non-excluded individuals in order to accompany spouses or children to assembly centers and relocation camps. These wives, husbands and parents executed WPC Form PM–7, "Request and Waiver of Non-Excluded Person," which requested leave to accompany a member of his or her family through all the stages of evacuation and internment as if they were persons of Japanese ancestry. In reality these non-Japanese spouses and parents were confronted by a horrifying choice. They could either "elect" to accompany their spouses or children throughout the removal and internment process, or choose to be separated from them. In the event that there was no Japanese parent or adult relative to accompany the child the Government policy was to take the part-Japanese child and place him or her in an institution and later transfer the child to the Children's Center under the supervision of the War Relocation Authority at Manzanar, California. Obviously, every human instinct would compel these parents to "elect" evacuation.

Unfortunately, however, section 108(2) of the Civil Liberties Act of 1988 limits the definition of an "eligible individual" specifically to "any individual of Japanese ancestry." Indeed, the focus throughout the Act is on those of Japanese ancestry and the discrimination they suffered based on their race. In light of the specificity with which Congress has spoken and its focus on the racial discrimination suffered, it must be concluded that the statute authorizes compensation be paid only to those of Japanese ancestry, and not to those who are of non-Japanese ancestry but who were nevertheless interned.

Although the phrase "of Japanese ancestry" in the Civil Liberties Act of 1988 cannot be interpreted in the regulation to include non-Japanese family members for purposes of compensation, it is undeniable that these individuals suffered the very injury that the Civil Liberties Act of 1988 is designed to redress and compensate, and that they should be compensated. Therefore, the Department will submit legislation to the Congress to amend the Civil Liberties Act of 1988 to render eligible those non-Japanese family members who suffered the effects of the government's internment policy by accompanying their spouses or children of Japanese ancestry through the evacuation and internment process.

A second area of inquiry regarding eligibility pertains to the method of confinement. It is clear from the findings by the Commission on Wartime Relocation of Civilians that the evacuation, relocation or internment of the Japanese Americans and Japanese resident aliens was not a single uniform action. Indeed, in section 108(2)(B)(i) (I)–(III) Congress specifically included language to ensure that the Act covered individuals confined, held in custody,

relocated, or "otherwise deprived of liberty or property" as a result of any action taken by the United States or its agents solely on the basis of Japanese ancestry during the period from December 7, 1941 to June 30, 1946. Therefore, in addition to persons deprived of liberty or property solely on the basis of Japanese ancestry by placement in relocation centers under the supervision of the Wartime Relocation Authority, or in camps under the authority of the Department of Justice or the U.S. Army, others who were deprived of liberty by other Government actions would also be eligible. As the discussion below illustrates, the language "otherwise deprived of liberty or property as a result (of government actions)" may be interpreted to include several categories of individuals. One example of a deprivation of liberty could be institutionalized persons who were unable to evacuate from the prohibited areas and were placed in the custody of the Wartime Relocation Authority.

In addition, some individuals who were members of the U.S. Armed Forces on or before mandatory evacuation on March 31, 1942, and not discharged from duty by that date, and whose domiciles were in excluded areas, could be determined to be eligible under section 108(2)(B)(i) as persons "otherwise deprived of liberty or property" as a result of the acts enumerated in subsections (I), (II), and (III). The Western Defense Command Public Proclamation No. 11, dated August 18, 1942, excluded all Japanese citizens and aliens from Military Area No. 1 and the California portion of Military Area No. 2 without first securing written permission of the Western Defense Command. As a result, there were some soldiers who were unable to re-enter unauthorized zones and safeguard their property. Such persons, as well as those whose property was confiscated by the government, could be considered to have been "deprived of property" as a result of the exclusion policy.

The issue concerning deprivation of property was raised in the Attorney General Adjudication for the Japanese American Evacuation Act of 1948. In *Hirotoshi Oda*, 1 Adjudications of the Attorney General 361 (No. 146–35–16597, November 5, 1954), it was held that persons of Japanese ancestry who were members of the Armed Forces and sustained property losses as a result of the exclusion policy were as much entitled to compensation under the Act as if they had been evacuated to assembly centers and relocation centers with the other members of their families. In light of the statutory language of the 1988 Act and the expressed purpose of that Act, such persons may be eligible for redress.

Finally, some Japanese American soldiers were "deprived of liberty" by virtue of the fact that regulations prohibited them from entering relocation centers to visit their family members or forced Japanese American soldiers to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families. (This group could also include a small percentage of members of the United States Armed Forces of Japanese ancestry from Hawaii whose families were interned.) One respondent questioned the singling out of the members of the military for eligibility and not other non-military persons of Japanese ancestry who were temporarily outside the prohibited zone and who may also have sustained property losses as a result of exclusion policy. We note that the regulations specifically set forth two categories of eligibility for the military, § 74.3 (b)(4) and (b)(5); however, the regulations also provide in § 74.3(c) that other individuals may be determined eligible under the Act on a case-by-case basis.

Another major issue of eligibility concerns those persons who were not interned but who evacuated their places of residence during the evacuation, relocation and internment period. The central question in determining eligibility in such cases is whether the individuals concerned evacuated their places of residence "as a result of" one or other of the statutorily specified types of governmental action. See section 108(2)(B). Thus, if the individuals in question were ordered by the military to evacuate an area, their evacuation was clearly a result of a governmental action. Similarly, if they evacuated in order to avoid internment, their evacuation resulted from governmental action. In contrast, if they evacuated voluntarily, not in response to any governmental order, it would seem that they are not eligible.

Some individuals evacuated as a result of specific governmental or military directives. President Roosevelt's Executive Order 9066, empowering the Secretary of War and the Military Commanders whom he might designate to prescribe military areas from which "any and all persons may be excluded" was issued on February 19, 1942. However, even as early as December 7, 1941, agents of the government were taking custody of enemy aliens, including Japanese. On January 29, 1942, the Department of Justice announced the first of a series of zones prohibited to enemy aliens on the West Coast, ordering such persons not to enter or remain in such areas after February 24, 1942. On February 10, 1942, the Department of Justice warned all Japanese aliens (of a total Japanese and Japanese American population of about 3,500) to evacuate Terminal Island, near Los Angeles: That evacuation took place, under orders of the Navy, on February 25, 1942. Apart from these early evacuations preceding Executive Order 9066, there was at least one later case of evacuations undertaken in response to a specific military directive. On March 24, 1942, after the issuance of Executive Order 9066, but before evacuation from Military Area No. 1 was required by orders of the West Coast Military Commander, persons of Japanese ancestry were ordered to evacuate Bainbridge Island, near Seattle.

The statute reaches all of the above-described situations. Even assuming that none of these evacuations "resulted from" Executive Order 9066, section 108(2)(B)(i)(III) declares evacuees eligible if their relocation resulted from any "directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees." Thus, actions of the Department of Justice, the Federal Bureau of Investigation, the Army, the Navy, or any other federal entity, to exclude, relocate or intern persons of Japanese descent, whether taken pursuant to Executive Order 9066 or not, provide the basis for eligibility for these groups of evacuees.

Another group of persons involuntarily evacuated who are deemed eligible under the regulations consist of those who left their places of residence on the West Coast between March 2, 1942, the issuance of Public Proclamation No. 1, and March 29, 1942, the date on which the Public Proclamation No. 4 took effect whereby persons of Japanese ancestry were prohibited from leaving parts of the West Coast area because the Government was preparing to forcibly relocate them later. Section 108(2)(B)(ii) of the Act defines as eligible one who "was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone." The Conference Report explains this language as a reference to some 4,889 Japanese Americans who left the West Coast during the so-called "voluntary" phase of the Government's evacuation program, and who filed "Change of

Residence" cards with the Wartime Civil Control Administration: "The conferees intend to include individuals who filed Change of Residence cards during the period between the issuance of Public Proclamation No. 1, on March 2, 1942 and public proclamation No. 4 on March 27, 1942 as being 'enrolled on the records of the U.S. Government.' " While some individuals may have evacuated after March 2, 1942, but not have been enrolled on such cards, they may be determined on a case by case basis to be eligible if such persons were directly ordered by the Government to evacuate. (Clearly, any person of Japanese ancestry who was evacuated from an excluded zone *after* March 29, 1942 is eligible, since such an evacuation would have been a "result" either of Executive Order 9066 or of a military directive issued pursuant to it.)

There remain those cases, if any, of evacuations occurring *before* March 2, 1942, but *not* in response to a governmental order directed specifically at the evacuees. We believe that if there are any such evacuees, they cannot be considered eligible.

The Office of Redress Administration also received comments pertaining to the eligibility of certain categories of persons who were minors during the internment period. We received 63 comments stating that Japanese American children born after the parents had voluntarily relocated from the prohibited zones or had departed from relocation centers or internment camps should be eligible. While children born in assembly centers, relocations camps and internment camps are included as eligible for compensation, the regulations do not include as eligible children born after their parents had voluntarily relocated from prohibited military zones or from assembly centers, relocation camps, or internment camps.

One comment pointed out that children of Japanese ancestry born in internment camps during the internment period were not specifically listed in the regulations. Such persons were intended to be included as eligible in the proposed regulations and therefore, § 74.3(b)(7) has been amended to include as eligible children of Japanese ancestry born in the internment camps during the internment period in addition to those born in assembly centers and relocation camps.

A unique eligibility issue pertains to minors who were relocated to Japan during the period beginning on December 7, 1941 and ending on September 2, 1945. Records indicate that some minors who were United States citizens were relocated with their families during this period. The Division received 61 comments in support of the eligibility of these minors. However, in implementing section 105 of the Act, the Department must follow the clearly restrictive language in section 108(2) that specifically excludes any individual who during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country. Consequently, the exclusionary language of the Act would preclude from eligibility the minors, as well as adults, who were relocated to Japan during that particular time period.

The last major eligibility issue pertains to persons of Japanese ancestry who were sent to the United States from other American countries for restraint and repatriation pursuant to international commitments of the United States Government for the security of the United States and its associated powers. We received 77 comments advocating that all such individuals should be eligible for redress. The plight of these persons is described in the Appendix to Part I of *Personal Justice Denied.* Although these individuals were evacuated, relocated or interned similarly to those of Japanese ancestry evacuated from the West Coast, the statute's threshold requirement that an eligible person must be a citizen of the United States or a permanent resident alien excludes most of these persons from redress payment. Records indicate that the people who entered the United States under these international agreements were determined by the Department of Justice to be illegal aliens. As such, they were not lawfully admitted to the United States for permanent residence. Consequently, the restrictive language of the Act pertaining to citizenship status renders such persons ineligible. On the other hand, after World War II some of the Latin American Japanese who were brought to the United States from other American republics for internment were permitted, under applicable statutes, to apply to the Attorney General of the United States for an adjustment of their immigration status; these individuals obtained the status of permanent resident alien extending retroactively to the internment period. Such persons would meet the threshold statutory requirement under the regulations of being permanent resident aliens during the evacuation, relocation and internment period and, as such, be eligible for compensation. In addition, children born in the United States to the Latin American Japanese during their internment would, by virtue of their place of birth, be United States citizens and therefore meet the threshold requirement for eligibility.

While this preamble has endeavored to discuss eligibility issues of public concern, § 74.3 of the regulations specifically sets forth those categories of individuals who are eligible or ineligible for compensation under Section 105 of the Act.

II. Verification Procedures

The Act forbids the Government from requiring persons to file claims for redress payments, but states that the Attorney General shall locate and identify all eligible persons by using records already in the possession of the United States Government. However, any eligible person is free to notify the Attorney General and advise him of the individual's claim of eligibility. In addition to using Federal Government records, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record document or information that may be made available to the Government. Section 74.5 describes the official and unofficial sources that the Government anticipates using for identification and location of eligible persons. Section 74.6 describes the procedures whereby the Office shall endeavor to locate eligible individuals.

All information compiled in these files is subject to the statutory mandates of the Privacy Act. Therefore, the Civil Rights Division is prohibited from using or releasing this information for purposes other than those described in the Division's Privacy Act Notice of Records Systems. 54 FR 13252.

After an individual is determined to be eligible, the regulations provide for a letter of notification to be sent to the individual to notify him or her of a preliminary finding of eligibility. (§ 74.7) Enclosed with the letter will be a form and a request for documentation. The Division attached draft forms which were appended to the proposed regulations as Appendix A to Part 74. The forms are unsworn declarations under penalty of perjury. (28 U.S.C. 1746) The purpose of these forms and the requests for documentation is to verify the identity of the individuals eligible for redress in order to prevent fraud or duplication of payments.

We received 13 comments pertaining to our requests for documentation. These letters expressed concern that the requirements to submit *original* documents, particularly to document the date of birth of a candidate are unduly burdensome. In response to such comments § 74.7(b) has been amended to eliminate the requirement of

submission of a photo identification with the current legal name. In addition, documentation requirements in Appendix A to Part 74 have been modified to accept certified copies in lieu of original records as evidence of birth or current legal name and address. Furthermore, we have waived the documentation of date of birth for persons whose identification has been confirmed by the Social Security Administration (SSA). (We estimate that SSA has confirmed over one-third of the possible 60,000 surviving eligible persons.) Finally, ORA will establish a telephone number for persons to call for advice about documentation.

III. Notification and Payment

Upon receipt of a person's unsworn declaration and documentation, the Redress Administrator will make a final determination of eligibility for payment and notify the individual in writing of his finding. (§ 74.8) As required by statute, a person determined to be eligible has up to eighteen months after notification to accept payment. The statute states that a person who accepts payment waives all claims against the United States arising from government actions described in the Act. The regulations also incorporate the statutory requirement that the refusal to accept payment by a person determined to be eligible must be in writing and such refusal will be final for that person and his or her survivors. (§ 74.11)

After funds have been appropriated and actual payments are to be made, the Assistant Attorney General for Civil Rights will certify authorization for payment to the Assistant Attorney General for Justice Management, who will give final authorization to the Secretary of the Treasury. (§ 74.10) Payments will be made beginning with the oldest living eligible person that has been identified at the date the notice goes out, or his or her survivors, until all eligible persons have received payment. (§ 74.12) In accordance with the statute, the categories of survivors who can receive redress payments are limited to spouses, children, and parents. (§ 74.13) The methods for establishing proof of relationship to the deceased eligible person are set forth in § 74.14.

IV. Appeal Procedures

In order to fairly resolve those cases in which the Administrator makes a determination of ineligibility, the regulations have established an appeal process. When an individual is notified in writing of the Administrator's finding of ineligibility and reason or reasons for the finding, the letter also shall inform the individual that he or she may petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, or the official designated by the Assistant Attorney General for Civil Rights, and that he or she has the right to submit documentation in support of his or her claim of eligibility. (§ 74.15) The regulations also provide procedures for filing a request for reconsideration. (§ 74.16)

Section 74.17 describes the appeal procedure whereby the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, reviews the determination of the Redress Administrator and any documentation submitted by the requester, and then notifies the requester of his or her decision to reverse or affirm the Redress Administrator's determination of ineligibility. The decision shall constitute the final action of the Department on that appeal.

Finally, non-substantive changes have been made throughout the regulations in response to comments in order to further clarify the verification and documentation procedures.

V. Regulatory Impact Analysis

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp. p.127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601–612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me including 28 U.S.C. 509 and 510, chapter I of title 28 of the Code of Federal Regulations is amended by adding part 74 to read as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

Subpart A—General.

Authority: 50 U.S.C. app. 1989b.

Subpart A—General

§ 74.1 Purpose.

The purpose of this part is to implement section 105 of the Civil Liberties Act of 1988, which authorizes the Attorney General to locate, identify, and make payments to all eligible individuals of Japanese ancestry who were evacuated, relocated, and interned during World War II as a result of government action.

§ 74.2 Definitions.

(a) *The Act* means the Civil Liberties Act of 1988, Pub. L. 100–383, 102 Stat. 903, as codified at 50 U.S.C. app. 1989b et seq., (August 10, 1988).

(b) *The Administrator* means the Administrator in charge of the Office of Redress Administration of the Civil Rights Division.

(c) *Assembly centers and relocation centers* means those facilities established pursuant to the acts described in § 74.4(i)–(ii).

(d) *Child of an eligible individual* means a recognized natural child, an adopted child, or a step-child who lived with the eligible person in a regular parent-child relationship.

(e) *The Commission* means the Commission on Wartime Relocation and Internment of Civilians established by the Commission on Wartime Relocation and Internment Act, 50 U.S.C. app. 1981 note.

(f) *Evacuation, relocation, and internment period* means that period beginning December 7, 1941, and ending June 30, 1946.

(g) *The Fund* means the Civil Liberties Public Education Fund in the Treasury

of the United States administered by the Secretary of the Treasury pursuant to section 104 of the Civil Liberties Act of 1988.

(h) *The Office* means the Office of Redress Administration established in the Civil Rights Division of the U.S. Department of Justice to execute the responsibilities and duties assigned the Attorney General pursuant to Section 105 of the Civil Liberties Act of 1988.

(i) *Parent of an eligible individual* means the natural father and mother, or fathers and mothers through adoption.

(j) *The Report* means the published report by the Commission on Wartime Relocation and Internment of Civilians of its findings and recommendations entitled, *Personal Justice Denied*, Part I and Part II.

(k) *Spouse of an eligible individual* means a wife or husband of an eligible individual who was married to that eligible person for at least one year immediately before the death of the eligible individual.

Subpart B—Standards of Eligibility

§ 74.3 Eligibility determinations.

(a) An individual is found to be eligible if such an individual:

(1) Is of Japanese ancestry; and

(2) Was living on the date of enactment of the Act, August 10, 1988; and

(3) During the evacuation, relocation, and internment period was—

(i) A United States citizen; or

(ii) A permanent resident alien who was lawfully admitted into the United States; or

(iii) An alien, who after the evacuation, relocation and internment period, was permitted by applicable statutes to obtain the status of permanent resident alien extending to the internment period; and

(4) Was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(i) Executive Order 9066, dated February 19, 1942;

(ii) The Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining, leaving, or committing any act in military areas or zones," approved March 21, 1942; or

(iii) Any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry.

(b) The following individuals are deemed to have suffered a loss within the meaning of paragraph (a)(4) of this section:

(1) Individuals who were interned under the supervision of the wartime Relocation Authority, the Department of Justice or the United States Army; or

(2) Individuals enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending June 30, 1946, as being in a prohibited military zone, including those individuals who, during the voluntary phase of the government's evacuation program between the issuance of Public Proclamation No. 1 on March 2, 1942, and the enforcement of Public Proclamation No. 4 on March 29, 1942, filed a "Change of Residence" card with the Wartime Civil Control Administration; or

(3) Individuals ordered by the Navy to leave Bainbridge Island, off the coast of the State of Washington, or Terminal Island, near San Pedro, California; or

(4) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and whose domicile was in a prohibited zone and as a result of the government action lost property; or

(5) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and were prohibited by government regulations from visiting their interned families or forced to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families; or

(6) Individuals who, after March 29, 1942, evacuated and relocated from the West Coast as a result of government action, including those who obtained written permission to travel to a destination outside of the unauthorized areas from the Western Defense Command and the Fourth Army; or

(7) Individuals born in assembly centers, relocation centers or internment camps to parents of Japanese ancestry who had been evacuated, relocated or interned pursuant to paragraph (a)(4) of this section, including children born in the United States to parents of Japanese ancestry who were relocated to the United States from other countries in the Americas during the internment period; or

(8) Individuals who, prior to or at the time of evacuation, relocation or internment period, were in institutions, such as a hospital, pursuant to acts described in paragraph (a)(4) and, were placed under the custody of the Wartime Relocation Authority and confined within the grounds of the institution and not permitted to return to their homes or to go anywhere else.

(c) Paragraph (b) of this section is not an exhaustive list of individuals who are deemed eligible for compensation; there may be other individuals determined to be eligible under the Act on a case-by-case basis by the Redress Administrator.

§ 74.4 Individuals excluded from compensation pursuant to section 108(B) of the Act.

The term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country.

Subpart C—Verification of Eligibility

§ 74.5 Identification of eligible persons.

(a) The Office shall establish an information system with names and other identifying information of potentially eligible individuals from the following sources:

(1) Official sources:

(i) The National Archives;

(ii) The Department of Justice;

(iii) The Social Security Administration;

(iv) Internal Revenue Service;

(v) University libraries;

(vi) State and local libraries;

(vii) State and local historical societies;

(viii) State and local agencies.

(2) Unofficial sources:

(i) Potentially eligible individuals;

(ii) Eligible individuals, relatives, legal guardians, representatives, or attorneys;

(iii) Civic Associations;

(iv) Religious organizations;

(v) Such other sources that the Administrator determines are appropriate.

(b) Historic information pertaining to individuals listed in official United States Government records will be analyzed to determine if such persons are eligible for compensation as set forth in section 108 of the Act.

(c) Persons not listed in the historic records of the United States Government who volunteer information pertaining to their eligibility may be required by the Administrator to submit affidavits and documentary evidence to support assertions of eligibility.

§ 74.6 Location of eligible persons.

The Office shall compare the names and other identifying information of eligible individuals from the historical official records of the United States Government with current information from both official and unofficial sources

in the information system to determine if such persons are living or deceased and, if living, the present location of these individuals.

Subpart D—Notification and Payment

§ 74.7 Notification of eligibility.

(a) Each individual who has been found to be eligible or their statutory heirs will be sent written notification of such status by the Office. Enclosed with the notification will be a declaration to be completed by the person so notified, or by his or her legal guardian, and a request for documentation of identity.

(b) The declaration and submitted documents (Appendix A to part 74) will be used for a final verification of eligibility in order to ensure that the person identified as eligible by the Office is in fact the person who will receive payment, and shall include a request for the following information:

(1) Current legal name;

(2) Proof of name change if the current legal name is different from the name used when evacuated or interned, such as a marriage certificate or other evidence of the name change as described in Appendix A;

(3) Date of birth;

(4) Proof of date of birth as set forth in Appendix A;

(5) Current address;

(6) Proof of current address as set forth in Appendix A;

(7) Current telephone number;

(8) Social Security Number;

(9) Name when evacuated or interned;

(10) Proof of guardianship by a person executing a declaration on behalf of an eligible person as set forth in Appendix A.

(11) Proof of the relationship to a deceased eligible individual by a statutory heir as set forth in § 74.13 and Appendix A;

(12) Proof of the death of a deceased eligible person as set forth in Appendix A.

(c) The individual must submit a signed and dated statement swearing under penalty of perjury to the truth of all the information provided on the declaration. A natural or legal guardian, or any other person, including the spouse of an eligible person, who the Administrator determines is charged with the care of the individual, may submit a signed and dated statement on behalf of the eligible individual who is incompetent or otherwise under a legal disability.

(d) Upon receipt of an individual's declaration and documentation, the Administrator shall make a determination of verification of the identity of the eligible person.

(e) Each person determined not to be preliminarily eligible after review of the submitted documentation will be notified by the Redress Administrator of the finding of ineligibility and the right to petition for a reconsideration of such a finding.

§ 74.8 Notification of payment.

The Administrator shall, when funds are appropriated for payment, notify an eligible individual in writing of his or her eligibility for payment. Section 104 of the Act limits any appropriation to not more than $500,000,000 for any fiscal year.

§ 74.9 Conditions of acceptance of payment.

(a) Each eligible individual will be deemed to have accepted payment if, after receiving notification of eligibility from the Redress Administrator, the eligible individual does not refuse payment in the manner described in § 74.11.

(b) Acceptance of payment shall be in full satisfaction of all claims arising out of the acts described in § 74.3(a)(4).

§ 74.10 Authorization for payment.

(a) Upon determination by the Administrator of the eligibility of an individual, the authorization for payment of $20,000 to the eligible individual will be certified by the Assistant Attorney General of the Civil Rights Division to the Assistant Attorney General of the Justice Management Division, who will give final authorization to the Secretary of the Treasury for payment out of the funds appropriated for this purpose.

(b) Authorization of payments made to survivors of eligible persons will be certified in the manner described in paragraph (a) of this section to the Secretary of the Treasury for payment to the individual member or members of the class of survivors entitled to receive payment under the procedures set forth in § 74.13. Payments to statutory heirs of a deceased eligible individual will be made only after all the statutory heirs of the deceased person have been identified and verified by the Office.

(c) Any payment to an eligible person under a legal disability, may, in the discretion of the Assistant Attorney General for Civil Rights, be certified for payment for the use of the eligible person, to the natural or legal guardian, committee, conservator or curator, or, if there is no such natural or legal guardian, committee, conservator or curator, to any other person, including the spouse of such eligible person, who the Administrator determines is charged with the care of the eligible person.

§ 74.11 Effect of refusal to accept payment.

If an eligible individual who has been notified by the Administrator of his or her eligibility refuses in writing within eighteen months of the notification to accept payment, the written record of refusal will be filed with the Office and the amount of payment as described in § 74.10 shall remain in the Fund and no payment may be made as described in § 74.12 to such individual or his or her survivors at any time after the date of receipt of the written refusal.

§ 74.12 Order of payment.

Payment will be made in the order of date of birth pursuant to section 105(b) of the Act. Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988, (or his or her statutory heirs) who has been located by the Administrator at that time. Payments will continue to be made until all eligible individuals have received payment.

§ 74.13 Payment in the case of a deceased eligible individual.

In the case of an eligible individual as described in § 74.3 who is deceased, payment shall be made only as follows—

(a) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(b) If there is no surviving spouse as described in paragraph (a) of this subsection, such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(c) If there is no surviving spouse described in paragraph (a) of this section, and if there are no surviving children as described in paragraph (b) of this section, such payment shall be made in equal shares to the parents of the deceased eligible individual who are living at the time of payment.

(d) If there are no surviving spouses, children or parents as described in paragraphs (a), (b), and (c) of this section, the amount of such payment shall remain in the Fund and may be used only for the purposes set forth in section 106(b) of the Act.

§ 74.14 Determination of the relationship of statutory heirs.

(a) A spouse of a deceased eligible individual must establish his or her marriage by one (or more) of the following:

(1) A copy of the public record of marriage, certified or attested;

(2) An abstract of the public record, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record;

(3) A certified copy of the religious record of marriage;

(4) The official report from a public agency as to a marriage which occurred while the deceased eligible individual was employed by such agency;

(5) An affidavit of the clergyman or magistrate who officiated;

(6) The original certificate of marriage accompanied by proof of its genuineness;

(7) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(8) In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(9) Any other evidence which would reasonably support a finding by the Administrator that a valid marriage actually existed.

(b) A child should establish that he or she is the child of a deceased eligible individual by one of the following types of evidence:

(1) A birth certificate showing that the deceased eligible individual was the child's parent;

(2) An acknowledgment in writing signed by the deceased eligible individual;

(3) Evidence that the deceased eligible individual has been identified as the child's parent by a judicial decree ordering the deceased eligible individual to contribute to the child's support or for other purposes; or

(4) Any other evidence that reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as the parent of the child;

(ii) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers; or

(iii) Information obtained from public records or a public agency, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

(c) Except as may be provided in paragraph (b) of this section, evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) The relationship of a step-child to a deceased eligible individual shall be demonstrated by—

(1) Evidence of birth to the spouse of the deceased eligible individual as required by paragraphs (e) and (f) of this section;

(2) Evidence of adoption as required by section (b) of this section when the step-child was adopted by the spouse;

(3) Other evidence which reasonably supports the finding of a parent-child relationship between the child and the spouse;

(4) Evidence that the step-child was either living with or in a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death; and

(5) Evidence of the marriage of the deceased eligible individual and the step-child's natural or adoptive parent, as required by paragraph (a) of this section.

(e) A parent of a deceased eligible individual may establish his or her parenthood of the deceased eligible individual by providing one of the following types of evidence:

(1) A birth certificate that shows the person to be the deceased eligible individual's parent;

(2) An acknowledgment in writing signed by the person before the eligible individual's death; or

(3) Any other evidence which reasonably supports a finding of such a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the person was the informant and was named as the parent of the deceased eligible individual;

(ii) Affidavits or sworn statements of persons who know the person had accepted the deceased eligible individual as his or her child; or

(iii) Information obtained from public records or a public agency such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the person had been named as parent of the child.

(f) An adoptive parent of a deceased eligible individual must show one of the following as evidence—

(1) A certified copy of the decree of adoption and such other evidence as may be necessary; or

(2) In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

Subpart E—Appeal Procedures

§ 74.15 Notice of the right to appeal a finding of ineligibility.

Persons determined to be ineligible by the Administrator will be notified in writing of the determination, the right to petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, and the right to submit any documentation in support of eligibility.

§ 74.16 Procedures for filing an appeal.

A request for reconsideration shall be made to the Assistant Attorney General for Civil Rights within 60 days of the receipt of the notice from the Administrator of a determination of ineligibility. The request shall be made in writing, addressed to the Assistant Attorney General of the Civil Rights Division, P.O. Box 65808, Washington, DC. 20035–5808. Both the envelope and the letter of appeal itself must be clearly marked: "Redress Appeal." A request not so addressed and marked shall be forwarded to the Office of the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, as soon as it is identified as an appeal of eligibility. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office receives the appeal, or until the appeal would have been so received with the exercise of due diligence by Department personnel.

§ 74.17 Action on appeal.

(a) The Assistant Attorney General or the official designated to act on his behalf shall:

(1) Review the original determination;

(2) Review additional information or documentation submitted by the individual to support a finding of eligibility;

(3) Notify the petitioner when a determination of ineligibility is reversed on appeal; and

(4) Inform the Redress Administrator.

(b) Where there is a decision affirming the determination of ineligibility, the letter to the individual shall include a statement of the reason or reasons for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department on that redress appeal.

Appendix A to Part 74—Declarations of Eligibility by Persons Identified by the Office of Redress Administration and Requests for Documentation.

Form A:

Declaration of Eligibility by Persons Identified by the Office of Redress Administration

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the identified eligible person or such person's designated representative.

Complete the following information:

(1) Current Legal Name:_____
(2) Current Address:
Street:_____
City, State and Zip Code: _____

(3) Telephone Number:

(Home)

(Business)
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Name Used When Evacuated or Interned:

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation: The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not need back.

II. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send us any further evidence of your birth date.

III. *One* Document of Name Change

If your current legal name is the same as your name when evacuated or interned, this section does not apply.

This section is only required for persons whose current legal name is different from the name used when evacuated or interned.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

IV. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form B:

Declaration of Verification by Persons Identified as Statutory Heirs by the Office of Redress Administration

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the spouse of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

(1) Current Legal Name:_____
(2) Current Address:
Street:_____
City, State and Zip Code: _____

(3) Telephone Number:

(Home)

(Business)
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(8) Date of marriage to the Deceased:_____

Read the following carefully before signing this document.

A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, section 3729), and fine or imprisonment or both (U.S. Code, Title 18, sections 287 and Section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation: The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of the Deceased Eligible Individual's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.
2. A certificate by the custodian of the public record of death.
3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.
4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.
5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.
6. If you cannot obtain any of the above evidence of your spouse's death, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Marriage to the Deceased Eligible Individual

1. A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage.
2. An offical report from a public agency as to a marriage which occurred while the deceased eligible individual who was employed by such agency.
3. The affidavit of the clergyman or magistrate who officiated.
4. The certified copy of a certificate of marriage attested to by the custodian of the records.

5. The affidavits or sworn statements of two or more eyewitnesses to the ceremony.

6. In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

7. Any other evidence which would reasonably support a belief by the Administrator that a valid marriage actually existed.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not need back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of brith, you *do not* have to send us any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual or the same as at the time of marriage this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.

2. A certified copy of the divorce decree.

3. A certified copy of the court order of a name change.

4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form C:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the child of a deceased eligible individual as a statutory heir in accordance with section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1988b.

Complete the following information:

(1) Current Legal Name: _____
(2) Current Address:
Street: _____
City, State and Zip Code: _____

(3) Telephone Number:

(Home) _____

(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(7) List the names and address (if known) of all other children of the deceased eligible individual. This includes all recognized natural children, step-children who lived with the deceased eligible and adopted children. Enter the date of death for any persons who are deceased.

_____
_____
_____
_____

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty or perjury that the foregoing is true and correct.

_____
Signature

_____
Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation for Children of Deceased Eligible Individual

The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of Your Parent's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.

2. A certificate by the custodian of the public record of death.

3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.

4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.

5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

6. If you cannot obtain any of the above evidence of your parent's death, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Relationship to Your Parent

Natural Child

1. A certified copy of a birth certificate showing that the deceased eligible individual was your parent.

2. If the birth certificate does not show the deceased eligible individual as your parent, other proof would be a certified copy of:

(a) An acknowledgment in writing signed by the deceased eligible individual.

(b) A judicial decree ordering the deceased eligible individual to contribute to your support or for other purposes.

(c) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as your parent.

(d) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers.

(e) A record obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

Adopted Child

Evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

Step-Child

Submit all *three* as evidence of the step-child relationship.

1. One document as evidence of birth to the spouse of the deceased eligible individual as listed under the "natural child" and "adoptive child" sections to show that you were born to or adopted by the deceased individual's spouse, or other evidence which reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased eligible person.

2. One document as evidence that you were either living with or in a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death.

3. One document as evidence of the marriage of the deceased eligible individual

and the spouse, such as a copy of the record of marriage, certified or attested, or by an abstract of the public records, containing sufficient data to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not want back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send us any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible, this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

Submit *one* of the following as evidence of the change of legal name.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If your are executing this document for the person identified as an eligible beneficiary, you must submit evidence of your authority.

If you are a legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form D:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs

U.S. Department of Justice Civil Rights Division Office of Redress Administration

This declaration shall be executed by the identified parent of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:
(1) Current Legal Name: _____
(2) Current Address: _____
Street: _____
City, State and Zip Code: _____
(3) Telephone Number: _____
(Home) _____
(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(7) The name of the child's other parent and the address if known. This includes fathers and mothers through adoption. If the parent is deceased provide the date and place of death. _____

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation.

The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of Your Child's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.
2. A certificate by the custodian of the public record of death.
3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.
4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.
5. If death occurred outside the United States, an official report of death by a United States Consul or othe employee of the State Department, or a copy of public record of death in the foreign country.
6. If you cannot obtain any of the above evidence, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Parent-Child Relationship Natural Parent

1. A certified copy of a birth certificate that shows you to be the deceased eligible individual's parent.
2. A certified acknowledgment in writing signed by you before the eligible individual's death.
3. Any other evidence which reasonably supports a finding of such a parent-child relationship, such as a certified copy of the public record of birth or a religious record showing that you were the informant and were named as the parent of the deceased eligible individual.
4. Affidavits or sworn statements of persons who know that you had accepted the deceased eligible individual as his or her child.
5. Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, you were named as parent.

Adoptive Parent

1. A certified copy of the decree of adoption and such other evidence as may be necessary.
2. In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy or an original that you do not need back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the

recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Approved the 10th day of August, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-19362 Filed 8-17-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Civil Penalty Assessments

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval of an amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides Pennsylvania's Department of Environmental Resources (DER) with the option to not assess a civil penalty for a Compliance Order violation when the calculated amount of the assessment is less than $1,000 and the violation does not relate to a discharge. The amendment is intended to give greater discretion to the State regulatory authority while maintaining consistency with the corresponding Federal regulations.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the general background of the Pennsylvania program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated August 17, 1988 (Administrative Record No. PA 699), Pennsylvania proposed to amend its Program Guidance Manual at Section 1:3:6, paragraph 4 by replacing the mandatory civil penalty provision for each Compliance Order violation with a discretionary civil penalty provision. Under the existing Pennsylvania program, all assessments for violations cited on Compliance Orders are mandatory, regardless of their nature.

Following receipt of the proposed amendment by OSMRE, the DER discovered that the State's Civil Penalty Program document at Section II, paragraph 4 had to be revised to reflect the proposed change in the Program Guidance Manual. A proposal to amend the Civil Penalty Program document was submitted to OSMRE by letter dated June 21, 1989 (Administrative Record Number PA 780). The substantive content of the proposed revision to the Civil Penalty Program document is identical to the proposed change in the Program Guidance Manual with the added limitation that the violation not be related to a discharge. OSMRE is therefore treating the August 17, 1988, and June 21, 1989, submissions as one amendment since they concern the same substantive issue.

OSMRE announced receipt of the proposed amendment in the October 6, 1988, **Federal Register** (53 FR 39316), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. Comments were not solicited on the June 21, 1989, submission because the change submitted by the State was considered to be within the scope of the original proposal.

III. Director's Findings

The mandatory civil penalty provision for a Compliance Order violation was approved as part of Pennsylvania's Civil Penalty Program on March 20, 1984 (49 FR 10253), along with other civil penalty provisions. At that time, the Secretary of the Interior found that the program and its accompanying policy statements and guidance manuals provided for civil and criminal penalties no less stringent than those of Section 518 of SMCRA. The Secretary also found that the program's procedures for assessing and reviewing civil penalty assessments were the same as or similar to those in Section 518 of SMCRA and no less effective than those provided by 30 CFR part 845.

The proposed amendment will provide DER with the option to waive the civil penalty for any Compliance Order violation when the calculated assessed amount of the penalty is less than $1,000 and the violation does not relate to a discharge. This amendment will not affect Section 2, paragraph 3 of the Civil Penalty Program document which requires mandatory civil penalties when the assessment amount for a Compliance Order violation is $1,000 or greater.

The Federal counterpart at 30 CFR 845.12 requires a mandatory civil penalty for each violation assigned 31 or more points which, under the Federal assessment scheme, equates to $1,100. Thus, the proposed amendment provides for a mandatory civil penalty at a lower dollar level than do the Federal rules.

The U.S. District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action 79-1144, February 26, 1980), ruled that SMCRA requires states to develop penalty systems incorporating the penalty criteria listed in section 518(a) of the Act and that these systems must result in the imposition of penalties no less stringent than those set forth in the Act; however, penalties need not be assessed in all cases where they would be under 30 CFR part 845, nor need penalty amounts be equivalent to those of 30 CFR part 845.

Under section 518(a) of SMCRA, the assessment of civil penalties by the regulatory authority is discretionary, except when a violation leads to the issuance of a cessation order. In determining the amount of penalty, a regulatory authority is required by section 518(a) to give consideration to: (1) The permittee's history of previous violations, (2) the seriousness of the violation, (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification. These criteria are present in Pennsylvania's system of assessment of civil penalties. Furthermore, the State's rules at 25 PA Code 86.193(a) provide for mandatory civil penalties for each violation which is included as a basis for a cessation order.

For the reasons discussed above, the Director finds that the amendment provides for the assessment of civil penalties no less stringent than those in section 518 of SMCRA and that the procedural requirements relating to civil penalty assessments are consistent with 30 CFR part 845.

IV. Disposition of Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. Only one, the United States Environmental Protection Agency (EPA), provided substantive comments. It suggested that Pennsylania and OSMRE consider the feasibility of dismissing civil penalties only when the accumulative total of civil penalties for the respective facility does not exceed $1,000 annually (Administrative Record No. PA 716). Otherwise, all civil penalties would become due and payable.

OSMRE does not accept this comment because the State's system for assessment of civil penalties already gives consideration to a violator's history of previous violations. Section 86.194(b)(6) of the Pennsylvania Code requires that a penalty assessment be increased by a factor of 5.0 percent for each previous violation within the previous two-year period. Each previous violation must be counted without regard to whether it led to a civil penalty assessment. OSMRE believes that Pennsylvania's system for assessment of civil penalties which includes consideration of the permittee's history of previous violations achieves the financial deterrent recommended by the commenter.

The Director also solicited public comments in the October 6, 1988 Federal Register (53 FR 39316). No comments were received and no one requested a public hearing to present testimony.

V. Director's Decision

For the reasons discussed in the finding above, the Director is approving the amendment as submitted to OSMRE on August 17, 1988, and June 21, 1989.

The Federal rules at 30 CFR part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a signficant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Managment and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 10, 1989.

Alfred E. Whitehouse,

Acting Assistant Director Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

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

2. In § 938.15, paragraph (q) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(q) The following amendment pertaining to discretionary civil penalties as submitted to OSMRE on August 17, 1988, and June 21, 1989, is approved effective August 18, 1989: Civil Penalty Program, Section II (Assessment), paragraph 4, and Program Guidance Manual, Section 1:3:6 (Civil Penalty Assessments) Part 1–Coal, paragraph 4.

[FR Doc. 89–19453 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–3631–5]

Underground Injection Control Program; Water-Brine Interface Mechanical Integrity Test for Class III Salt Solution Mining Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; interim approval with request for comments.

SUMMARY: The Director of the Office of Drinking Water, Environmental Protection Agency (EPA), is granting a two-year interim approval for the use of the Water-Brine Interface mechanical integrity test as an alternative to the tests specified in the Code of Federal Regulations 40 CFR 146.8(b) for the demonstration of no significant leaks in the casing, tubing, or packer. The Agency intends this approval to apply to Class III salt solution mining injection wells on a national basis. The test is referred to as the Water-Brine Interface Method.

To better define the use of this alternative test, EPA requests comments and further data on the viability of this alternative. During the two-year interim approval, the Agency intends to study the test to verify that it provides comparable results to the tests currently specified in 40 CFR 146.8(b) and to refine the criteria for its use. Based on this analysis, the Agency will then issue a final determination on its use as an alternative to existing tests for demonstrating no significant leaks in the casing, tubing, or packer.

DATES: The interim approval period for this alternative mechanical integrity test becomes effective September 18, 1989. Written comments and referenced data may be submitted, and will be considered by EPA in making its decision on whether to grant final approval. EPA requests that such written and any referenced data be submitted by February 19, 1991.

ADDRESSES: Comments should be addressed to Jeffrey B. Smith, Office of

Drinking Water (WH–550E), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at EPA Headquarters, Room 1103, East Tower, 401 M Street SW., Washington, DC and at EPA Region V, 111 West Jackson Boulevard, Trans Union Building, 9th Floor, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, Office of Drinking Water (WH–550E), U.S. EPA, Washington, DC 20460 at: (202) 475–8459 or Harlan Gerrish, Drinking Water Branch, U.S. EPA, 111 West Jackson Boulevard, Trans Union Building, 9th Floor, Chicago, IL 60604 at: (312) 886–2939.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) Program is the mechanical integrity of the wells. Mechanical Integrity (MI) is defined as the absence of significant leaks in the casing, tubing, or packer, and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection wellbore. This movement can occur from either the injection zone or from other zones or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA (direct implementation), and in the program applications of the States with primary enforcement responsibility (primacy) for injection wells. Section 146.8(d) states that the Director may allow alternative mechanical integrity tests if the Administrator approves the alternative method. The Director of the Office of Drinking Water has been delegated the authority to approve alternative tests.

An alternative method is needed for the Class III salt solution wells because of the great difficulty which has been encountered in attempting to test these wells with a tubing and packer. Typically, a tubing and packer would have to be installed in the well for a standard test to be run. Scale formed on the interior surface of the casing often makes establishment of a seal across the packer very difficult.

The EPA is granting approval for a period of two years from (insert date 30 days after publication) for the use of an alternative mechanical integrity test known as the Water-Brine Interface Method. The Salt Institute has requested that EPA approve this test as an alternative mechanical integrity test. This test may be applied to Class III salt solution mining injection wells. The information gathered during the two year interim period will be used to verify the effectiveness of the alternative. Any necessary changes in the test will be identified during the interim approval period.

II. Application and Description of the Test

A. Application

The field design of a salt solution mining operation is dependant upon the morphology of the salt formation being mined. If the salt formation is a dome or a very thick layer, single wells are commonly used. In this instance, typically one well is drilled for each cavern. The well has a surface casings and within it, a production casing. Both casing are cemented to the surface, and tubing is placed inside the casing. Water or partially saturated brine is injected through either the tubing or the annulus and salt saturated brine is returned up the annulus or the tubing, respectively.

If the salt formation is bedded, two or more wells are usually drilled, then connected by one of several technologies, and circulation of liquid through various wells established. In this case, the well construction consists of a surface casing and a production casing reaching to the top of the salt, both of which are cemented to the surface. In a gallery containing two wells, one well is used for injection and the other for production. If there are more than two wells in the gallery, the additional wells may be used for either injection or production. None of these variations in geology, well construction, or field design affect the proposed alternative test.

A pressure sufficient to cause the produced brine to flow through the wells and piping to the production facilities is maintained within the cavern. This results in a pressure differential between the well bore and any aquifer adjacent to it.

B. Testing Method

Fresh water (lower specific gravity) is emplaced between the wellhead assembly and the cavern brine (higher specific gravity) and, due to the force of buoyancy, remains there with a relatively distinct interface between the two liquids. The contribution of buoyant force to the pressure at the wellhead can be determined by measurements using a dead weight gauge before and after the fresh water is introduced into the well. If a portion of the fresh water is removed from the casing through a leak or by intentional release, the interface between the water and the brine moves up the casing and a drop in pressure will result. This is because a greater amount of cavern pressure is required to support the more dense cavern brine replacing the fresh water which has been moved. The Water-Brine Interface Method indicates leakage through changes in the wellhead pressure which result from the upward movement of the water-brine interface. A monitoring method which can accurately detect small pressure changes has been developed to make this test effective.

By measuring the change in pressure, the upward movement of the water-brine interface in the casing can be calculated. The extent of movement is obtained by dividing any pressure drop observed during the test by the product of the difference of the specific gravities of the two liquids (above and below the interface) and the conversion constant of 0.4331 psi per foot.

$$M = \frac{NPC}{(SG1 - SG2) \times k}$$

where:

NPC = the net pressure change in pounds per square inch (psi),
SG1 = the specific gravity of the cavern brine,
SG2 = the specific gravity of the injected fluid (water),
k = 0.4331 psi/ft, a conversion constant (pressure gradient for fresh water), and
M = the upward movement of the interface in ft.

The rate of leakage can be determined by multiplying the casing volume per foot of length by M, the distance which the interface has moved, and dividing the result by the length of the test.

The sensitivity of the test is a function of two factors: (1) The duration of the test; and, (2) the sensitivity of the pressure gauge. In theory, with proper design, almost any sensitivity can be achieved, particularly by extending the duration of the test.

C. Procedure

The procedure to run this test is as follows:

1. Withdraw fluid from the test well until the specific gravity of the fluid is constant and record the value.
2. Measure the wellhead pressure.
3. Withdraw fluid from a reference well until the specific gravity of withdrawn fluids is constant. Shut-in the

reference well and take a pressure reading. If there is only one well in the system, the tubing is the reference well and the casing tubing annulus is the test well.

4. Inject fresh water in the test well in sufficient quantity to fill all but the bottom 50 ft of the well. To achieve this, inject fresh water until the wellhead pressure increases by the amount calculated using the following formula:

Pressure increase = (D–50) × (SG1–SG2) × k

where:

D = depth of the well,
SG1 = the specific gravity of the cavern brine,
SG2 = the specific gravity of the injected fluid (water), and
k = 0.4331 psi/ft, a conversion constant (pressure gradient for fresh water).

Determine the net pressure change during the injection in the reference well. Add this pressure change to the calculated pressure increase for the test well to obtain the final pressure necessary for proper placement of the interface.

5. In order to maintain a sharp interface, inject the fresh water at a rate which will not cause the interface to move downward at a rate of greater than 20 feet per minute.

6. Wait a minimum of 36 hours for the test and reference wells to come to temperature equilibrium.

7. At the conclusion of the 36 hours, the pressure of both wells must be checked against the original pressures to assure no significant movement of the interface. If pressure differences can be explained by the wells coming to temperature equilibrium then the test may proceed. If pressure differences cannot be explained by the wells coming to temperature equilibrium then the operator must bleed a minimum of one casing volume from both wells and start the test again at step 1.

8. Simultaneously measure the wellhead pressures for both the test well and reference well at one minute intervals for a minimum of 10 readings. (Use a deadweight gauge or similar device with a sensitivity of 0.1 psi or better.) Calculate the average pressure at the test well and the reference well and the difference between them.

9. Wait eight hours.

10. Repeat step seven.

11. Calculate the net pressure change at the test well as follows:

NPC = P(start) – P(end)

where:

NPC = Net Pressure Change.
Pstart = average pressure of test well at the beginning of the test minus average pressure of reference well at the start of the test.
Pend = average pressure of the test well at the conclusion of the test minus the average pressure of the reference well at the conclusion of the test.

12. If the calculations indicate a net pressure change of greater than 0.5 psi/hr, the well has failed to demonstrate mechanical integrity.

III. Basis for Determination

All technical documentation supporting the Water-Brine Interface Method will be available for review at EPA offices mentioned in the Summary of this notice. EPA developed the requirements and limitations of the testing method to demonstrate mechanical integrity pursuant to 40 CFR 146.8(b) after considering test results on test wells at the Morton Salt Plant at Rittman, Ohio from July 5–13, 1988 and from June 16–20, 1989.

Further consideration was given to the following technical documents:

(1) "Significance of Regulatory Constraints on the Operation of Packerless Injection Wells." K.I. Kamath, et. al. SPE #17047

(2) "Solar Ponds Collect Sun's Heat." R.K. Multer, Chemical Engineering, March, 1982.

IV. Special Conditions

A. Limitations for Conducting the Water-Brine Interface Method Mechanical Integrity Test

The following are limitations for running the Water-Brine Interface Method mechanical integrity test:

1. A reference well must be used.
2. Verification that there is no salt crystallization inside the casing must be included with the test results.
3. The test well must be filled with a lower specific gravity fluid to within fifty feet of the bottom of the casing.
4. The test and reference wells must reach temperature equilibrium prior to initiation of the test.
5. Deadweight gauges (or similar device) with a minimum sensitivity of 0.1 psi must be used.
6. Wellhead pressures for the reference well and the test well must be read simultaneously.

B. Informational Requirements for the Test

During the interim approval period the EPA is requesting affected State UIC Directors to make certain determinations and supply necessary information for effective evaluation of this test, as follows:

1. The results of the testing must include the following well name and/or number, county, and State. In addition, the information must indicate the number of wells in the gallery, the depth of the wells, the construction and configuration of the wells, the calibration of the testing equipment, the stabilization of the wells, the duration of the test, the readings from both the test well and the reference well, all calculations involved in determining the water-brine interface movement, the pass/fail criteria used, and the witnessing field personnel.

2. All new wells drilled by companies proposing to use this test must run a standard annulus pressure test prior to well injection and record the results. After a maximum of six months, those same wells shall demonstrate MI using the Water-Brine Interface Method for comparison purposes.

3. If the Director chooses to require or allow the use of the Water-Brine Interface Method, he is asked to submit recommendations for modifications to the Water-Brine Interface Method to the Office of Drinking Water, or the Region, based on the results obtained during the interim period. The recommendations shall outline any limitations, procedures, and criteria necessary to assure effective testing.

4. If a well fails to demonstrate mechanical integrity, in order to aid EPA in determining the sensitivity of the test, the operator should run a second test using the same procedure outlined above except that the difference in specific gravity must be half what it was when the test test only. If the well fails the 0.05 psi/hr test, it has failed to demonstrate mechanical integrity.

C. Determination

The Water-Brine Interface Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has a leak in the casing, tubing, or packer.

EPA is approving the test for Class III salt solution mining injection wells in all States. After the two-year interim period, EPA will make a final determination on whether this test is an effective alternative mechanical integrity test for Class III salt solution mining wells in all States.

Date: August 7, 1989.

Michael B. Cook,

Director of Office of Drinking Water.

[FR Doc. 89–19465 Filed 8–17–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL-3631-3]

Ocean Dumping: Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Houma Navigation Canal (HNC) for the continued disposal of dredged material removed from the Cat Island Pass section of the HNC. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on September 18, 1989.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202, Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the HNC site for the disposal of material dredged from the Cat Island Pass section of the HNC. In January 1980, the interim status of the HNC site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) jointly prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Houma Navigation Canal Ocean Dredged Material Disposal Site Designation." On February 3, 1989, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this Final EIS closed on March 6, 1989. One comment letter from the Louisiana Department of Natural Resources (LDNR) was received. LDNR stated that designation of the HNC disposal site was inconsistent with the Louisiana Coastal Zone Management Program. LDNR recommended that spoil from the HNC should be used to create or enhance wildlife habitat in the Wine Island Shoal area. A meeting with Federal and state agencies regarding use of Wine Island as a disposal site was held in Baton Rouge, Louisiana on March 27, 1989. Subsequently, the COE conducted a cost feasibility study of this option. The COE concluded, based on the study, that pumping the dredged material to Wine Island would cost approximately $408,000.00 more per dredging cycle than ocean disposal. This estimate did not include any cost associated with dike construction. The COE also determined that the only available option for accomplishing disposal at Wine Island is if 100 percent of the additional costs are provided by non-Federal interests. Since site designation does not preclude the consideration of other disposal options, EPA has elected to proceed with final designation of the HNC site.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft EIS based on information from the COE. Inland disposal sites are currently used for the inland reaches of the Houma Navigation Canal. These inland sites, however, cannot accommodate the dredged material from Cat Island Pass. Use of these upland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the nearest land-based sites are about 30 miles away and their use would involve barging material, which is economically impractical.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transporation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the potential exists for greater impact to Isle Dernieres from the turbidity plume at this site.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS); NMFS concurred. Regarding coastal zone consistency, EPA has determined that final designation of the HNC site is consistent, to the maximum extent practicable, with Louisiana's Coastal Zone Management Program. The State of Louisiana has not concurred with EPA's determination.

The EIS presented the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal

site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On November 4, 1988, EPA proposed designation of this site for the continuing disposal of dredged materials from the Cat Island Pass section of the HNC. The public comment period on this proposed action closed on December 19, 1988. No comments were received on the proposed rule.

The site is located about eight miles south of the Terrebonne Parish mainland and about three miles from Timbalier Island to the east and Isles Dernieres to the west. The site extends approximately four miles offshore. Water depths at the site range from 6 to 30 feet. The coordinates of the site are as follows: 29°05'22.3" N., 90°34'43" W.; thence following a line 1000 feet west of the channel centerline to 29°02'17.8" N., 90°34'28.4" W.; thence to 29°02'12.6" N., 90°35'27.8" W.; thence to 29°05'30.8" N., 90°35'27.8" W.; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is relatively flat and slopes to the south (3.8 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The HNC ocean disposal site represents a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The HNC ocean disposal site is about three miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The dredged material to be disposed is from the adjacent area of the HNC and consists of varying amounts of sand, silt and clay. Sediments generally decrease in grain size in the offshore direction, with sands being predominant in the northern portion of the disposal site and 80 to 97 percent silts existing generally in the southern area. Approximately 400,000 cubic yards of material are disposed in the site annually. About 90 percent of the material is removed with a hydraulic pipeline dredge. The material is released as an uncohesive slurry directly into the water overlying the site. The remaining 10 percent of the material is removed by hopper dredge and released as a slurry from the hopper. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Cat Island Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a vertically homogenous water column in the area. Density stratification can occur seasonally. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. A westerly surface flow of 0.8 knots predominates during winter and spring. Velocities of 3 to 4 knots may occur during storm events. In non-storm conditions, predominant sediment transport along the barrier islands fronting Terrebonne Bay is toward the west. Suspended sediments associated with tidal discharge or dredged material disposal, may be rafted along with the tidal plumes and eventually influenced by wind-driven, longshore currents.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

Dredged materials from maintenance of the HNC have been disposed at the site since 1964, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the HNC. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the HNC during dredging and disposal operations. Shoaling immediately after dredging stopped resulted in the grounding of one ship in the disposal site.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The Houma site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries.

The nearest shellfish culture is the Terrebonne Bay estuarine area; disposal operations at the site would not affect this activity. There are oyster leases in remnant bayous on the north side of Isles Dernieres and the Timbalier Islands. Designation of the disposal site would not impact these lease areas. Desalination and areas of special scientific importance do not occur in the vicinity of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays offshore. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site is dominated by polychaete worms, ribbon worms, and the little surf clam. Population densities were highest in the late spring. Several of the dominant organisms, inside and outside the site, were small-bodied opportunistic species capable of rapid recolonization of disturbed sediments. There was little difference in density or diversity of benthic organisms inside and outside the site. During disposal, however, species density and diversity would decline. Recolonization would start at the cessation of dumping and be essentially complete within two to six months.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation. The designation of the HNC site as an EPA approved Ocean Dumping Site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. And although the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect or providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 4, 1989.

Robert E. Layton Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

Part 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Houma Navigation Canal, Louisiana-Cat Island Pass and adding paragraph (b)(38) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(38) Houma Navigation Canal, Louisiana—Region 6

Location: 29° 05' 22.3" N, 90° 34' 43" W; thence following a line 1000 feet west of the channel centerline to 29° 02' 17.8" N, 90° 34' 28.4" W; thence to 29° 02' 12.6" N, 90° 35' 27.8" W; thence to 29° 05' 39.8" N, 90° 35' 27.8" W; thence to the point of beginning.

Size: 2.09 square nautical miles.

Depth: Ranges from 6–30 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Cat Island Pass, Louisiana.

* * * * *

[FR Doc. 89-19403 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3631-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-BFEF-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

BF Goodrich Intermediates Company, Incorporated (BFG), located in Calvert City, Kentucky, petitioned the Agency to exclude from hazardous waste control a specific waste that it intends to generate. After evaluating the petition, EPA proposed, on December 9, 1988, to exclude BFG's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon BFG meeting certain sampling, analysis, and reporting requirements. See 53 FR 49680.

BFG petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, set maximum allowable levels for hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky

1. Proposed Exclusion

BFG petitioned the Agency to conditionally exclude from regulation as a hazardous waste its brine purification muds and saturator insolubles, presently listed as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." BFG based its petition on the claim that the constituent of concern, although present in the waste, was both low in concentration and in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern would not be present in the brine purification muds and saturator insolubles above levels of regulatory concern, BFG relied on the analytical data presented in Vulcan Materials' (Vulcan) delisting petition (see 51 FR 16860, May 7, 1986). BFG believes that the analytical data presented by Vulcan is representative of the treated waste that BFG will generate because (1) BFG's and Vulcan's production processes are similar and use the same raw materials; (2) BFG's untreated waste and Vulcan's untreated waste are similar in composition; and, (3) BFG plans to use a treatment system that will be identical to the one used by Vulcan.

As stated above, BFG relied upon the analytical data provided by Vulcan. The Agency, therefore, used the results of its evaluation of Vulcan's petitioned waste to determine that the constituents in BFG's waste also would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. Specifically, the Agency evaluated Vulcan's waste using the Vertical and Horizontal Spread (VHS) model to predict the potential mobility of the hazardous constituents found in Vulcan's waste. See 51 FR 16873, May 7, 1986. The Agency also evaluated the total concentrations of benzene, toluene, and xylene (derived from mass-balance demonstrations) provided by BFG in support of its petition and determined that these organic constituents, if present in the petitioned waste, would not pose a threat to human health and the environment. Specifically, the Agency evaluated BFG's waste using the VHS model and Organic Leachate Model (OLM) to predict the potential mobility of these organic constituents potentially found in BFG's waste. Based on this evaluation, the Agency determined that these constituents, if present, would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 49680, December 9, 1988, for a more detailed explanation of why EPA proposed to grant BFG's petition for its

brine purification muds and saturator insolubles when treated using the "Vulcan technology."

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from two interested parties. One commenter supported the Agency's proposed decision to exclude BFG's brine purification muds and saturator insolubles. The second commenter opposed the Agency's proposed decision. The comments made by the two interested parties are discussed below.

Petition-Specific Comments

One commenter opposed the Agency's proposal to grant BFG an exclusion for the reasons discussed below.

The commenter stated that EPA listed K071 wastes as hazardous based primarily on the waste's "significant concentrations" of mercury. The commenter therefore believed that a specific K071 waste could not be delisted without consideration of the mercury concentrations. The commenter also believed that, in the context of upfront delisting, a petitioner should offer a reasonable projection as to the constituent concentrations expected in the treated waste and a basis for such a projection. The commenter therefore reasoned that because the proposed rule contained no information regarding the concentrations of total mercury and the other non-listed constituents in the treated waste, EPA's granting of this petition would be inconsistent with the Agency's own rules.

The Agency agrees that the presence in K071 wastes of significant concentrations of mercury was one of the reasons for listing K071 wastes as "I" (toxic) wastes. See 40 CFR § 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency, however, believes that the data presented in the Background Document broadly characterize the physical/chemical nature of brine purification muds and that these data are not representative of the physical/chemical nature of BFG's treated brine purification muds and saturator insolubles (*i.e.*, BFG's waste, unlike those wastes characterized in the Background Document, will be subjected to a chemical washing step to reduce the total concentration of mercury). Furthermore, the maximum concentration of total mercury present in BFG's untreated wastes (26.5 mg/kg) is seven times lower than the average level of total mercury found in KO71 wastes (200 mg/kg) and is more than 75 times less the maximum level of mercury found in K071 wastes (2,000 mg/kg). See Background Document, page 8.

The Agency also agrees that, in the context of upfront delistings, the petitioner should provide a reasonable projection of the levels of constituents in the petitioned waste. The Agency, however, disagrees with the commenter's claim that the petitioner did not provide a reasonable projection as to the concentrations of total mercury in the treated waste. Specifically, the petitioner provided a worst-case projection of the level of total mercury using the maximum concentration of total mercury in the untreated waste. The petitioner also referenced the levels of total mercury reported by Vulcan for both its untreated and treated wastes (see 53 *FR* 49683, December 9, 1988). The Agency considered these data as well as all other relevant data in issuing this final rule.

The Agency also disagrees with the commenter's claim that the proposed notice failed to provide any information regarding total constituent levels for the non-listed constituents in the petitioned waste. Specifically, the Agency cited the petitioner's reliance on Vulcan's results from total constituent analyses performed for all the EP toxic metals, nickel, and cyanide (previously published on May 7, 1986, 51 *FR* 16872). See 53 *FR* 49683, December 9, 1988.

The Agency does not believe that BFG's wastes (both untreated and treated) exhibit significant total concentrations of mercury. Specifically, EPA based its conclusion that the waste would not contain significant concentrations of total mercury on: (1) the maximum total concentration of mercury exhibited by the untreated waste, and (2) the data on total mercury in Vulcan's untreated and treated wastes. The "Vulcan technology" actually removes mercury from the waste; therefore, the treated waste would exhibit levels of total mercury below those exhibited by the untreated waste (*i.e.*, the analysis of the total mercury levels in the untreated waste serves as a worst-case analysis of the total mercury levels exhibited by the treated waste). The Agency also expects that the levels of total mercury to be found in BFG's waste will be similar to the levels exhibited by Vulcan's wastes due to the similarities in raw materials and manufacturing processes, and the use of identical treatment processes.

Last, the Agency disagrees with the commenter's claim that granting an exclusion in the apparent absence of total constituent data would be inconsistent with the Agency's own rules. EPA notes that the petitioner did provide data for total constituents (see above). However, in the context of upfront delisting, the petitioner may not always be in the position to provide analytical data characterizing the waste intended to be generated. The Agency encourages the use of upfront delisting petitions in these cases, because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. As in this case, the upfront delisting petition was processed concurrently during construction activities; therefore, the new/modified treatment system will be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to collect and submit data verifying that the delisting levels are achieved by the fully operational treatment system will maintain the integrity of the delisting decision and will ensure that only non-hazardous wastes are removed from Subtitle C control.

The Agency also does not believe that the wastes, when treated using the "Vulcan technology" present a potential threat to human health or the environment. The commenter's conclusion that the treatment residues contained significant concentrations of total mercury and thus, represented a potential (yet unspecified) risk to human health and the environment, was based on the comparison of the maximum total mercury concentration of 26.5 mg/kg in BFG's *untreated* wastes to the range of 0.02 mg/kg to 0.5 mg/kg total mercury generally found in soils. In delisting evaluations, the Agency does not typically consider site-specific factors, including the background concentrations of the constituents of concern. Rather, the Agency evaluates the characteristics of the waste. EPA notes that both the mercury and other metals BFG's treated wastes will be tightly bound within the waste matrix. The Agency's conclusion that the inorganic constituents of concern (both listed and unlisted) would be bound in the waste matrix and not available for leaching is supported by the results of the EP leachate analyses provided by Vulcan. See 51 *FR* 16872, May 7, 1986. Therefore, the Agency believes that the levels of both mercury and the other metals present in BFG's treated wastes should not pose a threat to either human health or the environment.

EPA normally evaluates the potential mobility of the treated wastes using the maximum EP leachate concentrations and the vertical and horizontal spread (VHS) model. In the context of upfront delistings, a treated waste has not been generated. As a result, the Agency used the predicted dilution factor (calculated using the VHS model and BFG's projected maximum annual waste volume) and the appropriate health-based levels to back-calculate maximum allowable levels of all the EP toxic metals, nickel, and cyanide. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The Agency, therefore, believes that the maximum allowable EP levels obtained from this analysis are protective of human health and the environment. See 53 FR 49684, December 9, 1988, for a description of the modeling analysis of BFG's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the listed and non-listed inorganic constituents of concern, could cause this wastestream to present a hazard to human health and the environment.

The commenter asserted that the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal and that the proposed rule provides no basis for determining if the waste would be hazardous under other mismanagement scenarios. The commenter believed that EPA should not exclusively rely on the leachable levels of hazardous constituents. The commenter cited a statement by the Agency contained in the Background Document for K071 wastes which suggested that EP leachate results are not determinative in making a delisting determination. The commenter also believed that the Agency did not consider waterborne and airborne dispersal of the waste.

The commenter used the agency's previous statement that "EP leachate results are certainly relevant, although not determinative, in making a delisting determination" out of context. See Background Document, Comment Response Section, page 20. Specifically, the Background Document was referring to the use of the EP toxicity test to define the level of leachable mercury at which a waste is a characteristic hazardous waste. The point made in the Background Document was that K071 waste should not necessarily be delisted merely because the waste exhibits EP leachate concentrations below the characteristic level (0.2 mg/l). (This interpretation is confirmed by the Federal Register notice cited in the Background Document (45 FR 33111–33112, May 19, 1980) which is a discussion of the EP toxicity test as a method for defining characteristic wastes.) The level of leachable mercury established in the exclusion for BFG (0.0126 mg/l) is much lower than the level of leachable mercury that defines a characteristic waste (0.2 mg/1). As discussed below, EPA believes that such wastes that meet this delisting level (and the levels for other constituents referenced in this rule) are justifiably non-hazardous.

With regard to possible airborne dispersal, the Agency believes that the commenter's concern is unfounded. The Agency believes that direct contact from airborne exposure to hazardous contaminants from BFG's waste is not probable because BFG's untreated waste will be regulated as a hazardous waste, thus releases of the untreated waste to the atmosphere should be controlled. Additionally, due to the physical nature of BFG's treated waste (*i.e.*, approximately 35 percent water), the Agency believes that direct contact from airborne exposure to hazardous contaminants from the treated waste is unlikely.

With regard to waterborne dispersal of the waste, it is important to first note that BFG's waste will be handled as hazardous until it is treated using the "Vulcan technology." Also, the VHS model analysis described in the proposal shows that leachate from the treated waste that travels through ground water will not exceed health based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the treated waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for BFG's waste. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this treated waste will not directly enter a surface water body without first traveling through the saturated (subsurface) zone where dilution and attenuation of hazardous contituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

Conditional Testing and Reporting Requirements

One commenter believed that EPA should modify the wording of conditions (1), (2)(A), and (2)(B) to require BFG to also analyze for total concentrations of mercury.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal landfill, where soil conditions would be mildly acidic. The EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency has not developed a health-based delisting standard regulating the total constituent concentration of mercury. To require BFG to continually monitor for the total constituent concentration of mercury will not ensure further protection of human health or the environment.

Another commenter believed that EPA should clarify the wording of conditions (1), (2)(A), and (2)(B) to require that representative samples be collected according to the procedures specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986. The Agency agrees with the commenter and has modified these conditions accordingly.

The same commenter stated that proposed conditions (4)(A) and (4)(B) allowing BFG to discontinue the sampling and analyses requirements of conditions (2)(A) and (2)(B) were inappropriate. Rather, the commenter believed that EPA should require BFG to periodically sample the brine

purification muds and saturator insolubles on a quarterly basis for one or two years to ensure that the constituent concentrations remain fairly constant.

As discussed in the proposed rule, the Agency does not believe it is necessary to require BFG to periodically test its treated brine purification muds and saturator insolubles for any hazardous constituents, except for mercury. See 53 *FR* 49686, December 9, 1988. The exclusion only covers wastes generated from processes covered by the original demonstration. BFG would require a new exclusion if its manufacturing or treatment processes are altered. As a result, wastes containing either new or increased levels of hazardous constituents would not be covered by the exclusion. More importantly, EPA believes that it is unlikely for either new or increased levels of hazardous constituents to be found in BFG's waste without BFG modifying either its manufacturing or treatment processes.

The Agency originally proposed conditions (2)(A) and (2)(B) to require BFG to collect weekly composite samples of the mercury brine purification muds and saturator insolubles, respectively. See 53 FR 49685 and 49687, December 9, 1988. The Agency, however, intended to require BFG to collect weekly composite samples of the *treated* brine purification muds and *treated* saturator insolubles since these wastes were the subject of BFG's petition. The proposed conditions do not specifically require the collection and analyses of treated batches. EPA, therefore, is clarifying conditions (2)(A) and (2)(B) to specifically require BFG to collect weekly composite samples of the *treated* mercury brine purification muds and *treated* saturator insolubles, respectively.

Lastly, the Agency elected to modify the reporting requirements associated with this exclusion. Specifically, the Agency no longer believes it is necessary to require the petitioner to submit the analytical results obtained from conditions (1), (2)(A), and (2)(B) every 90 days. Rather, the Agency is requiring BFG to only submit the analytical results, including quality control data, generated through condition (1) within 90 days. In addition, BFG is now required to compile and store on-site for a minimum of three years, the analytical data, including quality control information, obtained from subsequent testing analyses, as required, by conditions (2)(A) and (2)(B). The Agency realized that requiring the petitioner to submit these analytical data every 90 days would place an undue burden on both the petitioner and EPA. In addition, the Agency, may at any time, either visit the facility for inspection purposes or request the petitioner to report these data. Therefore, the Agency is maintaining the same level of protection without requiring the petitioner to report these analytical data every 90 days.

The Agency, therefore, has restructured the proposed conditions. The Agency has not reduced the requirements, other than as discussed above. The testing conditions of this exclusion now read:

(1) Initial Testing

During the first four weeks of full-scale operation, BFG must do the following:

(A) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate daily composite samples (one of the treated mercury brine purification muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, the two daily composite samples must be analyzed for EP leachate concentration of mercury. BFG must report the analytical test data, including all quality control data, within 90 days after the treatment of the first full-scale batch.

(B) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, the two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(2) Subsequent Testing

After the first four weeks of full-scale operation, BFG must do the following:

(A) Continue to sample and test as described in condition (1)(A). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky.

(B) Continue to sample and test as described in condition (1)(B). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of both the treated mercury brine muds and treated saturator insolubles, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies BFG that the requirements of this condition have been lifted.

(3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.16 mg/l; for cyanide exceeds 4.42 mg/l; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(4) Within one week of system start-up, BFG must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in condition (1). At the Section Chief's request, BFG must submit any other analytical data obtained through condition (2) to the above address, within the time period specified by the Section Chief. * * *

EPA's Modeling Approach

One commenter objected to EPA's use of the VHS model in analyzing BFG's treated brine purification muds and saturator insolubles. The commenter believed that the VHS model could not be assumed to predict a reasonable worst-case when applied to BFG's waste and may result in significant underestimation of actual ground-water concentrations for the two reasons discussed below.

The commenter believed that the VHS model cannot accurately predict the behavior of waste volumes of the magnitude of BFG's waste stream (6,420 cubic yards). The commenter asserted that above approximately 2,000 cubic yards, the VHS model predicts virtually no further reduction in the expected dilution. The commenter noted that EPA has previously stated: "Since the quantity of leachate from a larger quantity of waste will be greater, the [VHS] model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer" and "waste in excess of 2,000 cubic yards probably would have a greater than predicted impact at the compliance point." See 50 FR 48886, 48899, November 27, 1985.

The initial version of the VHS model, presented on February 26, 1985,

calculated dilution factors ranging from 10 to 50, with the minimum dilution factor (*i.e.*, 10) resulting at a waste volume approaching approximately 2,000 cubic yards. See 50 FR 7896. On November 27, 1985, the Agency both modified the values used for several of the VHS model variables and responded to public comments regarding the February 26, 1985 model. See 50 FR 48896. The November 27, 1985 version (present version) of the VHS model calculates dilution factors ranging from 6.3 to 32.3. In the present version, the calculated dilution factor steadily falls as the waste volume increases from 475 cubic yards, with the minimum dilution factor resulting at waste volumes equal to, or exceeding 8,000 cubic yards.

Unfortunately, the Agency's November 27, 1985, notice (cited by the commenter) failed to consistently reflect both the technical modifications made to the VHS model computer code and the resulting change in the range of calculated dilution factors. Due to the technical modifications incorporated into the final version that is now being used, the statement noted by the commenter, that the VHS model predicts virtually no further dilution above a waste volume of 2,000 cubic yards, was an inadvertent error in the text and is not accurate. Specifically, the present version of the model predicts a dilution factor of 8.98 for 2,000 cubic yards and a dilution factor of 6.31 for BFG's waste volume (6,420 cubic yards). The Agency continues to believe that the VHS model performs a reasonable, worst-case analysis and provides dilution factors that are fully protective of human health and the environment.

The commenter also believed that the VHS model, as applied, considered the impact of only one year of waste disposal, rather than the cumulative impact of continuing disposal of BFG's waste. The commenter noted that after a decade of such generation, the total amount of waste would exceed the VHS model's upper limit by more than 30-fold. The commenter also stated that nowhere in the development of the VHS model does EPA justify the use of an annual, rather than cumulative, waste quantity as the appropriate input into the VHS model. Nor did the commenter see any possible justification for such an application of the model.

First, the Agency believes that the commenter is incorrect in concluding that a decade of waste generation would yield a waste volume that exceeds the VHS model upper limit by 30-fold. The VHS model does not have an "upper limit", but rather incorporates a sliding-scale which allows the Agency to take into account the different impact that various waste volumes would have on ground water. As stated above, the VHS model calculates the maximum and minimum dilution factors at waste volumes of less than, or equal to 475 cubic yards and equal to, or greater than 8,000 cubic yards, respectively. Thus, as the waste volume increases above 8,000 cubic yards or even 64,240 cubic yards (10 years X 6,420 cubic yards/year), the dilution factor calculated by the VHS model would be 6.3. The reason that the dilution factor remains constant after the waste volume exceeds 8,000 cubic yards is a function of the assumptions made in the disposal unit dimensions for the VHS model. For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, see 53 FR 48900, November 27, 1985.

The commenter also is incorrect in stating that the Agency has not justified the use of annual waste volumes, instead of cumulative waste volumes. The Agency previously stated that EPA will use either the volume of the waste generated by the facility annually or the volume of waste discarded at the time of disposal, if the waste is disposed of less than once a year. See 50 FR 7899, February 26, 1985. The Agency considers the use of annual or one-time waste volumes to be sufficiently conservative since it is a reasonable worst-case for a petitioner to dispose of one year's accumulated volume of waste in a single landfill cell at one time. Based on routine landfill management practice, however, EPA believes that it is unreasonable to assume, even in a worst-case scenario, one-time disposal of waste continuously generated over ten years into the same landfill cell. Specifically, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated wastes (if disposed of at the same landfill) are periodically disposed of and, as such, are distributed throughout the entire landfill, as the landfill is filled.

The Agency believes that periodic disposal of a continuously generated waste over the course of time (e.g., ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (e.g., native soils) at the Subtitle D landfill. Subsequently, due to this long-term mixing, the wastes effect on the underlying aquifer would be reduced. The Agency, therefore, believes its assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. The Agency, however, will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste no longer generated.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that BFG's brine purification muds and saturator insolubles, when both are treated using the "Vulcan technology" and subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to BF Goodrich Intermediates Company, located in Calvert City, Kentucky, for its treated brine purification muds and saturator insolubles, described in its petition as EPA Hazardous Waste No. K071. The exclusion applies only to the processes and waste volumes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to § 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory

authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective upon publication in the **Federal Register**. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective upon publication in the **Federal Register**, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly. I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: August 7, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	Brine purification muds and saturator insolubles (EPA Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to SW–846 procedures. This testing program must meet the following conditions for the exclusion to be valid: (1) Initial Testing: During the first four weeks of full-scale operation, BFG must do the following: (A) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate daily composite samples (one of the treated mercury brine purification muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two daily composite samples must be analyzed for EP leachate concentration of mercury. BFG must report the analytical test data, including all quality control data, within 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) Subsequent Testing: After the first four weeks of full-scale operation, BFG must do the following: (A) Continue to sample and test as described in condition (1)(A). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. (B) Continue to sample and test as described in condition (1)(B). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of both the treated mercury brine muds and treated saturator insolubles, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies BFG that the requirements of this condition have been lifted. (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.16 mg/l; for cyanide exceeds 4.42 mg/l; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. (4) Within one week of system start-up, BFG must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1). At the Section Chief's request, BFG must submit any other analytical data obtained through condition (2) to the above address, within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke BFG's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 89-19464 Filed 8-17-89; 8:45 am]
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FEDERAL MARITIME COMMISSION

46 CFR Parts 552 and 553

Financial Reports by Common Carriers in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations with respect to financial reports by vessel operating common carriers (46 CFR part 552) and non-vessel-operating common carriers (46 CFR part 553) to reflect revised Office of Management and Budget ("OMB") information collection control numbers.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Section 3507(f) of the Paperwork Reduction Act of 1980, Public Law 96-511, requires that agencies display a current control number assigned by the Director of the OMB for each agency information collection. This Final Rule amends 46 CFR parts 552 and 553 to display the current control numbers of these particular Commission information collection requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820 and 841a), and sections 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847), the Federal Maritime Commission amends parts 552 and 553 of title 46 of the Code of Federal Regulations as follows:

PART 552—[AMENDED]

1. The authority citation for part 552 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a, and 847.

2. Section 552.91 is revised to read:

§ 552.91. OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0008.

PART 553—[AMENDED]

3. The authority citation for part 553 continues to read:

Authority: 5 U.S.C. 553; secs. 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841a); secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

4. Section 553.91 is revised to read:

§ 553.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0031.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19407 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-388; RM-6374]

Radio Broadcasting Services; Glencoe, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 226A to Glencoe, Alabama, as that community's first local broadcast service, in response to a petition for rule making filed by Bill Dunnavant. See 53 FR 32633, August 26, 1988. Coordinates utilized for Channel 226A at Glencoe are 33-56-44 and 85-52-19. With this action, the proceeding is terminated.

DATES: Effective September 25, 1989; The window period for filing applications on Channel 226A at Glencoe, Alabama, will open on September 26, 1989, and close on October 26, 1989.

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

SUPPLEMENTRY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-388, adopted July 28, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Alabama, by adding Glencoe, Channel 226A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-19312 Filed 8-17-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[FV-89-094-PR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 910 for the 1989–90 fiscal year established under the lemon marketing order. This action is needed for the Lemon Administrative Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 28, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 910 [7 CFR Part 910], both as amended, regulating the handling of lemons grown in California and Arizona. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 85 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order, and approximately 2,500 producers of lemons in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 18, 1989, and unanimously recommended 1989–90 marketing order expenditures of $775,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1988–89 marketing year budgeting expenditures were $734,000 and the assessment rate was $0.045 per carton. Assessment income for 1989–90 is estimated to total $742,500 based on anticipated fresh domestic shipments of 16,500,000 cartons of lemons. Other sources of income, including interest expected to be received, are estimated at $22,500. The remaining $10,000, a projected deficit that might be realized during the 1989–90 fiscal year, will be derived from the Committee's reserve. Additional reserve funds may be used to meet any deficit in assessment income.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses,

which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 910 be amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.227 is added to read as follows:

§ 910.227 Expenses and assessment rate.

Expenses of $775,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19475 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 946

[Docket No. FV–89–084]

Irish Potatoes Grown in Washington; Proposed Amendment to Exempt Handlers From Reinspection of U.S. No. 1 Grade Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt from reinspection requirements U.S. No. 1 grade or better potatoes that are resorted or repacked within 72 hours of the original inspection. Currently all inspected potatoes which are repacked must be reinspected. Exempting high quality potatoes from reinspection under specified conditions would lessen the regulatory burden on handlers and help to reduce operating costs.

DATES: Comments must be received by September 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 477–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 45 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 475 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

On June 21, 1989, the State of Washington Potato Committee (committee) met and unanimously recommended amending the handling regulation to exempt previously inspected and certified U.S. No. 1 grade or better potatoes from reinspection after resorting or repacking if such potatoes are repacked in the State of Washington within 72 hours of the original inspection.

The handling regulation effective under Marketing Order No. 946 specifies the quality and other requirements that must be met in order for potatoes to be handled. For example, all varieties must be at least U.S. No. 2 grade or better. Also, round types must be at least 1⅞ inches in diameter except that round reds or yellow fleshed potatoes may be at least one inch in diameter. Sections 946.60 and 946.336(g) (53 FR 8144) require potatoes handled in the State of Washington to be inspected and certified as meeting these requirements. Section 946.60(b) of the marketing order further requires that potatoes that are regraded, resorted or repackaged be reinspected prior to shipment.

Potatoes are customarily packed in a number of different containers of varying size, type and construction. The actual container used is usually determined by many market factors, including the preference of the buyer. Potatoes that are graded and packed in a specific container are sometimes repackaged in different containers in response to changes in these market requirements.

The purpose of reinspection is to ensure that the minimum quality requirements are met. This action would be limited to U.S. No. 1 or better potatoes which would assure a high quality pack. Requiring reinspection of these potatoes would be unnecessary to accomplish the above stated purpose and therefore constitutes an undue hardship on handlers under § 946.60(a) of the order. The committee therefore recommended that U.S. No. 1 grade or better potatoes that have been previously inspected be exempt from the reinspection requirements of § 946.60(b), if repacked by a handling facility in the State of Washington within 72 hours of the original inspection. A maximum time limit of 72 hours would help to ensure that the quality of repackaged potatoes would not significantly deteriorate prior to shipment.

The committee believes that a lot of U.S. No. 1 grade or better potatoes, when repacked, would not be of significantly different quality when resorted or repacked within 72 hours of the original inspection. The committee did not, however, recommend permitting U.S. No. 2 grade potatoes that are resorted or repackaged to be shipped without being reinspected. If lots of U.S. No. 2 grade potatoes were resorted, the

better quality potatoes in the lot could be segregated and sold as a higher grade, while those lower quality potatoes sorted out of the lot could fail marketing order requirements even though officially covered by an original inspection and certification. The committee further believes that, in order to maintain control of regraded potatoes, this rule should apply only to potatoes handled by Washington shippers.

The majority of handlers and growers that would be affected by this proposed regulatory change are small entities. Permitting handlers to repackage No. 1 or better grade potatoes within 72 hours of the original inspection without requiring reinspection would have a positive impact on them by decreasing inspection costs. Moreover, reducing these costs to handlers would tend to increase returns to growers.

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

It is found that a comment period of 15 days is appropriate. The shipping season has begun and this regulation, if adopted, should apply to as many shipments as possible to be of maximum benefit to producers and handlers. Also, this action was proposed at a public meeting in which all affected parties could participate. All written comments received within the designated comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

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

2. Section 946.336 is amended by adding a new paragraph (g)(2) as follows:

§ 946.336 Handling regulation.

* * * * *

(g) * * *

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-19476 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-56]

Airworthiness Directives; Sikorsky Aircraft Model S-61N and S-61NM Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to further amend an airworthiness directive (AD) that presently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components; and replacement of the components, as necessary, on Sikorsky Model S-61N and S-61NM series helicopters. The proposed amendment to the AD is needed to increase the compliance times to alleviate difficulties being encountered in accomplishing the hardness test and initial fluorescent penetrant inspections, and to extend the intervals for repetitive florescent penetrant inspections. If adopted, the extended compliance times would eliminate these undue burdens on operators and at the same time provide an equivalent level of safety.

DATES: Comments must be received on or before October 2, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket. Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, or delivered in duplicate to Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas. Comments must be marked: Docket No. 88-ASW-56. Comments may be inspected at the above location in Room 158 between the hours of 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Assistant Chief Counsel for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88-ASW-56. The postcard will be date/time stamped and returned to the commenter.

This action proposes to amend Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989), which currently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary, on Sikorsky Model S-61N and S-61NM series helicopters. The one-time hardness test is applicable to truss tube assemblies which have butt-welded end fitting with a lug welded to the end fitting.

Since issuing Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by amendment 39-6279 (54 FR 31505; July 31, 1989), the FAA has determined that operators have encountered difficulty in achieving accurate hardness readings. Some operators have elected to remove the truss tube assemblies to conduct a

laboratory-type hardness test, and others have replaced the affected truss tube assemblies with serviceable parts, if available. As a result, the hardness test has taken more time than anticipated. In response to these problems the FAA has determined that the compliance time may be extended without adversely affecting safety, considering service experience to date. Therefore, the FAA proposes to further amend paragraph (a) to extend the compliance time to 100 hours' time in service for completing the hardness test.

In addition, the FAA has determined that operators of a fleet of S–61 series helicopters have encountered serious operational difficulties in complying with the initial fluorescent penetrant inspections. The inspection has taken more time than anticipated and sufficient serviceable spares are not available to allow immediate replacement of the parts affected. The result is that the inspection for the fleet of S–61 series helicopters cannot be conducted on a rotation basis. The FAA has determined that a compliance time in terms of number of landings and increased inspection intervals alleviates the operators' difficulties while achieving the same level of safety, considering all available service experience to date. Therefore, the FAA proposes to amend paragraph (b) to require the initial fluorescent penetration inspections on the basis of number of landings and to increase the intervals in table 1 for the repetitive inspections.

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

The FAA has determined that this proposed regulation is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of 14 CFR part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–6131 (54 FR 6512; February 13, 1989), AD 89–04–01, as amended by Amendment 39–6279 (54 FR 31505; July 31, 1989), by revising paragraph (a) introductory text; by revising paragraph (b) introductory text; and by revising table 1 by inserting 2,500 in place of 500 and 4,700 in place of 2,500 as follows:

Sikorsky Aircraft: Applies to Model S–61N and S–61NM helicopters certificated in any category. (Docket No. 88–ASW–56)

* * * * *

(a) Within the next 100 hours' time in service after the effective date of this AD, conduct a hardness test of each welded lug of sponson truss tube assemblies, Part Numbers (P/N) S6125–51212–4 and 61250–51233–042, aft lower truss tube assembly—left side, S6125–51212–5 and 61250–51233–043, aft lower truss tube assembly—right side; S6125–51214–3 and 61250–51235–041, forward upper truss tube assembly—left and right side; and S6125–51214–4 and 61250–51235–042, aft upper truss tube assembly—left and right side, as follows:

* * * * *

(b) Prior to the accumulation of 1,000 landings after the effective date of this AD, and thereafter at intervals not to exceed those landing intervals stated in table 1, inspect the sponson truss tube assemblies for cracks in the locations noted in the table as follows:

* * * * *

Issued in Fort Worth, Texas, on August 9, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–19427 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Proposed Customs Regulation Amendment to the Definition of Switchblade Knives

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations relating to switchblade knives. Switchblade knives are prohibited entry into the United States by the Switchblade Knife Act. The document clarifies the definition of switchblade knives and related materials which are included within the prohibitions of the Act. It would also amend the regulations by including "Balisong" and "ballistic" knives among the prohibited weapons. It is Customs position that both the legislative intent and current definitions include Balisong knives within the existing regulatory prohibition. This position has been expressly upheld in the courts; however, Customs has decided to clarify the regulations. The inclusion of "ballistic" knives reflects direct Congressional action. This notice of proposed rulemaking invites comments from interested members of the public which will be reviewed and considered prior to the publication of a final rule.

DATE: Comments must be received on or before October 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Value, Special Programs and Admissibility Branch, Commercial Ruling Division, (202) 566–5765.

SUPPLEMENTARY INFORMATION:

Background

The Switchblade Knife Act (15 U.S.C. 1241–1245) prohibits the introduction, manufacture, transportation or introduction into interstate commerce of any switchblade knife. To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others* v. *Joseph P.*

Kelly, Collector of Customs, and Others (378 F. 2d 1014). Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes. The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the *Precise Imports* case could not be considered too limiting.

In addition to the knives themselves, Customs is also concerned with blades, handles, and kits which are entered separately into the United States where they are assembled into a finished product which would have been denied entry had any been attempted. To prevent such actions, Customs has issued several decisions which include these components within the prohibitions of the Switchblade Knife Act.

The Customs position that Balisong knives are included within the prohibitions of the Switchblade Knife Act was squarely addressed in a decision of the United States Court of Appeals for the Sixth Circuit, *Taylor* v. *United States*, 848 F.2d 715 (6th Cir. 1988). That decision reversed an order of the district court which had enjoined Customs from seizures of Balisong knives. In its decision, the Court of Appeals stated the Customs Service's interpretation of the statute was rational and should not be set aside. In order to clearly set forth Customs position, the regulations issued to implement the Act are being amended to specifically refer to Balisong knives.

In 1986, in response to a newly developed weapon called a "ballistic knife", Congress, as part of Public Law 99–570, amended the Switchblade Knife Act by adding a new section 1245 prohibiting the possession, manufacture, sale or importation of ballistic knives. These knives were defined in the legislation as knives with a detachable balde that is propelled by a spring-operated mechanism. To conform the Customs Regulations to the statute, the proposed amendment includes these knives within the identified prohibited items.

The proposed amended regulation is intended to eliminate the need for continuing litigation over the scope of Customs Regulations which exclude knives which are within the breadth of the Switchblade Knife Act. The amendment is intended to include within the definition section, (§ 12.95(a)), all types of knives and knife components which fall within the prohibition of the Switchblade Knife Act either by name or description.

The proposal also amends the Regulations to provide that Customs will use its seizure authority under 19 U.S.C. 1595a(c) to enforce the provisions of the Switchblade Knife Act. In addition, citations of the Switchblade Knife Act are revised to reflect its amendment.

It is Customs position that the proposed amendments of the Customs Regulations are being made to clarify already existing enforcement standards and regulations, and not to create new standards or prohibitions. Accordingly, Customs will continue to enforce the existing regulations, to include all judicial interpretations thereof, during the consideration of these proposed amendments.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, imports.

Proposed Amendment

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202, (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

2. The specific authority for §§ 12.95–12.103 will be revised to read as follows:

Sections 12.95–12.103 also issued under 15 U.S.C. 1241–1245:

3. Section 12.95 is amended by revising paragraph (a) to read as follows:

§ 12.95 Definitions.

* * * * *

(a) *Switchblade knife.* "Switchblade knife" means:

(1) Any knife, or components thereof, including, but not limited to, knives which are referred to as Balisong, butterfly, or gravity knives, which has the following characteristics or identities:

(i) A blade which opens automatically by hand pressure applied to button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both; or

(ii) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(iii) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which

open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both.

(2) Knives with a detachable blade that is propelled by a spring-operated mechanism and which are referred to as ballistic knives, or components thereof.

* * * * *

§ 12.96 [Amended]

4. In § 12.96(b) remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

5. Section 12.97 is revised to read as follows:

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

6. Section 12.98 is amended by revising the introductory text and revising paragraph (c) to read as follows:

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by 15 U.S.C. 1244, when:

* * * * *

(c) A switchblade knife, other than a ballistic knife, having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

§ 12.100 [Amended]

7. In § 12.100(b) remove the words "§ 4 of the Act of August 12, 1958".

§ 12.101 [Amended]

8. In § 12.101(a) remove the words "section 545, title 18, United States Code" and add, in their place, the words "19 U.S.C. 1595a(c)".

§ 12.103 [Amended]

9. In § 12.103 remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 14, 1989.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89–19492 Filed 8–17–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 448

[Docket No. 76N–0482]

RIN 0905–AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR Part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. The amendment would allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR part 448 to be consistent with the monograph for OTC first aid antibiotic drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 17, 1989. Requests for an informal conference on proposed change in § 448.510f(a)(1) by September 18, 1989.

ADDRESSES: Written comments or requests for conference on proposed change in § 448.510f(a)(1) to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products (21 CFR Part 333 Subpart B). The monograph providers for combinations of bacitracin-polymyxin B sulfate topical aerosol (§ 333.120(a)(3)) and bacitracin or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (§ 333.120(b)(1) and (2)).

On January 27, 1989, FDA received a citizen petition (Docket No. 76N–0482/CP0002) requesting the amendment of 21 CFR Part 333 and 21 CFR 448.510f to include a suitable local anesthetic in the combination bacitracin-polymyxin B sulfate topical aerosol. Specifically, the petition requested that the following paragraph be added to § 333.120(b):

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with inert gases: *Provided*, that it meets the tests and methods of assay in § 448.510f(b).

The petition also requested that the following sentence be added to § 448.510f(a)(1): "It may contain a suitable local anesthetic."

After reviewing the citizen petition, the agency concludes that there is sufficient evidence to generally recognize the requested combination as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. The citizen petition pointed out that FDA, in its final monograph for OTC first aid antibiotic drug products, accepted the appropriateness of the combination of OTC topical products containing antibiotics and a local analgesic, and expressly permitted the combination of certain antibiotic active ingredients with any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (52 FR 47312 at 47323). This acceptance was based, in part, on the facts that combination topical antibiotic products containing a local anesthetic have a marketing history that predates the OTC drug review and the antibiotic regulations in §§ 448.510a and 448.510e (21 CFR 448.510a and 448.510e) allow certain antibiotic-anesthetic combinations.

In the advance notice of proposed rulemaking for OTC external analgesic drug products (December 4, 1979; 44 FR 69768), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products recommended as Category I combinations containing certain external analgesic active ingredients and Category I antimicrobial active ingredients provided the product was labeled for the concurrent symptoms involved (44 FR 69865). In the tentative final monograph for OTC external analgesic drug products, the agency proposed such combinations as

Category I (February 8, 1983; 48 FR 5852 at 5868). That rulemaking has not been finalized to date. However, in the final monograph for OTC first aid antibiotic drug products, the agency stated that the combination of a first aid antibiotic and an external analgesic, anesthetic, or antipruritic is similar in action and intended use to the combination of a topical antimicrobial and an external analgesic, anesthetic, and antipruritic (52 FR 47312 at 47319).

In addition, the agency stated that combinations of first aid antibiotic and local anesthetic ingredients provide rational concurrent therapy for a significant proportion of the target population and that the combination is suitable for OTC use under adequate directions for use and warnings against unsafe use, as required under § 330.10(a)(4)(iv) (52 FR 47319).

In the final monograph for OTC first aid antibiotic drug products, the agency included only those topical antibiotic-anesthetic combinations that included Category I ingredients from both the external analgesic and first aid antibiotic rulemakings and that are the subject of a current CFR antibiotic monograph (52 FR 47319). Bacitracin-polymyxin B sulfate topical aerosol in combination with a local anesthetic was not the subject of an existing antibiotic regulation and, consequently, such a combination was not included in the final monograph.

Therefore, the agency is proposing to amend the existing antibiotic regulation in § 448.510(a)(1) to provide for such a combination and to include this combination in § 333.120(b) of the final monograph for OTC first aid antibiotic drug products. The product would be labeled in accordance with § 333.160 (21 CFR 333.160).

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking 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 proposed rule for OTC first aid antibiotic 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, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC first aid antibiotic drug products. Comments regarding the impact of this rulemaking on OTC first aid antibiotic drug products should be accompanied by appropriate documentation.

It has been determined that 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.

Interested persons may, on or before October 17, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of all comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may, on or before September 18, 1989, submit to the Dockets Management Branch a request for an informal conference on the proposed change in § 448.510f(a)(1). The participants in an informal conference, if one is held, will have until October 17, 1989, or 30 days after the day of the conference, whichever is later, to submit their comments.

List of Subjects

21 CFR Part 333

First aid antibiotic drug products, Labeling over-the-counter drugs.

21 CFR Part 448

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 333 continues to read as follows:

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, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. A new paragraph (b)(3) is added to § 333.120 to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(b) * * *

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with inert gases: *Provided,* That it meets the tests and methods of assay in § 448.510f(b) of this chapter.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 448 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Section 448.510f is amended by revising paragraph (a)(1) to read as follows:

§ 448.510f Bacitracin-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin-polymyxin B sulfate topical aerosol is bacitracin and polymyxin B sulfate in a suitable and

harmless vehicle, packaged in a pressurized container with a suitable and harmless inert gas. Each gram contains 500 units of bacitracin and 5,000 units of polymyxin B. It may contain a suitable local anesthetic. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin used conforms to the standards prescribed by § 448.10(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: June 14, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89-19392 Filed 8-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to previously mined areas, fish and wildlife, maps and plans, steep slope mining, subsidence, definitions, financial interests of State employees, and individual civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. September 18, 1989. If requested, a public hearing on the proposed amendment will be held on September 12, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on September 5, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office:

Mr. William. J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (307) 758-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 951-4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (307) 758-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated August 3, 1989, (Administrative Record No. MO-454), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to a November 3, 1988, letter from OSMRE in accordance with 30 CFR 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through June 15, 1988.

The regulations that Missouri proposes to amend are: 10 CSR 40-4.080 (1) and (2), Previously Mined Areas; 10 CSR 40-6.040(11)(E), Fish and Wildlife Resource Information; 10 CSR 40-6.050(5)(C), Operations Maps and Plans; 10 CSR 40-6.060 (2)(B) and (2)(C), Steep Slope Mining; 10 CSR 40-6.070 (7)(A)3, Review of Permit Applications; 10 CSR 40-6.070(8)(M), Criteria for Permit Approval or Denial; 10 CSR 40-6.120(11), Subsidence Control Plan; 10 CSR 40-8.010(1)(A) 5, 18, and 71, Definitions; 10 CSR 40-8.045 (1), (2), (3), (4), (5), and (6), Individual Civil Penalty Assessment to the Directors, Officers, or Agents of a Corporation; and 10 CSR 40-8.060(8)(B), Resolving Prohibited Interest.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.d.t. September 5, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to

testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-19454 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3631-2]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located in the Gulf of Mexico near the Barataria Bay Waterway (BBWW) for the continued disposal of dredged material removed from the BBWW. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposal site designation is for an indefinite period of time, but the site is subject to monitoring to insure that unaccepable adverse environmental impacts do not occur.

DATES: Comments must be received on or before October 2, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 288.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the BBWW site for the disposal of material dredged from the BBWW. In January 1980, the interim status of the BBWW site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Final Environmental Impact Statement entited "Environmental Impact Statement (EIS) for the Barataria Bay Waterway, Louisiana Ocean Dredged Material Disposal Site Designation." On August 11, 1989, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register.** The public comment period on this Final EIS closes on September 11, 1989. Limited copies of the Final EIS are available from the EPA address given above. Comments received on the March 1989 Draft EIS were addressed in the Final EIS. Five comment letters were received. The major issue raised concerned the beneficial uses of dredged material for marsh creation purposes instead of ocean disposal of the material. Because site disignation does not preclude the use of other disposal options, EPA has elected to proceed with site designation.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines oceans disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Final EIS based on information from the COE. The nearest land disposal area occurs about 3.5 miles north of the disposal site. However, this area is already used for disposal of material dredged from the bay portion of the BBWW. Using this or other sites would increase costs considerably and reduce their life expectancy, necessitating acquisition of new areas. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with BBWW material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate

shallow-water site located further east or immediately west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. The State of Louisiana has indicated that EPA's proposed action is not consistent with the Louisiana Costal Zone Management Program. However, EPA has determined that designation of the BBWW site is consistent, to the maximum extent practicable, with the Coastal Zone Management Act.

C. Site Designation

The BBWW ocean disposal site is located off the Barataria Basin of southeast Louisiana. The northern end of the site is about 1.25 miles southeast of Grand Terre Island and about 2.0 miles east of Grand Isle in Jefferson Parish. The site extends approximately three miles offshore. Water depths at the site range from 8 to 20 feet. The coordinates of the rectangular shaped site are as follows: 29°16'10" N, 89°56'20" W; 29°14'19" N, 89°53'16" W; 29°14'00" N, 89°53'36" W; 29°16'29" N, 89°55'59" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for coninuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposal disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (2.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2))

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The BBWW ocean disposal site represents a small area of the total range of the fisheries resource. Impacts to endangered or threatened turtles and whales that might utilize the area for the listed activities are negligible. Grand Terre Island harbors a bird nesting colony consisting of black skimmers. This colony is located about 2.5 miles from the disposal site.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3))

The existing ocean disposal site is about 1 mile from the nearest beach on Grand Terre Island. The Grand Terre beach is sparsely used because it is small and accessible only by boat. There is a beach on the eastern end of Grand Isle in Grand Isle State Park, about 1.5 miles to the east, that attracts visitors. The turbidity plume resulting from disposal would be diluted to ambient levels well before reaching either of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4))

The material to be disposed of is from the adjacent area of the BBWW and consists of a mixture of sand, silt and clay obtained by hydraulic dredge. Sediment grain size generally decreases in the offshore direction, with sands being predominant in the disposal site. Approximately 500,000 cubic yards of material are disposed of in the site during each use. The material is removed with a hydraulic dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5))

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6))

Mixing processes, current characteristics, and sediment transport in the nearshore region off Barataria Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally to a minor extent with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which can cause mortality of benthic organisms. During a site study in December 1980, waters were supersaturated with oxygen at all depths. During June 1981, waters were partially saturated or supersaturated with oxygen down to about sixteen feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current is to the west, but easterly currents occur with storm events. Data on the specifics of currents in the area are sparse.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7))

Dredged materials from the construction and maintenance of the BBWW have been disposed of at the site since 1960, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations,

temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size. Since the effects of disposal are temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of specific scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8))

In the vicinity of the disposal site the majority of shipping traffic is confined to the BBWW. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the BBWW during disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The BBWW site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.4 feet, which should not result in vessel groundings.

The nearest oyster leases are on the north side of Grand Terre Island about 2.0 miles to the northwest of the site. Designation of the disposal site would not impact these or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located near the Grand Isle State Park recreation area. There has been no apparent impact to the park from use of the disposal site and no impact is expected to occur in the future.

Petroleum and mineral-extracting activities occur offshore within 8.0 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. There is a major oil and gas collection facility that occurs on the eastern end of Grand Isle; it has not been impacted by the use of the disposal site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9))

Water column concentrations of trace metals were below EPA's water quality criteria during the 1980–1981 study. Chlorinated hydrocarbon concentrations (CHC) in and near the BBWE disposal site were below detection limits, except for dieldrin and DDE. These chemicals were found at slightly higher levels than EPA's 24-hour average criteria, but at levels well below the single measurement criteria.

Nutrient concentrations, turbidity, and suspended solids are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

During the 1980–1981 study, concentrations of chemicals in sediments were strongly related to grain size, with highest levels in slits and clays. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types. Total hydrocarbon concentrations were three to four times higher in June than in December probably due to riverine sources. The presence of unresolved high molecular weight hydrocarbons showed evidence of chronic petroleum contamination. Concentrations of cyanide, phenol and oil and grease were low and were comparable inside and outside the disposal site.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporarily and was dominated by polychaete worms and the little surf clam. The little surf clam only became dominant during summer on sand substrate. Polychactes tended to reach highest densities in fine grained sediments. Statistical analyses demonstrated a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from southern Louisiana.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10))

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11))

Fort Livingston is a registered historic site on the west end of Grand Terre Island, due north of the disposal site. This landmark has undergone marked subsidence and cannot be restored. A survey to identify other archeological and historical resources is not required at this time. However, a Nautical Resources Plan for the Corps is being prepared in consultation with the Louisiana State Historic Preservation Officer. Under guidelines established by this plan, studies may be done in the future to evaluate impacts to historic shipwrecks that may result from use of the disposal site.

E. Proposed Action

Based on the Final EIS, EPA proposes to designate the Barataria Bay Waterway ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 8, 1989.

Robert E. Layton Jr., P.E.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Barataria Bay Waterway, La.–Bar Channel and adding paragraph (b)(81) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(81) Barataria Bay Waterway, Louisiana—Region 6

Location: 29°16'10" N, 89°56'20"W; 29°14'19"N, 89°53'16"W; 29°14"00" N, 89°53'36" W; 29°16'29" N, 89°55'59" W.

Size: 1.4 square nautical miles.

Depth: Ranges from 8–20 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Barataria Bay Waterway.

[FR Doc. 89–19466 Filed 8–17–89; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping In the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Ecuador, proposes rules imposing a fee of $100,000 per outbound voyage from the United States to Ecuador on Maritima Transligra, S.A., an Ecuadorian-flag carrier. The rule would adjust or meet apparent unfavorable conditions by imposing burdens on an Ecuadorian carrier in response to burdens imposed on U.S. commerce by Ecuadorian laws and regulations.

In addition, the Commission proposes to revise Part 586 of the Code of Federal Regulations to incorporate as a single section the present Part 586, and to add the proposed rule to that Part as a new section. For this reason, the Final Rule issued in Docket No. 87–6, *Actions to Adjust or Meet Conditions Unfavorable to Shipping In The U.S./Peru Trade,* 54 FR 12,629 (March 28, 1989) is reprinted herein as a proposed recodification which makes no substantive change in the rule and does not otherwise affect its status.

DATES: Comments due on or before September 18, 1989.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: .

Pursuant to the authority of section 19(1)(b) ("Section 19"), Merchant Marine Act, 1920 ("1920 Act"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3(a), (b) and (d).

Background

On March 15, 1989 (54 FR 10,721), the Commission issued a Notice of Inquiry ("March Notice") into laws, regulations and policies of the Government of Ecuador ("GOE") affecting shipping in the United States/Ecuador trade ("Trade") to determine whether action pursuant to Section 19 is warranted. The Commission instituted this inquiry as a result of allegations made by Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, that it has been unable to reestablish a liquid bulk service in the Trade due to GOE cargo reservation laws [1] which require OEI to employ U.S.-flag vessels in such a service. In addition, the Commission requested information from the U.S. Department of State ("DOS") about its efforts to resolve the situation through diplomatic channels.

The Commission received comments to its March Notice from Maritima Transligra S.A. ("Transligra"), OEI, Pecten Chemicals ("Pecten"), Trans Marketing Houston, Inc. ("Trans Marketing"), Shippers for Competitive Ocean Transportation ("SCOT"), the Joint Maritime Congress ("JMC"), DOS, and the GOE.

Based on the comments received, the Commission on May 18, 1989 (54 FR 21,473), issued a Notice of Further Comments ("May Notice") to provide interested parties an opportunity to submit additional comments on the status and operations of OEI, as well as on shipping conditions in the U.S./Ecuador trade. These comments were generally solicited to assist the Commission in determining whether issuance of a countervailing rule pursuant to Section 19 is warranted. The Commission particularly sought information on the status and operations of OEI because it was not clear from the comments filed whether OEI operates as a carrier, is solely an agent for non-U.S. companies which are carriers operating foreign-flag vessels, or has some other relationship to carriers operating third-flag vessels.

In the May Notice, the Commission stated that GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade and, to the extent that the Resolution applies only to the U.S./Ecuador bulk

[1] The particular law in question is GOE Resolution No. 012/87 of March 1987, which reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

trade, leaving most other Ecuadorian bulk trades open to third-flag carriers, it is discriminatory.[2] The Commission added that this Resolution allows Ecuadorian shipping companies to charter and employ foreign-flag vessels in the Trade, whereas U.S. shipping companies may employ only U.S.-flag vessels in the Trade. Further, the Commission advised that even if, as the GOE represents, U.S. companies may employ third-flag vessels in the Trade if they operate at least one U.S.-flag vessel, troubling questions are raised as to whether Ecuadorian laws dictating the fleet mix and other registration requirements for U.S. or other non-Ecuadorian citizens' participation in U.S. trade create conditions unfavorable to shipping or are otherwise inappropriate. Additionally, the Commission noted that the exclusion of third-flag operators in the Trade pursuant to Resolution No. 012/87 alone may create conditions unfavorable to shipping in the Trade and that comments received thus far indicate shipper support for OEI's allegation that GOE cargo reservation laws create conditions unfavorable to shipping in the Trade.

Comments in response to the May Notice were received from: OEI, Transligra, SCOT, Nedlloyd Lines ("Nedlloyd"), Council of European and Japanese National Shipowners Association ("CENSA") and DOS. These comments are summarized below.[3]

Summary of Comments

A. OEI

OEI states that it does not own or operate vessels. It reportedly acts as agent for owners and operators of non-U.S.-flag vessels. OEI advices that it markets the services of vessel owners and operators and negotiates their charters and other shipping arrangements. Further, OEI states that it is affiliated with and operates as agent for O.N.E. Shipping, Ltd., a Bermuda company that uses liquid parcel tankers in regular service between the U.S. and South and Central America and the Caribbean. OEI advises that this service of 25 years included Ecuador until GOE laws excluded competitors of Transligra.

OEI takes the position that the facts and circumstances present in this proceeding definitively show the existence of conditions unfavorable to shipping in the foreign trade of the United States within the meaning of Section 19 and that, therefore, countervailing action under that Section is warranted. The laws and policies of the GOE are said to have caused actual harm to shipping in the U.S. commerce and to U.S. trade interests. OEI maintains that all third-flag carriers except those operated by the authorized Ecuadorian carrier, Transligra, are prohibited from carrying U.S. exports to Ecuador; [4] U.S. exporters are compelled by the GOE to deal with a one carrier monopoly; and shipping-related services by U.S. companies such as OEI are unemployed in the Trade. OEI asserts that GOE laws and policies have resulted in "above-market freight rates for U.S. exporters, absence of cost sensitive competition, inability of U.S. exporters to make commercial selection of transportation, and U.S. exporters' potential loss of markets to other countries' exporters not facing similar restrictions." Further, it believes that the threat of penalties to shippers violating GOE cargo reservation laws magnifies the actual and potential harm. Shippers unwilling to risk penalties allegedly will not venture to use a carrier other than Transligra.

OEI submits that it is "doubly affected and harmed" by the GOE's actions. It reports that it is unable to engage U.S.-flag vessels in the Trade due to their unavailability,[5] and that its principals who own and/or operate third-flag vessels cannot use OEI to broker shipments in the Trade because third-flag vessels not chartered by Transligra are excluded.

OEI maintains that, due to GOE restrictions, U.S. exporters to Ecuador and neighboring countries necessarily suffer higher costs because they are unable to employ a single carrier to transport cargoes to all destinations. The inability to employ a single carrier allegedly prevents exporters from receiving volume discounts. Further, OEI contends that carriers cannot compete effectively if barred from the U.S.-Ecuador leg of a U.S.-West Coast of South America service.

OEI takes exception with the GOE's earlier contention that no additional service is needed because the Trade is not large enough to accommodate any carrier other than Transligra. Transligra allegedly has used as much or more third-flag tonnage in the Trade as Ecuadorian-flag tonnage.

OEI contends that Section 19 relief is available under the circumstances of this case, citing past Section 19 cases, dealing with countries such as Venezuela,[6] Colombia,[7] and the Philippines [8] wherein the Commission issued proposed rules due to unilateral foreign government actions resulting in the apparent exercise of control by that government over the flow of U.S. exports. OEI quotes from the Commission's proposed rules, illustrating that in these cases the Commission sought to protect the interests of not only U.S.-flag carriers, but third-flag carriers and U.S. shippers. OEI maintains, therefore, that Transligra's argument that Section 19 benefits only U.S.-flag shipping is without merit.

Further, OEI contends that relief under Section 19 is available for parcel tanker cargoes. It cites the fact that such interests were previously protected by the Commission in FMC Docket No. 87-11, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade.* OEI takes the position that the interest protected by Section 19 is "shipping in the foreign trade," which includes all types of international ocean commerce.

OEI maintains that the harm it has described is expected to continue since the GOE has not indicated that it will permit freer access. Given the harm which allegedly is suffered by U.S. exporters of liquid bulk commodities, U.S. enterprises like OEI, and third-flag operators, OEI urges the Commission to find that the laws, policies and actions of the GOE produce conditions that the Commission has previously declared to be unfavorable to shipping under Section 19.

B. Transligra

Comments submitted by Transligra include an affidavit of Wil W. Nefkens, Vice President of Transligra. Transligra avers that no operator of U.S.-flag

[2] Exceptions to this may be the Ecuador/Brazil-Argentina trades wherein the GOE states in its April 7, 1989 letter to GOS that 100 percent of the cargo generated by those two countries destined for Ecuador is reserved for "itself."

[3] *See* May Notice for a summary of comments received in response to the March Notice.

[4] OEI reports that it has been informed that applications for authorization to serve the Trade must be submitted by a U.S. company thereby barring third-flag carrier access.

[5] OEI asserts that no U.S.-flag vessels able to carry liquid bulk cargoes serve the Trade or are available for service. One reason for lack of availability of U.S.-flag service is reportedly the vessel draft restriction at Guayaquil.

[6] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade,* Docket No. 82-58, Notice of Proposed Rulemaking, 47 FR 55968, 55971 (December 14, 1982).

[7] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade,* Docket No. 87-11, Notice of Proposed Rulemaking, 52 FR 20119 (May 29, 1987).

[8] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade,* Docket No. 83-45, Notice of Proposed Rulemaking, 48 FR 45000, 45802-03 (October 7, 1983).

vessels has claimed that conditions unfavorable to shipping exist in the Trade. Transligra states that, on the contrary, the JMC, a research and education organization representing U.S.-flag ship companies, did not oppose GOE policies in its comments.

Transligra notes that OEI appears to be an agent for one or more third-flag carriers and argues that FMC jurisdiction under Section 19 is limited to protecting the interests of U.S.-flag carriers.

Transligra submits a number of statements rebutting comments filed by shippers in response to the Commission's March Notice. It states that Trans Marketing neither claims nor demonstrates that service in the Trade is poor, rates are high, or unfavorable conditions exist. Transligra asserts that Pecten makes no attempt to support its allegations of high rates in the Trade. It likewise counters SCOT's concern that GOE restrictions do not apply to liquid bulk exporters of any other country, contending that virtually all liquid bulk parcel tanker imports to Ecuador are shipped from the U.S. SCOT's allegations that GOE restrictions result in economic, safety and environmental costs are said to be unfounded and in no way demonstrate that conditions are unfavorable to shipping in the trade from the U.S. to Ecuador. Transligra responds that its rates in the Trade are competitive and its service is efficient and of high quality.

Further, Transligra maintains that OEI's claim that the number of liquid bulk operators offering service from the U.S. to Ecuador has declined to one while the Ecuadorian import trade from other countries continues to have several operators is misleading. It notes that OEI, for example, lists product carriers such as Shell Tankers as carriers of Ecuadorian liquid bulk imports in other trades. Further, Transligra advises that less than 10 percent of parcel shipments in any year originates outside the U.S.

Transligra concludes that nothing in the comments submitted to date indicates that unfavorable conditions exist in the Trade, and accordingly suggests that the proceeding be terminated.

The affidavit submitted by Mr. Nefkens provides information on Transligra's service in the Trade, stating that its rates are competitive and operations efficient. He reports that Transligra operates one Ecuadorian-flag vessel, the MV CHIMBORAZO which normally makes 10 to 11 voyages per year in the Trade. When additional tonnage is required, Transligra reportedly charters space on other parcel tankers or charters entire voyages.

Mr. Nefkens takes exception to a number of comments submitted in response to the Commission's March Notice. He points out that OEI's claim that no U.S.-flag vessels are available for service in the Trade is directly refuted by the JMC. He suggests, however, that if OEI is a U.S. company operating vessels, it would acquire a foreign-built vessel and register it under the U.S. flag.

Mr. Nefkens also takes issue with OEI's statement that Transligra transports a majority of its liquid bulk cargo on third-flag vessels. He states that in the first five months of 1989, over one-half of Transligra's liquid bulk cargoes were transported on Ecuadorian-flag vessels. Mr. Nefkens explains that, if sufficient liquid bulk cargoes were available in the Trade, Transligra would operate a second Ecuadorian-flag vessel.

Mr. Nefkens states that the GOE "obviously favors reliable service by the Ecuadorian carrier, operating a dedicated Ecuadorian vessel" at rates that can be adjusted or lowered by the GOE when it believes that such action is necessary. Further, Mr. Nefkens submits that Transligra can offer a full service which meets the needs of shippers.

C. SCOT

SCOT reports that its members have used OEI vessels in U.S./South America trades other than the U.S./Ecuador trade, and that it has provided efficient service. It therefore maintains that OEI should not be denied access to the Trade.

SCOT explains that in small markets for U.S. exports, such as Ecuador, it is particularly important that chemical parcel tankers be free to serve a total geographic area to make their services cost effective. Free access is said to be important so that shippers can select the carrier that will best assure safe handling of the product, minimize the risk to the environment, and maintain product quality. SCOT asserts that these assurances are not possible when a single carrier, *i.e.*, Transligra, is granted an effective monopoly in the Trade.

SCOT refutes JMC's claim that the U.S. merchant marine has chemical parcel tankers capable of operating in the Trade. Further, SCOT disputes JMC's argument that the FMC's primary goal is to protect the rights of U.S.-flag vessels, asserting that the FMC is responsible for protecting the rights of U.S. shippers, as well as the rights of U.S.-flag and other carriers.

SCOT expresses concern over the fact that the GOE has involved itself in the setting of freight rates, which it believes should be set by the market and not by the government. Additionally, SCOT is troubled by the fact that the GOE has imposed severe fines on importers who violated the cargo reservation law.

SCOT has provided information on conditions in the U.S./Ecuador *liner* trade because GOE cargo reservation policies extend to liner, as well as bulk cargoes. Competition in the U.S./Ecuador liner trade is said to be extremely limited causing rates to be among the highest that U.S. shippers experience anywhere in the world. SCOT states that with the possible exception of northbound service by Nedlloyd to the U.S. East Coast, no third-flag carriers operate in the Trade.

D. Nedlloyd

Nedlloyd advises that it is precluded from offering service in the U.S. export trade to Ecuador because of Ecuadorian requirements that U.S. exports to Ecuador be transported on Ecuadorian or U.S.-flag vessels. It believes that "the overall effect of Ecuadorian restrictions on U.S. maritime commerce is to restrict heavily market mechanisms in the export commerce of the United States to Ecuador without subjecting Ecuadorian exports to similar impediments." Nedlloyd urges the Commission to examine Ecuador's restrictions of general cargo as part of its evaluation of OEI's complaint.

While Nedlloyd has no information to submit regarding the status of OEI, it challenges the position taken by Transligra that OEI lacks standing to raise issues under Section 19. Nedlloyd states that this position is inconsistent with the provision's nearly seventy-year history. Nedlloyd submits that Commission authority under Section 19 and the issues to be brought to the Commission pursuant thereto must necessarily be broad. It contends that the adverse impact of unilateral restrictions on U.S. commerce is varied and widespread. In order for the Commission to determine whether unfavorable conditions exist, Nedlloyd believes that the Commission must engage in efforts to obtain the broadest possible comment in the shortest time practicable. Nedlloyd maintains that Transligra, through its Petition to Dismiss the Proceeding due to OEI's standing, is attempting to prevent the Commission from compiling an adequate record, and is focusing on OEI's status rather than explaining why Transligra should enjoy a privileged position in the U.S. export commerce due to GOE restrictions, or providing a defense or explanation for GOE restrictions.

E. CENSA

CENSA challenges Transligra's argument that Section 19 does not extend to protection of non-U.S.-flag carriers. CENSA notes that the Commission has consistently rejected this argument and that the Commission's long-standing interpretation of Section 19 has not been overridden by Congress. CENSA, therefore, urges the Commission to adhere to its prior decisions and reject the jurisdictional argument advanced by Transligra.

F. DOS

The DOS transmitted two letters to the Commission. By letter of June 6, 1989, DOS reports that the issue of OEI was being discussed within the GOE's National Merchant Marine Council. In a follow up letter to the Commission, dated July 21, 1989, DOS advises that based on a recent meeting between U.S. Embassy representatives in Quito and GOE officials, the GOE has not indicated that it is contemplating any initiatives to allow OEI into the Trade.

Discussion

A. Jurisdiction

Much of the substance of the second round of comments was directed to the legal issue raised by Transligra, that the reach of Section 19 is limited to U.S.-flag vessel operators and thus may not be invoked by OEI, which, although a U.S. company, is not an operator of vessels. Indeed, certain commenters went to some length to refute the jurisdictional contentions of Transligra. CENSA filed comments addressed solely to this issue, citing past Commission exercises and interpretations of Section 19. Nedlloyd Lines filed lengthy comments rejecting what it terms Transligra's "tortured interpretations of Section 19 * * *." (Nedlloyd Comments at 1.)

Nedlloyd correctly points out that Transligra's reliance on specific aspects of the legislative history is strained and misplaced. Transligra argues that the 1920 Act is promotional in purpose rather than regulatory, and that regulation of carriers was accomplished in the earlier Shipping Act, 1916 ("1916 Act"), 46 U.S.C. 801, et seq. (1982). In this connection, Transligra states that the "only" regulatory section of the 1920 Act—Section 20—was cast as an amendment to the 1916 Act. This argument ignores the fact that Section 19 itself refers to regulations affecting shipping in each of its four subsections. Moreover, as Nedlloyd points out, the far more numerous promotional aspects of the 1920 Act were specifically recognized as such and separated from the regulatory section—Section 19—when the Maritime Administration was created as an agency separate from the Federal Maritime Commission in 1961.

Transligra's use of the legislative history of the Merchant Marine Act, 1920 is disingenuous and misleading in several respects. In its Petition to Dismiss this proceeding,[9] Transligra cites from the House hearings and debates, arguing that they focus exclusively on the maintenance of a U.S.-flag merchant marine based on the government-built ships to be transferred to the private sector at the end of World War I. (*See* Transligra Petition to Dismiss the Proceedings, 7–8.) However, Section 19 was not part of the bill that originated in the House of Representatives. Section 19, therefore, did not exist during the House hearings and debates and the concerns expressed there cannot accurately be relied upon in interpreting the scope of that section.

Moreover, even with respect to the House debates, Transligra overstates the exclusivity of the legislative concern with the welfare of a U.S.-flag fleet. In the House debate on the original bill, H.R. 10378, which focused solely on disposition of the World War I fleet acquired by the United States Shipping Board and the Emergency Fleet Corporation, the concern was "[n]ot only that we must have our own merchant marine if we *expect our commerce to have a fair chance in the markets of the world* in peace time, but it is necessary that we do so in case of emergency." 58 Cong. Rec. 8152 (1919) (Emphasis added). For example, Representative Lazaro expressed the concern that:

> Other powerful nations have built and are building their merchant marines and we must do likewise *if we are to get our share of the world's commerce.* The day has come when we should be no more dependent upon foreign ships to carry our products to market than should any other nation. We all agree that we are to have intensive competition following the world war and that we need a sound policy and sane laws to keep up our position. (Emphasis added) *Id.*

This concern was echoed by Representative Wright:

> As I see it, the brightest opportunity in the history of this great country is before us, to promote an efficient and great American merchant marine, and *thereby to extend and promote our foreign commerce and trade.* (Emphasis added). *Id.*

Thus, even the House debates reflect the broader Congressional concern with U.S. trade and commerce generally, as well as vessel operations. These general concerns informed the impetus for the bill originated in the House as H.R. 10378 which dealt only with the disposition of the ships and other physical assets acquired by the United States Shipping Board, as well as its maritime powers. This bill did not extend to other concerns, including the detrimental actions of foreign governments and foreign carriers, which subsequently arose during Senate consideration of the bill.

Indeed, Section 19 originated in the draft of the bill that emerged from the Senate Committee on Commerce following testimony concerning the detrimental effects of foreign laws and regulations on the ability of U.S. commercial interests to compete in foreign markets. The Senate committee heard much testimony on the effects of foreign laws, rules, "orders in council", and shipping and commercial practices in promoting not only the foreign nation's merchant marines, but their import and export trade as well, to the detriment of American commercial interests.

The British and Canadian use of orders in council was discussed in the testimony of William L. Clark of the Pacific Steamship Company. *Hearings Before the Senate Committee on Commerce, Establishment of an American Merchant Marine,* 66th Cong., 2nd Sess. 1429, 1453–1456, 1463–1466 (1920). The following exchange occurred during that testimony:

> SEN. CHAMBERLAIN: Well, I have often wondered if there was any way in the world in which the United States under its Constitution can adopt any regulations or can confer any powers which would meet these constant orders in council, which may change every 24 hours to meet a good situation.
>
> * * * * *
>
> I have often thought that a power could be conferred upon the board enabling us to meet that order in council. It affects us not only in Canada, but in America, everywhere.
>
> THE CHAIRMAN: Why could we not give power to the Shipping Board to pass regulations to meet the situation started by the orders in council?
>
> SEN. CHAMBERLAIN: That is the only way we could protect ourselves.
>
> MR. CLARK: If there were some way that we could devise a department somewhat similar to the British Board of Trade, it would be of great benefit to us. *The British Board of Trade protects British shipping in every way possible. That protection is always presumed to be in the general British interests, and all matters of regulation are therefore worked out in harmony with British commerce and British shipping, protective of both,* . . . and they make their laws to protect Great Britain *against all the commerce and all the shipping* of the world, and that is as it should be.
>
> * * * * *

[9] Transligra's Petition to Dismiss the Proceedings has been treated by the Commission as comments. See the Commission's May Notice (54 FR 21473).

Wherever you find the British flag you will find that its *carriers are working not simply for the revenues that can be earned from the carrying of a cargo, but working also in the interests of British trade.*

* * * * *

THE CHAIRMAN: And we have got to emulate her [Great Britain]. If we want our interests looked after we have got to look after them ourselves. Other countries are looking after their own interests and not after ours. *Id.* 1465–1466. [Emphasis supplied]

Section 19 originated in the Confidential Committee Print of H.R. 10378 which emerged from those hearings. The language proposed in that print was enacted with little change.[10]

These broad, nationalistic purposes of the Act were emphasized in floor debate on the Senate bill by Senator Jones, Chairman of the Commerce Committee, who expressed the desire:

to impress upon the Shipping Board, if I can do it * * * that we want them to be animated by a spirit of Americanism; that we want them to be moved with the desire, an intense desire, *to build up American trade, American shipping, and American interests.* I want them to understand that we are placing in their hands the greatest and widest power, probably greater than was ever invested in any governmental organization before and that we are giving them this power and giving them this discretion *to use in the interest of American trade and American shipping* and not for the purpose of simply getting rid of the ships we have in the most expeditious way possible. 59 Cong. Rec. 6813 (May 10, 1920). [Emphasis added]

This portion of the Senate debate is also quoted at page 5 of Transligra's Petition to Dismiss. We note, however, that the passage has been selectively edited by Transligra to omit the references to "American trade" or the broader "American interests" of concern to Senator Jones. Therefore, contrary to Transligra's representations, the legislative history of Section 19 does reflect Congress' wish to protect not only U.S.-flag carriers, but U.S. interests in the efficient movement of U.S. export and import commerce.

The Commission sought clarification and further comment on the nature of OEI's operations in its May Notice. OEI advises in its supplemental comments that it does not itself operate vessels, but arranges and coordinates shipping transactions between vessel owners and operations and U.S. exporters.

We do not view OEI's activities as making it any less engaged in the business of "shipping in the foreign trade," as that term is used in Section 19. It participates in such "shipping" much in the same way as non-vessel operating common carriers (NVOCCs) and ocean freight forwarders do.

Although the Commission's rules do not refer to such participants in maritime activities in delineating who may file a petition for relief under Section 19 at 46 CFR 585.4, the rule is applicable to *"any person,* including, but not limited to * * *" the entities named. (Emphasis added). We see no reason to exclude non-carrier maritime businesses, such as OEI, from the broad coverage available under Section 19.

The Commission's rule, moreover, clearly states its applicability to any owner, operator or charterer of "bulk or tramp," as well as liner, vessels. OEI, as a U.S. company seeking to participate in transactions to provide bulk vessel capacity in the Trade for service to U.S. exporters is within the range of shipping interests protected by Section 19. The Commission proposed a rule to meet conditions alleged to be unfavorable to shipping in the liquid bulk trade between the U.S. and Columbia. *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade,* 52 FR 20,119 (May 29, 1987).

B. Conditions Unfavorable to Shipping

The supplemental comments filed in response to the Commission's May Notice, taken as a whole, support the tentative conclusion of that Notice that "GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade." Nothing in the second round of comments justifies or offsets the discriminatory nature of the Resolution noted therein.

The discriminatory impact of the Ecuadorian Resolution is not lessened by the possible authorization of service by a U.S. company operating at least one U.S. vessel. No U.S.-flag vessels can or do serve the Trade, according to OEI, due to economic and physical impediments to such service. The physical limitations of the port of Guayaquil make service by a vessel of greater than 23'6" draft impossible; U.S.-flag chemical tankers reportedly exceed that draft. Economic as well as physical aspects of the Trade effectively limit service to parcel tankers of 5 to 10 thousand DWT. No such vessels are present in the U.S.-flag fleet, according to OEI. In any event, the possible existence of U.S.-flag vessels which might be able to participate in this Trade does not justify GOE exclusion from the Trade of other vessels which do wish to participate, in order to create a monopoly for its own vessels.

As OEI points out in its supplemental comments, the effect of the Ecuadorian resolution is to close the Trade to all third-flag carriers *except* those chosen by Transligra to participate through charters. The result, as several commenters point out, is to subject U.S. export commerce to a limit imposed on the market for shipping services by the GOE while similar limits are not imposed on the shipping services available to Ecuadorian exporters or non-U.S. exporters to Ecuador.

The comments of SCOT and Pecten indicate that those who must move cargo in this U.S. export trade find that their ability to do so efficiently and safely, as well as economically, has been adversely affected by the exclusion of third-flag carriers from the market. Such effects are harmful to shipping in the Trade within the meaning of section 19.

The only justification for the GOE restrictions offered by Transligra is that the size of the Trade provides only sufficient cargo for its own dedicated service. The Commission has rejected similar arguments based on adequacy of service in the past, and does so again here. As we noted in Docket No. 86–7 concerning Peru, adequacy of service "is irrelevant as a defense of government schemes which limit competition in shipping services in order to protect or enhance their national-flag or State-owned shipping lines." *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade,* Order Denying Petition, _____ F.M.C. _____, 24 S.R.R. 308, 312 (June 18, 1987). The Commission there further pointed out that a showing that the government-favored carrier now offers adequate service may merely indicate that it has been able to increase its share of the market and consolidate its position during the period when competitors have been excluded.

The Commission, therefore, finds that conditions unfavorable to shipping appear to exist in this Trade.

C. Sanctions

Transligra is the chief, if not sole, beneficiary of the Ecuadorian resolution. Transligra is an Ecuadorian-flag carrier serving the Trade with one Ecuadorian-flag vessel and additional space chartered on foreign-flag vessels. However, Transligra is not a liner operator and therefore does not file tariffs. Therefore, tariff cancellation is not an available sanction. The sanctions added to section 19 by the Foreign Shipping Practices Act of 1988, 46 U.S.C.

[10] A direction to act "in aid of the development and maintenance of an American merchant marine" was replaced by the more general command to "* * * aid in the accomplishment of the purposes of this Act * * *" and the reference to rules and regulations "relating to ships and shipping" was replaced with a reference to "shipping" only.

app. 1710a, however, are available. These include the assessment of a fee of up to $1 million per voyage, as well as the denial of clearance at U.S. ports by the collector of customs.

Based on the comments filed to date, the Commission has found that conditions unfavorable to shipping appear to exist in the U.S./Ecuador trade as a result of Ecuadorian Resolution No. 012/87. In order to adjust or meet these conditions, we herein propose a rule to impose a countervailing fee of $100,000 per outbound (ex. U.S.) voyage by Transligra. In addition, in order to secure the information necessary for Commission administration and enforcement of this rule, Transligra is required to file with the Commission periodic reports reflecting the service it provides in the Trade, including the vessels employed and the amount of cargo carried, as well as certification that it has complied with the Commission's rule. In the event that Transligra fails to comply with the requirements of the rule, it is further provided that the Commission, through its Secretary, will request that the collector of customs at ports in the U.S. Gulf of Mexico deny the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to vessels owned or operated by Transligra, as provided for in section 1002(f) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a(f).

Since the Commission instituted this proceeding by publication of the Notice of Inquiry in March 1989, there has been no indication of willingness on the part of the GOE to permit greater opportunity for non-Ecuadorian participation in the Trade. Nevertheless, it is to be hoped that progress in resolving these issues, through GOE acton or talks with OEI or the DOS, or both, may yet be achieved without need for Commission action on a Final Rule in this proceeding.

To assist the Commission in assessing the continuing need for the action proposed, interested parties are invited to file comments, views and information relating to the proposed rule within 30 days of publication in the **Federal Register**. Because the Commission is proposing a rule to meet or adjust conditions in a non-liner trade by action affecting a carrier which does not file tariffs with the Commission, the specific authority provided in the Foreign Shipping Practices Act of 1988, making the action against foreign carriers authorized by that Act available for use in proceedings under section 19, has been utilized. This is, therefore, a case of first impression in that respect, and interested parties are asked to focus in their comments on the sanctions proposed. The issues raised include the probable effect of the fees imposed on Transligra's rates in the Trade and the possibility that the request for denial of clearance, reflected at section 586.3(d) of the proposed rule, alone might be a more effective means of adjusting the effects of GOE Resolution No. 012/87.

Another matter to which commenter's attention is invited is the possibility that the Commission might require in its final rule that the fees imposed will become effective if the Ecuadorian-flag carrier fails to certify within 25 days of publication that no law, regulation or policy of the GOE will preclude any carrier from operating in the trade on the same basis as any other carrier or impose any administrative burden on any non-Ecuadorian-flag carrier, vessel or shipper in the trade not imposed on Ecuadorian-flag carriers.

In addition to the rule proposed herein to meet or adjust conditions unfavorable to shipping in the U.S./Ecuador trade, the Commission proposes to revise the manner in which it incorporates in the Code of Federal Regulations rules issued in similar proceedings under section 19. Therefore, the Commission proposes to revise part 586 of the CFR to add a new § 586.1 descriptive of the function of part 586 and to redesignate and incorporate as a single § 586.2 all provisions of the current part 586 which were enacted by the Final Rule to adjust or meet conditions unfavorable to shipping in the U.S./Peru Trade, published at 54 FR 12629 (March 28, 1989). This rule is republished herein to reflect the redesignation and conforming changes. No substantive changes have been made in the rule and its status as a Final Rule is unchanged by this action. The proposed rule in the U.S./Ecuador trade would be added to part 586 as § 586.3 if it becomes a final rule.

List of Subjects in 46 CFR Part 586

Foreign trade, Maritime carriers, Trade practices.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 Fr 7315 (August 12, 1961); and 46 CFR part 585; part 586 of title 46 of the Code of Federal Regulations is revised to read as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN SPECIFIC TRADE

Sec.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the **Federal Register** and added to this part.

§ 586.2 Conditions unfavorable to shipping in the United States/Peru Trade.

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(2) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

(b) *Peruvian-flag carriers—assessment of fees.* (1) "Voyage" means an inbound or outbound movement between a foreign country and the

United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitues a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound betwen ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV");
Empresa Naviera Santa, S.A. ("Santa");
Naviera Neptuno, S.A. ("Neptuno"); and
Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Peruvian-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 dalendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Compania Peruana de Vapores (CPV)*

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.
FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.
FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(B) *Empresa Naviera Santa, S.A.*

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.
FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.
FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru.

(C) *Naviera Neptuno, S.A.*

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(D) *Naviera Universal, S.A. (Uniline)*

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.
FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.
FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.
FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian-flag carriers operating pursuant to such Agreements.

(d) *Effective Date.* Paragraph (a) of this section is effective on March 28, 1989. The date upon which paragraphs (b) and (c) of this section shall become effective shall be determined by further order of the Commission amending this section.

§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador Trade.

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carriers—assessment of fees. (1)* "Voyage" for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the

United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligra, S.A. ("Transligra"), whether on board vessels owned or operated by Transligra or in space chartered by Transligra in vessels owned or operated by others shall be deemded to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligra shall pay to the Federal Maritime Commission a fee in the amount of $100,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligra shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligra in the Trade, whether owned or chartered; the names of vessels on which Transligra has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligra shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by Section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligra.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19408 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: In the November 14, 1988, **Federal Register** (53 FR 45788) the Fish and Wildlife Service (Service) proposed to amend the regulations in 50 CFR Part 18 implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361–1407. The proposed rule would prohibit the taking of sea otters by Alaskan Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native Exemptions section of the Act, 16 U.S.C. 1371(b). In the February 15, 1989, **Federal Register** (54 FR 6940), the Service extended the comment period on the proposed rule to April 13, 1989. In the May 31, 1989, **Federal Register** (54 FR 23233), the Service gave notice that the comment period was further extended through November 30, 1989, to allow time for public meetings to be conducted in selected coastal Alaska locations within the range of the sea otter, and at one location in California. This notice announces the exact times and locations of those meetings.

DATES: The public meetings are scheduled as follows:

1. September 1, 1989, 1:00 p.m., Atka, Alaska
2. October 2, 1989, 7:00 p.m., Sitka, Alaska
3. October 3, 1989, 7:00 p.m., Klawock, Alaska
4. October 9, 1989, 7:00 p.m., Unalaska, Alaska
5. October 12, 1989, 7:00 p.m., Cordova, Alaska
6. October 16, 1989, 7:00 p.m., Anchorage, Alaska
7. October 19, 1989, 7:00 p.m., Homer, Alaska
8. October 23, 1989, 7:00 p.m., Kodiak, Alaska
9. October 24, 1989, 7:00 p.m., Dillingham, Alaska
10. October 26, 1989, 7:00 p.m., Seldovia, Alaska
11. October 30, 1989, 1:00 p.m., San Francisco, California

Written comments and materials on the proposed rule will still be accepted through November 30, 1989.

ADDRESSES: The public meetings will be held in the following locations:

1. Atka—Atka Community Building, Atka, Alaska 99502
2. Sitka—Centennial Building (Pestchouroff Room), Sitka, Alaska 99835
3. Klawock—Alaska Native Brotherhood Hall, Klawock, Alaska 99925
4. Unalaska—City Council Chambers, Unalaska, Alaska 99685
5. Cordova—Cordova Public Library, Cordova, Alaska 99574
6. Anchorage—Large Conference Room, First Floor, Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503
7. Homer—Kachemak Bay Campus of the Kenai Peninsula College, 533 E. Pioneer Avenue, Homer, Alaska 99603
8. Kodiak—Fisherman's Hall, Kodiak, Alaska 99615
9. Dillingham—Senior Citizens Center, Dillingham, Alaska 99576
10. Seldovia—Seldovia Native Association Office, 206 Main Street, Seldovia, Alaska 99663
11. San Francisco—Fort Mason Center, Golden Gate National Recreation Area, Building 201, Room A2, San Francisco, California 94102

Comments and materials concerning the proposed rule may be sent to the Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, or delivered in person to the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska. Comments and materials received in response to the proposed rule will be available for public inspection at the above address during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jon R. Nickles, Supervisor, Marine Mammals Management, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, telephone (907) 786–3492.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public. Interested parties may present data, information, or views, orally or in writing, on the issue under consideration, that is, the Service's proposal to prohibit the taking of sea otters by Alaskan Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native Exemption section of the Act, 16 U.S.C. 1371(b). Oral statements may be limited in length if the number of parties present at the meetings necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the meetings or mailed to

the Service. The closing of the comment period for the proposed rule remains November 30, 1989. Parties unable to attend any of the meetings but who wish to provide written comments or materials should mail, or deliver in person, their submissions to the Service's Anchorage Regional Office (see ADDRESSES section above).

The author of this notice is Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Mail Stop 820–Arlington Square, 18th and C Streets, NW., Washington, DC 20240.

Dated: August 11, 1989.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service, Department of the Interior.

[FR Doc. 89–19425 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

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

Forest Service

Strawberry Ridge Timber Sale, Dixie National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Revision of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement in the May 25, 1989 **Federal Register** (Vol. 54, No. 100) for a proposal to harvest timber and build roads in the Strawberry Ridge area on the Cedar City Ranger District of the Dixie National Forest in Kane County, Utah. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in October 1989, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by January 1990. No other revisions are made.

Dated: August 3, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89-19388 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-11-M

Forest Service, USDA.

North Slope Timber Sale, Dixie National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Revision of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest published a Notice of Intent to prepare an Environmental Impact Statement in the May 25, 1989 **Federal Register** (Vol. 54, No. 100) for a proposal to harvest timber and build roads in the north slope area of Boulder Mountain on the Teasdale Ranger District of the Dixie National Forest in Wayne County, Utah. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in October 1989, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by January 1990. No other revisions are made.

Dated: August 3, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89-19389 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-11-M

Strawberry Gulch Timber Sale

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site specific proposal to harvest timber in the Strawberry Gulch area of the Hayden Ranger District, Carbon County, Wyoming. The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposal. The Forest Service will schedule a public scoping meeting to identify issues related to the proposal during the latter part of September 1989 in the town of Encampment, Wyoming. Adequate notice will be given with the specific location and date so that interested and affected people may attend.

The Forest Service is seeking comments during the scoping analysis from other Federal, State, and local agencies, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

DATE: The Draft EIS is expected to be completed and made available for public review and comment in December 1989. A public comment period of 45 days will be established, beginning August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Submit written comments and suggestions concerning management of the area or the scope of the analysis, or direct any questions about the proposed action and Environmental Impact Statement to Bob Thompson, District Forester, Box 187, Encampment, WY 82325, phone 307-327-5481.

SUPPLEMENTARY INFORMATION: The Strawberry Gulch timber sale is a site specific project identified in the Medicine Bow Land and Resource Management Plan (Forest Plan). This project was tentatively scheduled during the first ten-year period of the Forest Plan, and is intended to implement the Plan and achieve the desired future condition for the area.

The decision to be made is how to best manage the Strawberry Gulch area, and whether to implement the proposed timber sale and other related activities. The related activities could include road construction and reconstruction, site preparation, tree planting and thinning, and some road closures.

A reasonable range of alternatives, including "no action", which would result in no development of the area, and the "proposed action" will be considered. Other alternatives may be formulated as a result of scoping, and may consider various combinations of development designs for timber harvest, transportation, wildlife and fishery habitat activities, and visual and recreation opportunities.

The draft Environmental Impact Statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the Strawberry Gulch timber sale participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adquacy of the statement or the merits of the

alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Dated: August 9, 1989.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 89-19455 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Withdrawal of Certification of Central Filing System; Arkansas

The certification of the Statewide central filing system of Arkansas is hereby withdrawn on the basis of information submitted by W.J. "Bill" McCuen, Secretary of State, and in accordance with State of Arkansas Act 655 of 1989.

The central filing system was previously certified, pursuant to section 1324 of the Food Security Act of 1985, for all farm products produced in that State except for cattle and calves, goats, horses, hogs, mules, sheep and lambs (51 FR 46887, December 29, 1986; 52 FR 6040, February 27, 1987).

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: August 14, 1989.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 89-19421 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Alternative Questionnaire Experiment S-601, 605, 606, 607, 609A, 609B, 610A, 610B

Type of Request: New Collection

Burden: 29,168 hours

Number of Respondents: 42,000

Avg Hours per Response: 41 minutes

Needs and Uses: This survey will test and evaluate question wording, layout, and instructions for the census questionnaire which is administered to the entire population. The Census Bureau staff will use the information gathered to improve the design and content of later census forms.

Affected Public: Individuals or households

Frequency: One-time only

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 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 H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19443 Filed 8-17-89; 8:45 am]

BILLING CODE 3510-07-M

[Docket No. 90517-9117]

Request for Comments on the Preliminary Implementation Plan of Portion of the Omnibus Trade and Competitiveness Act of 1988; National Trade Data Bank

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to subtitle E of title V of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 4901-4913, the Commerce Department is establishing a National Trade Data Bank (NTDB) and is proposing a systems concept for it. The purpose of the NTDB is to provide reasonable public access, including electronic access to data "useful * * * to policymakers and analysts concerned with international economics and trade * * *" and "* * * data * * * of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports. * * *".

The purpose of this notice is to inform the public and seek comments prior to the establishment of the NTDB.

DATE: Comments from the public should be received no later than September 18, 1989.

ADDRESS: Written comments should be addressed to: John E. Cremeans, Economic Affairs, Office of Business Analysis, Room 4878, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, telephone (202) 377-1405.

SUPPLEMENTARY INFORMATION: Subtitle E, Part I of Title V of the Omnibus Trade and Competitiveness Act of 1988 directs the Department of Commerce to establish and manage a National Trade Data Bank (NTDB) consisting of two parts: (1) An "International Economic Data System" (IEDS) and (2) an "Export Promotion Data System" (EPDS). The Act calls for the Secretary of Commerce, with the assistance of other Federal agencies to assemble, in one location, those economic, demographic, social, and other statistics of the United States and other countries that are of use to policymakers and analysts concerned

with international economics and trade. The NTDB will also include information of greatest interest to U.S. businesses engaged in export-related activities and to Federal and State agencies that promote exports. The NTDB is to be operational within two years of the enactment of the Act (i.e., August 23, 1990).

Interagency Trade Data Advisory Committee

Some of the U.S. information called for in the IEDS and the EPDS is produced by the Department of Commerce. However, a significant portion is produced by other government agencies. The Act stipulates that each agency shall provide data considered necessary to the operation of the data bank. In addition, some of the data to be included in the IEDS may be derived from foreign sources such as foreign government agencies or international organizations.

The Act establishes the Interagency Trade Data Advisory Committee (ITDAC) to be chaired by the Secretary of Commerce. The ITDAC will consist of:

The United States Trade Representative,
The Secretary of Agriculture,
The Secretary of Defense,
The Secretary of Commerce,
The Secretary of Labor,
The Secretary of Treasury,
The Secretary of State,
The Director of the Office of Management and Budget,
The Director of the Central Intelligence Agency,
The Chairman of the Federal Reserve Board,
The Chairman of the International Trade Commission,
The President of the Export-Import Bank,
The President of the Overseas Private Investment Corporation,

or their designees, and

Such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

The Secretary of Commerce will seek the advice of the Committee on the establishment, structure, contents, and operation of the NTDB as appropriate with the goals of assuring timely and accurate collection of the information and providing efficient access to the data by the private sector and government officials. The ITDAC will be a standing committee that will provide ongoing consultation and guidance to the Secretary.

Review of Notice by the Interagency Trade Data Advisory Committee

This notice on the NTDB was reviewed by the Interagency Trade Data Advisory Committee and the Committee was asked for its advice in correspondence and in a formal meeting. The first draft of the notice was circulated to the member agencies on March 17, 1989 and representatives of the member agencies were briefed on the draft on March 20, 1989. Comments were received and changes made to the draft. The second draft was circulated to the member agencies of the Committee on April 21, 1989. At the meeting of the Interagency Trade Data Advisory Committee on May 3, 1989, representatives were briefed on the draft notice.

Content

A determination has not yet been made as to the specific data entities to be included in the data bank. However, the language of the Act provides clear guidance on the general types of information to be included. The agencies of the Federal government and especially those represented on the Interagency Trade Data Advisory Committee will be asked to determine those data entities that are prepared or estimated by them that should be included in the EPDS or the IEDS. The Secretary of Commerce, with the advice of the ITDAC, will request additional data entities if they are determined to be useful in carrying out the purposes of the Act or may delete data items not determined to be useful.

The resulting list of data entities, determined by the Secretary with the advice of the Committee, will constitute the initial desired content of the data bank. Data entities may be added or deleted later as circumstances change or experience suggests improvement. The actual content of the data bank when it is made available to the public will, however, be determined in part by the resources and budget for the purpose of the NTDB that are available to the Secretary and to the Federal agencies supplying the data. Data determined to be useful, but not available initially, will be included as resources and budget permit.

International Economic Data System: The IEDS will contain current and historical statistics for the United States and other countries with which we have "important" economic relations and which are determined to be useful for policymakers and analysts concerned with international economics and trade. Among the statistics specifically cited as examples of data to be included in the IEDS are the following:

Imports and exports:
- Aggregate statistics
- Industry specific statistics
- Product-specific statistics
- Market penetration statistics
- Foreign destinations for exports

International service transactions
International capital markets
- Interest rates
- Exchange rates

Foreign direct investment in United States
International labor market
- Wage rates by industry
- Unemployment rates
- Labor productivity

Policies affecting trade
- Trade barriers
- Export financing policies

Imports/exports by States
- Destination
- Origin

"Any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle."

Export Promotion Data System: The EPDS will contain information of greatest interest to U.S. firms engaged in export-related activities and to Federal and State agencies that promote exports. The Act calls for the system to "monitor, organize, and disseminate" information on the following:

Business opportunities in foreign countries
Industry sectors in foreign countries with high export potential including:
- Size of market,
- Distribution of products,
- Competition,
- Significant applicable laws, regulations, specifications, and standards,
- Appropriate government officials, trade associations and other contact points

Foreign countries generally such as:
- Economic conditions
- Common business practices
- Significant trade barriers and tariffs,
- Other significant laws and regulations regarding imports, licensing, patents, etc.,

Export financing information,
Transactions involving barter and countertrade, and
"Any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle."

The Act specifically excludes data which are prohibited from disclosure to the public by other laws or are authorized to be withheld under provision of law. Also, it may not contain classified information. Finally, with the exception of section 5408 which calls for an expansion in the collection of information on service sector transactions, the Act does not grant authority to collect any new information from individuals or entities outside the Federal government.

Users

The Act directs Commerce to make the information available to:

U.S. Government policymakers,
U.S. business firms,
U.S. workers,
U.S. industry associations,
U.S. agricultural interests,
State and local economic development agencies; and other interested U.S. persons who could benefit from such information.

The Act further directs Commerce to consult regularly with representatives of the private sector and officials of State and local governments on the adequacy of trade information and seek recommendations on how the information can be made more accessible, understandable, and relevant.

Operation and Dissemination

The Act requires that Commerce manage the data base by utilizing appropriate data retrieval systems to monitor, organize, analyze, and disseminate the information found in the data bank and to use the most effective means to make the information available to a wide range of potential users ranging from individual citizens to government officials. Operation of the data base should facilitate dissemination through nonprofit organizations with significant outreach programs.

The Act further directs that information systems created by the NTDB should not unnecessarily duplicate existing systems available from other U.S. Government agencies or the private sector and that Commerce provide reasonable public services and access (including electronic access) to any information maintained as part of the data base.

Dissemination of the NTDB is to be facilitated through public/private partnerships with the information community (State and local governments, nonprofit organizations, libraries, and information vendors) to provide multiple outlets for obtaining the information.

Operation of the NTDB

The Department of Commerce will establish, on a government computer system or on a private computer system under contract, the National Trade Data Bank. The system will be comprised of 1) all information to be contained in the Export Promotion Data System and the International Economic Data System, 2) computer programs and related software necessary to establish, operate, update, and maintain the information contained in the EPDS and IEDS, 3) software and related information necessary to maintain and ensure the security of the information found in the data bank, and 4) the programs and related software necesssary to disseminate the NTDB information to its intended audience through a network of government, nonprofit, and private information distributors. Management and operation of this system will be in accord with OMB Circular A–130, Management of Information Resources, internal Department of Commerce administrative orders, and other applicable information processing standards that may apply as determined by the Department's Office of Information Resources Management.

The NTDB will be operated as an information warehouse. Statistics and other data will be supplied by Federal Government agencies and other organizations in bulk electronic form using magnetic tape, diskette, or telecommunications as the means to transfer the information from agency internal files to the NTDB. Information in the system will be updated on a regular ongoing basis at the same time it is made available to the public through other means. While the information will be stored in a Commerce-operated data bank,[1] supplier agencies will retain ownership and maintain control of their respective data in the data bank. They will be solely responsible for updating, correcting, and verifying their data in the data bank. The NTDB "manager" will not be authorized to change, correct, or delete any substantive data item from the data bank.

The NTDB is not designed to replace existing dissemination programs of supplier agencies. Many individuals and organizations have already established means to obtain certain trade related information from these agencies. Access channels currently in place should not be disrupted due to the establishment of the NTDB unless the supplier agency elects to change its dissemination program. The NTDB will offer an additional outlet for supplier agencies' information.

In addition to the basic statistical data and reports, other information will be included in a data "dictionary" for each entity in the IEDS and EPDS. This will include such items as (examples are shown in parenthesis): program (U.S. Balance of Payments), agency/organization (BEA, U.S. Department of Commerce), contact (name of individual responsible for information), telephone number, update schedule (Mid-month in March, June, September, and December), creation and/or expiration date (3/3/88), time period covered (1968 to present for most series), periodicity/seasonality (Annual and quarterly, seasonally adjusted and unadjusted), basis of classification (SIC, TSUSA, etc.), description of data methods, caveats, coverage, and references to other sources of information. The "data dictionary" will be used both for internal NTDB operations and will be disseminated in electronic and paper form so that users will be able to determine what is in the data bank.

To the extent possible, computer programs required by the NTDB will take advantage of off-the-shelf software to minimize system development costs and expected future maintenance expenditures. The system will be built using data management software that features a structured query language (SQL). The implementation will be designed to allow for expansion of the content of the data bank with a minimum of reprogramming effort.

Trade-related information now available from supplier agencies is structured in a wide variety of formats. By contrast, data for both the IEDS and the EPDS will be supplied and maintained in a limited set of standard formats. This will enable the data bank to accommodate as much of the supplied information as possible without specialized programming, provide enough flexibility to enable the data bank to dynamically change without major reprogramming efforts, and, be logically coherent to users.

Forms of Dissemination

Information will be distributed to end users via government, nonprofit, and private distributors to take advantage of existing information dissemination networks. "Retail" distributors are expected to include State development agencies, nonprofit organizations, Federal depository libraries, the National Technical Information Service, the Government Printing Office, private sector information vendors, and Department of Commerce Field Offices.

Information from the data bank will be transferred in "bulk" to the retail distributors; i.e., only whole categories of information will be shipped (e.g., an update of all of BEA's international transactions), not single requests (e.g., exports of industrial supplies and materials excluding petroleum in 1986). Distributors, in turn, may repackage the information, provide value-added services and/or proprietary information, and redistribute the information to their respective constituents.

There will be three forms of media used to provide information. The

[1] Some historical data may be stored off-line.

primary medium for distribution of NTDB information will be the compact disk-read only memory [CD–ROM]. This technology provides the capability to distribute in electronic format vast amounts of information at an extremely low cost relative to other technologies (printed or electronic). Monthly NTDB CD–ROMs will be produced that contain the entire data bank,[8] including all information updated during the month. Users may obtain the CD–ROMs individually or through a subscription service which will provide new CD–ROMs each month; they will be distributed by the Government Printing Office and/or the National Technical Information Service. They will also be distributed through the GPO Federal Depository Library program.

The CD–ROMs will be prepared to conform with ISO–9660 standards to ensure compatibility with existing CD–ROM readers and software. Information on the CD–ROMs will be structured on the disk to afford maximum usability by a wide a variety of computer and computer operating systems. Along with the CD–ROM, Commerce will distribute software to perform rudimentary search, reporting, and extraction functions. No specialized programs to perform more sophisticated searches or numeric manipulation are planned. Software will not be written on the CD–ROM; it will be distributed using floppy diskettes containing the proper program for the computer system specified by the purchaser. Current plans call for software to be developed for the Apple Macintosh™ and IBM PC™ (or compatible) families of computers. Programs for other computer operating systems will be provided as demand warrants and as CD–ROM technology is made available to these systems.

Using the CD–ROM medium for distribution will not be appropriate for a small subset of NTDB information. This constitutes information that is perishable in nature; it loses its value quickly and must be accessed as soon as possible after it is made available to the public. For example, Commerce's International Trade Administration and the Department of Agriculture issue daily trade opportunities (TOPS), which are leads to help U.S. businesses export their goods and services to foreign countries. TOPS leads are usually very time sensitive, often requiring submission of bids within 30 to 60 days of the date the TOPS notice is filed. Information on the CD–ROM will be at least 30 and possibly 60 days old by the time it is available to end users. Consequently, a second component of the NTDB distribution service will be an electronic bulletin board or similar computer service that will enable NTDB end users to directly access time sensitive information. The bulletin board will not contain other, less time sensitive information that is normally distributed on the CD–ROM.

The third form of distribution will be via magnetic tape[s], which will contain the same information provided on the CD–ROM.

These three forms of distribution—CD–ROM, bulletin board, and magnetic tape—constitute what Commerce defines as the "standard" NTDB service. It provides all the information found in the NTDB to as wide an audience as possible and at the lowest possible prices. The standard service is expected to meet the needs of the average NTDB user.

In addition to the standard service, Commerce will offer a higher "premium" level of service to users that require NTDB information [perishable or not] as soon as it is made available to the public. The distinction between the premium service and the standard service is one of timeliness and cost, not content; i.e., users of the premium service will obtain the same information content distributed via the standard service but will receive it in a more timely manner. Users of the premium service will be charged the full direct cost of providing this information to them which is expected to be higher than the cost of obtaining the NTDB using the standard service. Specific premium service costs which may be recovered through user fees are outlined in OMB Circular A–130 and the Department of Commerce Draft Departmental Administrative Order on Electronic Dissemination of Information.

The premium service will provide users with direct electronic access to the NTDB. This may be accomplished via standard asynchronous telecommunications or via specialized high-speed data links. The exact type of telecommunications service offered will depend on the capabilities of the computer site selected to house the NTDB operations. However, the premium service will not allow selective query and access to the data bank. Rather, it will provide a mechanism to transfer updated information in bulk from the NTDB computer system to the premium user's computer system.

An example may clarify the premium service concept. One type of premium service user is expected to be an information vendor that will obtain NTDB information, add value to it, and resell the information to its clients. The initial distribution of NTDB information to this user will probably be via magnetic tape. Thereafter, the user will establish communications periodically with the NTDB computer to obtain more recent information. NTDB software will determine what information was updated since the user last obtained data and transmit all of it to the user's computer.

Depending on the time and frequency with which the user obtains information, the update could range from a few numbers or reports to millions of pieces of information.

Finally, Commerce proposes a third level of NTDB service—NTDB authorized distributors—whereby Commerce and interested distributors enter into a contractual arrangement for distribution of the NTDB. Commerce wishes to encourage, through this service, the development of private value added programs and services which will make information contained in the NTDB more useful to a wider spectrum of users. It is also intended to provide a measure of quality control by providing a mechanism to insure the completeness, accuracy, timeliness, and documentation of the data made available to the public. In general, authorized distributors agree to meet certain standards in return for the use of the NTDB logo and trademark and customer referral by the Department of Commerce. Any organization may become an authorized distributor.

Specific contractual arrangements have not been developed. However, proposed rules specify that authorized distributors will:

Make the entire NTDB available to all requestors, not just the most profitable segments of the data bank.

Update their copy of the data bank daily using the NTDB premium service or at a frequency commensurate with the distributor's form of dissemination, e.g., a distributor packaging NTDB information and using a CD–ROM as the distribution medium must obtain the most recent information prior to mastering the disc.

Clearly identify the source of each data item they distribute.

Pass along standard descriptive information about the data including any caveats about use of the data.

Pay an annual fee to the Department of Commerce to defray its costs of administering the service.

Provide a feedback mechanism to enable Commerce to learn of errors in the information, suggestions for improvement to the content or

[8] Some historical data may be made available on separate CD–ROMS that are updated annually or less frequently as required.

organization of the NTDB, usage of the information, etc.

No restrictions are placed on how the information is organized, the medium used to distribute it, or what, if any, ancillary value added services accompany the information. No restrictions will be placed on charges to users of these services; they will be expected to vary depending on the extent of specialized services accompanying the information.

In return, the Department will:

Conduct a modest news release and publicity campaign about the NTDB that emphasizes the contents of the data bank and includes phrases such as "See your authorized NTDB distributor."

Provide a list of authorized distributors to the public.

Provide an "NTDB assistance phone line". Staff will provide basic information on the data bank and offer to send a list of distributors. A list of callers expressing a wish to be contacted by distributors will be provided to authorized distributors.

It is important to emphasize that redistribution of information in the NTDB is not restricted to authorized distributors. Commerce cannot nor will it attempt to prevent users of the standard or premium services from redistributing the non-copyrighted information in any manner they see fit. However, the authorized distributor service is planned to provide quality control and provide attractive market opportunities to a large number of information distributors.

With very few exceptions, none of the information in the NTDB is copyrighted. If copyrighted information is included in the data bank, special permission to redistribute it may need to the obtained from the copyright holder.

Summary of User Access Options

The three levels of service proposed provide users of the NTDB with a number of choices for receiving information. In sum, the standard service offers access to all data the lowest possible prices; the premium service offers access with more frequent updates and faster delivery at higher but still reasonable prices; the authorized distributor service offers the prospect that non-Federal sources will provide value added services and analysis at commensurate rates.

Developer's Toolkit

The Department of Commerce wishes to encourage the development of ancillary computer programs, analytical tools, and other related data by non-Federal sources to assure the widest and most effective use of information found in the National Trade Data Bank. To meet this objective, the Department will prepare and issue to all interested parties a Developer's Toolkit which will provide sufficient information about the content and structure of the NTDB to enable businesses and individuals to design and prepare these tools. Information to be included in the toolkit will include:

- File structure and organization of the CD-ROM
- File structure and organization of the distribution tape
- File structure and organization of information distributed online
- The data dictionary
- Data bank update schedule
- Suggested applications
- Sample data files

Tentative plans call for the Developer's Toolkit to be available by December 31, 1989.

Resource and Budget Constraints

The Department of Commerce supports the NTDB is doing everything possible, within the tight limits of the Department's budget, to get the system into operation by the August 1990 date set by the Trade Act. The NTDB is an advanced and complex information distribution system requiring time and substantial development and data conversion costs to the Department of Commerce and the other Federal Agencies supplying data. Nothing in this notice should be construed to guarantee that the NTDB will be complete with all described features in August 1990. The NTDB is expected to evolve and improve after its initial release; features described in this notice but not initially available will be added as resource and budget availability permit.

Request for Comments

The Department of Commerce invites the public to comment on the proposed preliminary implementation plan within 30 days of this notice. In particular, the Department of Commerce solicits views by the public on:

1. The proposal to have three levels of service—standard, premium, and authorized distributor service.

2. The proposed rules for the authorized distributor service.

3. The specific contents of the international economic data system and the export promotion data system.

4. Specific telecommunications requirements for access to the premium service.

Recommendations received may be incorporated into planning for the content and organization of the data bank. At its option, the Department of Commerce may elect to distribute recommendations (without attribution) as part of the NTDB Developer's Toolkit in order to provide further guidance to software writers designing programs to enhance the value of information in the NTDB.

Additional **Federal Register** notices about the National Trade Data Bank may be issued as plans are further developed covering the content of the data bank, the authorized distributors service, and proposed user charges. Persons interested in receiving these and other public correspondence concerning the NTDB directly may have their name added to the NTDB mailing list by contacting John E. Cremeans.

Dated: August 14, 1989.

Mark W. Plant,

Acting Under Secretary for Economic Affairs, U.S. Department of Commerce.

[FR Doc. 89-19406 Filed 8-17-89; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-588-810]

Preliminary Determination of Sales at Less Than Fair Value; Mechanical Transfer Presses From Japan

AGENCY: Import Administration, International Trade, Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that mechanical transfer presses from Japan 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 and have directed the U.S. Customs Service to suspend liquidation of all entries of mechanical transfer presses from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 24, 1989.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr., or V. Irene Darzenta, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3965, 377-4929, or 377-0186, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that mechanical transfer presses (MTPs) from Japan 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. section 1673b (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation [54 FR 5993, February 7, 1989), the following events have occurred. On March 8, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of mechanical transfer presses [54 FR 9905).

On March 3, 1989 and May 10, 1989, the Department presented Section A and Sections B, C and D, respectively, of the antidumping duty questionnaire to Komatsu, Ltd. (Komatsu). This company accounted for a substantial portion of exports of the subject merchandise from Japan to the United States during the period of investigation. On a voluntary basis, Aida Engineering, Ltd. [Aida) also responded to the antidumping duty questionnaire.

Responses to Section A of the questionnaire were due on March 31, 1989, and responses to the remaining sections were due on June 9, 1989. At the request of the respondents, the response deadline for Sections B, C and D of the questionnaire was extended to June 26, 1989. Responses to Section A were received on March 31, 1989, and responses to Sections B, C and D were received June 26, 1989. The Department issued supplemental questionnaires to both Komatsu and Aida on May 24, 1989, and July 12, 1989. Supplemental responses were filed by both respondents on May 31, 1989 and July 24, 1989.

On May 25, 1989, petitioners requested that the preliminary determination be postponed for 30 days. On June 12, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until July 21, 1989 (54 FR 24927). On July 3, 1989, petitioners requested that the Department further extend the period for the preliminary determination by an additional 20 days. On July 13, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until August 10, 1989 (54 FR 29597).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of product coverage.

The products covered by this investigation are mechanical transfer presses from Japan. For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled. Prior to January 1, 1989, such merchandise was classifiable under items 674.3583, 674.3586, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). Until July 1, 1989, this merchandise was classifiable under HTS subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50. Effective July 1, 1989, the Committee for Statistical Annotation of the Tariff Schedules changed the tariff classification of mechanical transfer presses. Mechanical transfer presses are currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040.

Period of Investigation

The period of investigation covers MTPs sold and shipped in the period January 1, 1987 through January 31, 1989.

Such or Similar Comparisons

Komatsu claimed that it had sales of merchandise in the home market during the period of investigation which were similar to certain MTPs sold to the United States. We preliminarily determine that only one of the MTPs sold to the United States could reasonably be compared to an MTP sold in the home market. For that sale, we based foreign market value on the home market price. For all other MTPs sold to the United States, we determined that there were no sales of such or similar merchandise. Therefore, we used constructed value as the basis for calculating foreign market value.

Although its home market was viable, Aida claimed that there were no sales of merchandise which were sufficiently similar to that sold to the United States to serve as a basis for comparison. Therefore, we used constructed value as the basis for calculating foreign market value.

Fair Value Comparisons

To determine whether sales of MTPs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both respondents in this investigation, we based the United States price on purchase price in accordance with section 772(B) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

A. Komatsu

For Komatsu, we calculated purchase price based on packed f.o.b. Japanese port prices, packed p.o.e. duty paid on carrier prices, or packed delivered prices, as appropriate. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, air freight, U.S. inland freight, loading charge, unloading charge, brokerage and handling, marine insurance, U.S. Customs duty and fees, discounts and spare parts. We disallowed the installation expenses claimed by Komatsu as a deduction to U.S. price, as it appears that such expenses are characteristic of manufacturing costs rather than movement charges. See A(5) of section on "Constructed Value". We also disallowed as deductions to U.S. price export proceed insurance and reassembly insurance. We consider these to be selling expenses which cannot be deducted from U.S. price in purchase price transactions. We added uncollected or rebated duties pursuant to section 772(d)(1)(B) of the Act.

B. Aida

For Aida, we calculated purchase price based on packed ex-go down Japanese port prices or packed f.o.b. U.S. port prices, as appropriate. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, brokerage and handling,

stevedoring charges, marine insurance, air freight, and U.S. Customs duty and fees.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value based on a home market sale or constructed value, as appropriate.

A. Komatsu

For the one sale of similar merchandise in the home market for which the difference in merchandise adjustment was less than 20 percent of the home market price (net of discounts and movement charges), we calculated foreign market value based on the packed, ex-factory price to an unrelated customer. We made deductions for inland freight and discounts. We deducted the home market packing costs from the foreign market value and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit terms, technical services, warranty and advertising, pursuant to section 353.56 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.56).

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market product and the U.S. product was substantial, we determined that the home market MTPs could not reasonably be compared to the MTPs sold to the United States. In this investigation, we determined that an adjustment greater than 20 percent of the home market selling price less inland freight and discounts was substantial. In these instances, we calculated foreign market value based on constructed value, in accordance with section 773(e) of the Act. The methodology used to calculate constructed value is fully described in the "Constructed Value" section of this notice.

B. Aida

For the reasons stated in the "Such or Similar Merchandise" section of this notice, foreign market value was based on constructed value in accordance with section 773(a)(2) of the Act. Constructed value was calculated in accordance with section 773(e) of the Act. The methodology used to calculate constructed value is fully described in the "Constructed Value" section of this notice.

Constructed Value

The constructed value for both Komatsu and Aida included materials, fabrication, general expenses, profit and packing. For both companies, actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of the cost of materials and fabrication. The statutory eight percent profit was applied to the cost of production for both companies since the profit in the home market was less than the statutory minimum. The finance expense was reduced to account for the interest portion included in the imputed credit expense. The constructed values submitted by the respondents were relied upon, except in those instances where the costs were not appropriately quantified or valued, as described below.

A. *Komatsu:* We made the following adjustments to constructed value:

(1) Inventory was excluded from Komatsu's calculation of the offset to finance expense. Inventory carrying costs were not included as a selling expense, therefore, no adjustment to interest expense was necessary for this portion of finance expenses.

(2) Bond issue costs and stock issue costs were included in the calculation of finance expense. These expenses are more appropriately characterized as finance rather than general and administrative expenses as claimed by Komatsu.

(3) Capitalized interest was not included in the cost of manufacturing. According to Financial Accounting Standards Nos. 34 and 42, interest should be capitalized for assets intended for sale or lease that are constructed or otherwise produced as discrete projects. However, interest capitalization is only required for these assets if the effect, compared with the effect of expensing interest, is material. Upon review of the time required to construct the MTP and the cost involved, it appears that capitalization of interest is not appropriate. Therefore, capitalized interest was not included for the preliminary determination.

(4) General and administrative costs were recalculated based on the selling, general and administrative expenses from the Ministry of Finance Report of the parent company, Komatsu Ltd., as best information available, since certain adjustments made by Komatsu in its response could not be reconciled. The Department deducted those items which were identified as product-line research and development, and ex-factory expenses. (For an explanation of selling expense adjustments, see (6) below.)

(5) Installation costs were included in the cost of manufacturing because Komatsu reported the price of the MTP inclusive of installation. Due to the nature of these expenses, it appears that they are characteristic of manufacturing expenses rather than movement charges as claimed by Komatsu.

(6) Where we used constructed value because there were no sales of such or similar merchandise in the home market, we deducted selling expenses which could be matched with the direct selling expenses incurred on the U.S. sales from SG&A as reflected in the Ministry of Finance Report. We added U.S. selling expenses as a surrogate for sale-specific home market expenses. We made a circumstance of sale adjustment based on U.S. direct selling expenses, which consisted of credit, warranty, advertising, technical service, export proceeds insurance, and reassembly insurance. We offset U.S. commissions against home market indirect selling expenses.

B. *AIDA:* We made the following adjustments to constructed value:

(1) We calculated interest expense as a percentage of the cost of sales on a consolidated basis rather than on a parent company basis as reported in the submission. Since Aida had not provided specific details on the amount of interest income related to operations, no deduction from interest expense was allowed.

(2) Transfer prices were used for the cost of services or products purchased from wholly-owned subsidiaries except in those cases where the transfer price was less than actual cost. In those cases, the actual cost was used. Aida had reported all of these services or products at cost.

(3) Capitalized interest was not included in the cost of manufacturing for the same reasons outlined in section A(4) above.

(4) Since there were no home market sales of such or similar merchandise, we substituted U.S. direct selling expenses for the equivalent home market expenses. We made a circumstance of sale adjustment based on U.S. direct selling expenses, which consisted of credit and warrantly. Since Aida did not report U.S. indirect selling expenses, as best information available, we used home market selling expenses and overseas selling expenses (incurred in markets other than the U.S. and Canada) as a percentage of net sales value as a surrogate for U.S. indirect selling expenses. We offset U.S.

commissions with home market indirect selling expenses.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining foreign market value.

Verification

As provided in section 776(b)(1) 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)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of MTPs, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of MTPs exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Komatsu	14.52
Aida	5.89
All Others	13.83

ITC Notification

In accordance with section 733(f) of the Act, we have notified 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 Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the latter of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with section 353.38 of the Commerce Department's regulations, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary by October 6, 1989, and rebuttal briefs by October 12, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 10:00 a.m. on October 18, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 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 accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: August 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–19390 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–DS–M

Management–Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management–Labor Textile Advisory Committee will be held on Tuesday, August 22, 1989, Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 2:00 P.M. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:30 P.M. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Clark Burton (202) 377–3737.

Dated: August 15, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19606 Filed 8–17–89; 11:13 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

[Docket No. 90779–9179]

Family of Services and Climate Dial-Up Service

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the National Oceanic and Atmospheric Administration's FY 90 fee schedule for the National Weather Service's Family of Services (FOS) and the Climate Analysis Center's (CAC) Climate Dial-Up Service. The FOS and the CAC Climate Dial-Up Service provide external user access to near real-time weather and flood data and other information as well as climatological data accessible in the Washington area. This notice announces the fee schedule for the seven medium speed communication services which make up the FOS as well as the CAC Climate Dial-Up Service. It further lists the points of contact for each of these services.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427–7258.

SUPPLEMENTARY INFORMATION: Although the Department of Commerce/NOAA/NWS is not legally required to issue this notice of fees under 15 U.S.C. 1525, the notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 313 and 15 U.S.C. 1525.

Dated: August 11, 1989.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

NOAA announces the FY 90 fee schedule for the National Weather Service (NWS) Family of Services (FOS) and the Climate Analysis Center (CAC) Climate Dial-Up Service.

The FOS provides external user access to near real-time weather and flood data and information available on a family of medium speed communication services accessed in the Washington, DC area. The FOS is divided into seven services described below. Along with the service description is the one-time connection fee which covers the expense related to establishing service and the annual maintenance fee which covers the Government's expense in maintaining the service provided. This expense includes direct labor and other related costs as well as computer and communication costs. Each year's annual service fee is based on the previous year's costs for that individual service divided by the number of direct subscribers.

The family of services	One time connection fee	FY 90 fee
Public Product Service (PPS), Forecasts and warnings in an easily read, plain language format		$2,500
Domestic Data Service (DDS), Coded observations, reports, forecasts and analysis	$2,500	3,500
International Data Service (IDS), Worldwide coded observations, reports, and forecasts	2,500	4,500
Numerical Product Service (NPS), Global model-derived forecasts and analysis in a gridded binary format	5,000	12,000
Direct Connect Service (DCS), Same as NPS, exception subscribers have direct posts on the NWS Telecommunication Gateway	5,000	16,500
National Facsimile Service (NAFAX), 100 facsimile charts of analysis, prognosis, and observed data including 10 satellite photos-analog signal	2,500	21,000
Digital Facsimile Service (DIFAX), 300 facsimile charts of analysis, prognosis, and observed data similar to those on NAFAX plus international aviation charts and agricultural products	2,500	3,500

The PPS and NPS fee stayed the same while the DDS, IDS, and NAFAX fees increased and the DCS and DIFAX fee decreased.

Besides the fees listed above, subscribers are required to pay for all related telephone line charges into the Washington, DC area. For more information on the Family of Services, please contact: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 16th Street, Rm. 1412, Silver Spring, Maryland 20910.

The CAC Climate Dial-Up Service provides near real-time delivery of climate information by providing telephone/computer menu access to the CAC data base. The user fee described below will be based on the number of times per year subscribers access the service. As with the FOS, the fees are required to recover the costs for operating this service. In addition, subscribers will continue to incur long-distance charges where applicable.

The annual fee scale for the CAC Climate Dial-Up Service will be as follows:

Very Heavy User (100 or more calls per year)	$800
Heavy User (52–99 calls per year)	400
Moderate User (12–51 calls per year)	140
Light User (1–11 calls per year)	48

For more information on this service contact: Ms. Joanna M. Dionne, Climate Dial-Up Service, Room 805, World Weather Building, Washington, DC 20233, Telephone: 301–763–8071.

[FR Doc. 89–19442 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–12–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a joint public meeting of the Surf Clam and Scientific and Statistical Committees at the Ramada Inn, Ball Room C, 76 Industrial Highway, Essington, PA. The meeting will begin on August 29, 1989, at 10 a.m., and will adjourn at approximately 5 p.m. The Committees will set quotas for 1990 surf clam and ocean quahog specifications. No other surf clam/ocean quahog issues will be discussed, including Amendment #8 issues.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 11, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19401 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania; Correction

August 14, 1989.

On page 49345, in the table in the letter to the Commissioner of Customs published in the **Federal Register** on December 7, 1989 (53 FR 49344), the HTS coverage for sublimit 334pt. should be corrected as indicated below:

* * * shall be in Category 334pt. in all HTS numbers except 6101.20.0010, 6101.20.0020 and 6112.11.0010.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19391 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989, Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 21, June 2, 26 and 30, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices

(54 FR 26828, 23684, 16148 and 27667) of proposed additions to and deletions from Procurement List 1989, which was published on November 5, 1988 (53 FR 46018).

Additions

No comments were received in direct response to the proposed additions to the Procurement List. However, during the early development stage, the current contractor claimed in a letter to the Committee that the addition of the woman's shirts would adversely affect his firm as well as its employment levels. The value of the firm's contract for the woman's shirts represents approximately 9.7 percent of its total annual sales. This is not considered to be severe adverse impact. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Envelope, Wallet
7530–00–268–3993
Pad, Writing Paper (Repositionable)
7530–01–116–7865
7530–01–116–7866
7530–01–116–7867
Shirt, Woman's
8410–01–069–6611
8410–01–069–6612
8410–01–069–6613
8410–01–069–6614
8410–01–069–6615
8410–01–069–6616
8410–01–069–6617
8410–01–069–6618
8410–01–069–6619
8410–01–069–6620
8410–01–069–6621
8410–01–069–6622
8410–01–069–6623
8410–01–069–6624
8410–01–069–6625
8410–01–069–6626
8410–01–069–6627

Services

Janitorial/Custodial, U.S. Army Reserve Center, 2562 Avery Avenue, Memphis, Tennessee.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following services are hereby deleted from Procurement List 1989:

Commissary Shelf Stocking, Naval Construction Battalion Center, Gulfport, Mississippi
Janitorial/Custodial, Naval and Marine Corps Reserve Center, Jackson, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–19493 Filed 8–17–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: September 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Shampoo, Medicated, 6508–00–116–1362, 6508–00–116–1367

Services

Janitorial/Custodial, Federal Building, 600 Church Street, Flint, Michigan.
Janitorial/Custodial, Federal Building and Post Office, Wenatchee, Washington
Laundry Service, Harrisburg/Middletown Airport, Tobyhanna, Army Depot and Fort Indiantown Gap, Pennsylvania.

Beverly L. Milkman,

Executire Director.

[FR Doc. 89–19494 Filed 8–17–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

The Joint Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Closed Meeting

AGENCY: Joint Strategic Target Planning Staff, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on October 12–13, 1989.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified Top Secret in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave

impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. 552b(c)(1).

Dated: August 15, 1989.

Linda M. Bynum,

OSD Federal REgister Liaison Officer, Department of Defense.

[FR Doc. 89-19481 Filed 8-17-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Advisory Panel on ROTC Affairs, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel of ROTC Affairs

Date of Meeting: October 1, 1989

Place: Duquesne University, Pittsburg, PA

Time: 8 a.m.-5 p.m., November 8, 1989

8 a.m.-12 p.m., November 9, 1989

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Robert E. Wagner and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Wagner will provide an overview of the significant changes since the June 1989 meeting at Fort Bragg, NC. Briefings on November 8-9 will include updates on Scholarships, Advertising Strategy, Marketing Operation, Citizen Soldier, Spring Gold, Green to Gold, Camps, Cadet Professional Development Training, the High School Program and the Hispanic Task Force. On November 9 the Army Advisory Panel on ROTC Affairs will visit Pittsburg area ROTC battalions and observe cadets enrolled in Military Science classes.

Kenneth L. Denton,

Alternate Liaison Officer with the Federal Register, Department of the Army.

[FR Doc. 89-19456 Filed 8-17-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet August 23-25, 1989 from 9 a.m. to 5 p.m. each day, at multiple locations in Alexandria, Virginia, Kings Bay, Georgia, Mayport, Florida, and at sea onboard the USS Kennedy (CV 67). All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late due to difficulties encountered in coordinating the schedules of multiple fleet units in order to hold this meeting afloat. This constitutes an exceptional circumstance, now allowing for 15 days Notice of this meeting.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 15, 1989.

Sandra M. Kay,

Alternate Federal Register Liaison Officer, Department of the Navy.

[FR Doc. 89-19565 Filed 8-16-89; 9:57 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Invitation for Applications for Designation as an Eligible Institute for Fiscal Year 1990 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: October 16, 1989.

Applications Available: August 28, 1989.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell Grant percentage must be more than the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Student: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1987-88 is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1987–88 base year.

	Median Pell Grant percentage	Average E&G per FTE student
2-year Public Institutions	21.90	$4,825
2-year non-profit Private Institutions	28.57	5,677
4-year Public Institutions	20.03	8,745
4-year non-profit Private Institutions	24.17	10,697

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d) respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1987–88 were from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families.

For the purposes of this waiver provision, low-income families are identified according to the following:

Size of family*	Gross annual Family income must be less than**
1	$8,250
2	11,100
3	13,950
4	16,800
5	19,650
6	22,500
7	25,350
8	28,200

*For all families with more than 8 members, add $2,850 for each additional member.

**Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family Income column.

Source: U.S. Department of Health and Human Services as published in the **Federal Register** of February 20, 1987, Vol. 52, No. 34, pages 5340–5341.

In reference to the waiver option specified in § 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by contacting: National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or call (703) 487–4650. Title Metropolitan Statistical Areas, 1988 #PB88–217567.

Applicable Regulations: Regulations applicable to the eligibility process include: (a) The Strengthening Institutions Programs, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77 and 85.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB#3, Washington, DC 20202–5335, Telephone: (202) 732–3314.

Authority: 20 U.S.C. 1057 and 1065a.

Dated: August 11, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–19482 Filed 8–17–89; 8:45 am]

BILLING CODE 4000–01–M

Amendment to Executive Committee Meeting of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment notice of partially closed meeting.

SUMMARY: This amends the notice of a partially closed meeting of the Executive Committee of the National Assessment Governing Board, published on Monday, August 14, 1989, in Vol. 24, No. 155, page 33266. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 23, 1989.

Time: 10:00 a.m. to 10:30 (open); 10:30 to 11:15 (closed); 11:15 until adjournment (open).

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583. Telephone: (202) 732–1824.

The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 23, 1989, from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the open portions of the Committee's deliberations. These facilities will be provided in the location listed in the portion of this notice titled "Location."

The Board will convene in open session beginning at 10:00 a.m. for roll call and introductory remarks. Thereafter, from 10:30 a.m. to 11:15 a.m., the meeting will be closed to the public. The closed portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b). During the closed portion, the Board members will discuss the qualifications of specific individuals nominated for Board membership and consider the qualifications of specific individuals for positions on the Board's staff. Discussion during the closed portion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, if conducted in open session and will relate solely to the internal personnel rules and practices of an agency. Such matters are protected under exemptions (2) and (6) of 5 U.S.C. 5526(c).

The proposed agenda for the open session from 11:15 a.m. until adjournment includes preparation of the agenda for the full Board meeting to be held in September, an update on appropriations, and reports from the test item review subcommittees in the areas of science, reading and math.

A summary of the activities at the closed session and related matters, which are informative to the public, consistent with the policy of 5 U.S.C. 5526b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street SW., Suite 4060, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: August 16, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–19651 Filed 8–17–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Ingo Valentin

AGENCY: Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15448 to Ingo Valentin to assist in the development of an invention entitled "Continuous Variable Hydraulic Pump/Motor Machinery and Vehicles." The technology is a completely redesigned and re-engineered swash plate type hydraulic motor, which offers high efficiency, low cost and weight.

SCOPE: This grant will aid in the building and testing of a production prototype of the unique swash-plate type hydraulic pump/motor. Currently the two types of hydraulic pump/motors for machinery and vehicular transmissions are the swash plate and bent shaft. The swash plate pumps are relatively small and light but have a limited displacement range and lower efficiency. The bent shaft pumps have larger displacement range and higher efficiency but are large, heavy and complex. The proposed technology is a completely redesigned and re-engineered swash-plate type hydraulic motor, which offers high efficiency, low cost, and light weight. These features have mainly been achieved by internal enigneering changes leading to higher speed and pressure operation and by changing the position and design of axial support bearings and design of the swash plate system. The National Institute of Standards and Technology (NIST) estimates a savings of 1.8 billion barrels of crude oil each year. It is anticipated that this project has a very high probability of achieving the objectives as well as achieving the energy savings.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of the award is being limited to Mr. Ingo Valentin. Mr. Valentin was the president of Hydropac, which has been engaged in fluid power products research in Brookfield, Wisconsin. Mr. Valentin, the inventor, has more than 20 years experience in the fluid power field and holds a patent on the pump/motor configuration to be covered under this grant.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie H. Marshall, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B," Office of Procurement Operations.

[FR Doc. 89–19507 Filed 8–17–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–46–NG]

Equitable Resources Marketing Co.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from and Export Natural Gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 20, 1989, of an application filed by Equitable Resources Marketing Company (ERMG) for blanket authorization to import up to 100 Bcf, and to export up to 100 Bcf, respectively, of Canadian, Mexican and/or domestically produced natural gas for a term of two years, commencing on the date of first delivery. ERMC intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 18, 1989.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249,

Diane J. Stubbs Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ERMC, a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania, is a wholly-owned subsidiary within the corporate system of Equitable Resources, Inc. ERMC proposes to import or export natural gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, gas brokers, agents, municipalities, and end users. According to the application, the authority requested by ERMC contemplates the following types of import and export transaction: (1) importation of Canadian and/or Mexican natural gas to U.S. markets; (2) importation of Canadian and/or Mexican natural gas for export to markets in either of such countries; (3) exportation of domestically produced natural gas to Canadian and/or Mexican markets; and (4) exportation of domestically produced natural gas to Canada and/or Mexico for eventual return by exchange or otherwise, via import, to U.S. markets.

According to ERMC, the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanker import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless the DOE receives comments indicated that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FR-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m. e.s.t., September 18, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comment should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of ERMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., August 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-19508 Filed 8-17-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-40-NG]

Norbac International Corp.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 7, 1989, of an application filed by Norbac International Corporation (Norbac) requesting blanket authorization to export from the United States to Mexico up to 47.45 Bcf of natural gas over a two-year period beginning on the date of first delivery. Norbac intends to use existing facilities within the United States and at the U.S.-Mexico border for the transportation of the exported gas. Norbac will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed with the Department under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than September 18, 1989.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233,

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Norbac, a Delaware corporation, with its principal place of business in El Paso, Texas, was organized to engage in the business of international marketing of natural gas, light hydrocarbons, and gaseous petroleum chemicals for resale or to specified end-users. Norbac intends to export natural gas to Mexico for spot market sales, primarily to Petroleos Mexicanos (Pemex). Norbac anticipates purchasing all the gas required to serve this authorization at arms length from natural gas producers in the States of Texas and New Mexico. Norbac states that each sales transaction would be negotiated at arms length with Pemex and would be consistent with the public interest.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE police of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic

gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border point where existing transmission facilities are located.

Norbac requests that an authorization be granted on an expedited basis. A decision on Norbac's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendment to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., e.d.t., September 18, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Norbac's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–19509 Filed 8–17–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89–1915–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1915–000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77254, filed an application in Docket No. CP89–1915–000, pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco to provide a firm interim natural gas sales service with pre-granted abandonment pursuant to a new rate schedule designated Rate Schedule IFS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the instant Application is being filed in accordance with the Commission's "Order Rejecting Settlements" issued July 19, 1989, and the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88–68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term system restructuring.

Transco proposes to provide an interim firm sales service to customers located on its pipeline system pursuant to a new rate schedule designated Rate Schedule IFS. Transco would provide this new sales service on an interm basis—*i.e.*, through March 31, 1991—commencing on the first day of the month following the date the Revised Stipulation and Agreement in Docket Nos. RP88–68, *et al.* is approved by the Commission. Transco states that if the Commission has not issued an order on a mutually agreeable long-term resolution of Transco's merchant service restructuring by March 1, 1991, Transco

and each customer under Rate Schedule IFS may negotiate an extension of service for an additional one year period. In order to effectively implement Rate Schedule IFS service on an interim basis, Transco requests pre-granted abandonment authorization at (1) March 31, 1991, or if applicable (2) March 31, 1992.

Transco states that under Rate Schedule IFS, each month, customers would pay Transco the sum of the following charges: a Gas Commodity Charge; an Interim Service Charge; a Non-gas Demand Charge and a Non-gas Commodity Charge. Transco explains that the Interim Service Fee would be subject to adjustment as set forth in Attachment J to the Revised Stipulation and Agreement. Under Rate Schedule IFS, Transco explains that the IFS customers have the right, but no obligation, to purchase gas on a firm basis.

Transco explains that in accordance with Rate Schedule IFS and the *pro forma* Service Agreement for service thereunder, no later than eleven days prior to the beginning of each month, Transco would propose a delivered price of gas for the following month. Thereafter, Transco and each customer would negotiate a delivered price of gas and no later than eight days prior to the beginning of each month, customers must nominate a quantity to be purchased at a negotiated commodity price. Transco explains that the commodity gas price would be subject to a price cap based upon the spot index set forth in Exhibit A of the service agreement under Rate Schedule IFS. Transco further explains that the price cap would also determine the commodity gas price for any month for any specific customer who is unable to agree with Transco upon a commodity gas price for that month.

Comment date: August 15, 1989 in accordance with Standard Paragraph F at the end of the notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1916–000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP89–1916–000, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco to make its firm transportation capacity rights on third-party pipelines available to its shippers on a non-discriminatory basis, all as more fully set forth in the application is on file with the Commission and open to public inspection.

Transco states that the instant application is being filed in accordance with the Revised Stipulation and Agreement filed on August 7, 1989, in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88–68 *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term restructuring.

Transco states that it currently holds firm transportation capacity entitlements on numerous third-party pipelines, as set forth in an exhibit to the application. Transco proposes to make these capacity rights on consenting upstream pipelines available to its shippers on a non-discriminatory basis to the extent that such capacity is not being utilized for Transco's system supply. Transco states that it would make such capacity available under IT Rate Schedule service agreements in connection with a newly proposed § 28.2(h) to the General Terms and Conditions of its FERC Gas Tariff, which provides for such capacity to be treated as an extension of Transco's system. Transco states that Rate Schedule FT customers would have priority access to any available capacity. Transco further states that it would post all available transportation arrangements on its electronic "Bulletin Board" and would update such list on a periodic basis.

Transco explains that it would continue to be responsible for arranging and scheduling the transportation with the pipelines and paying demand and commodity charges applicable to the service. Transco further explains that the operational and payment provisions of the underlying contracts between Transco and the transporting pipelines, as well as the corresponding certificate provisions, would remain in full force and effect. Transco states that the customers would reimburse Transco for any and all variable, commodity, or volumetric charges or costs incurred by Transco on behalf of customers (including fuel) for quantities transported through Transco's firm transportation entitlements on third-party pipeline systems.

Comment date: August 15, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket Nos. CP84–335–022, CP83–228–000, CP81–194–000, G2432–000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP84–335–022, *et al.*, pursuant to Section 7 of the Natural Gas Act, to amend the authorizations granted in the referenced dockets to modify the restrictions on the injection or return to storage under Rate Schedules GSS, LSS, LG–A and S–2 of natural gas purchased from parties other than Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the instant Application is being filed in accordance with the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88–68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term system restructuring.

Transco states that the instant Application is designed to provide the necessary authorization to enable Transco and its customers to restructure service currently provided under Rate Schedules GSS, LSS, LG–A and S–2. Transco explains that as originally certificated, under Rate Schedules GSS, LSS and LG–A customers were entitled to inject into storage only gas purchased from Transco. As a result of Order Nos. 436 and 500 and Transco's transition toward an unbundled, open access pipeline environment, many of Transco's customers have permanently converted a portion of their firm sales entitlements to firm transportation entitlements, and Transco agreed to limited modifications of the GSS, LSS and LG–A tariff restrictions to enable customers to inject into storage limited quantities of gas purchased from third parties. Transco states that the current entitlement to inject third-party gas into storage is not in all instances equivalent on a percentage basis to the percentage converted to firm transportation service. Transco explains that if the permanent conversion from sales to transportation occurred on or before May 1, 1988, injection quantities purchased from third

parties are limited, on a daily and total quantity basis, to a quantity equal to the customer's injection entitlement (daily and total) multiplied by the percentage of the customer's daily firm purchase entitlement which has been converted to firm transportation service. It is further explained, for conversions taking place after May 1, 1988, the customer's injection rights for third-party gas are further limited on both a daily and total quantity basis so as not to exceed 15% of the customer's storage injection entitlements. Transco explains that Under Rate Schedule S–2, customers currently are not permitted to return to storage quantities of gas purchased from third-party sellers.

Transco proposes to modify the services it currently renders pursuant to the Schedules GSS, LSS, LG–A and S–2 to permit customers unlimited right to inject into storage (or "return" to Transco for storage), on a daily and total quantity basis, quantities of gas purchased from third parties equivalent on a percentage basis to the level which each customer has converted, either on an interim or permanent basis, from firm sales service to firm transportation service. Transco explains that under the Revised Stipulation and Agreement customers are permitted to convert up to 100 percent firm sales service to firm transportation service on an interim basis—from the date the Commission approves the Stipulation and Agreement through March 31, 1991, with a possible one year extension. Transco proposes for the interim period, to remove all limitations on the injection into storage (or "return" to storage) of third-party gas under Rate Schedules GSS, LSS, LG–A and S–2.

Transco states that under Rate Schedule S–2, during the November 16 to April 15 period, customers would designate to Transco that portion of withdrawal quantities (consistent with conversion percentages) which would be purchased from Transco under Rate Schedule CD and that portion of such quantities which would be returned to Transco from quantities of gas purchased under third-party transportation arrangements, including purchases under Transco's Rate Schedule IFS. Transco explains that in regard to withdrawal quantities which a customer designates would be returned under third-party arrangements (non Rate Schedule CD), at the time of withdrawal the customer would pay only the applicable delivered from storage charge. Transco further explains that when the customer returns gas purchased from third-party sources, Transco would charge the applicable rate under its Rate Schedule IT of FT, as applicable, for transportation of the gas on Transco's system for redelivery to Texas Eastern Transmission Corporation under Rate Schedule X–28 plus the return to seller charge.

Comment date: August 15, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. Transcontinental Gas Pipe Line

[Docket No. CP74–33–013]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston Texas 77251, filed an application in Docket No. CP74–33–013, pursuant to Section 7(c) of the Natural Gas Act, to amend the authorizations granted in Docket No. CP74–33 on February 26, 1975, in order to provide specific daily withdrawal entitlements to Washington Storage Service customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco explains that the February 26, 1975 order authorized Transco to (1) construct and operate certain facilities in the Washington Field, St. Landry Parish, Louisiana, (2) use the Cockfield "D" reservoir therein as a storage field, and (3) provide a natural gas storage service pursuant to Rate Schedule WSS, *i.e.*, Washington Storage Service. Transco states that Rate Schedule WSS provides for an interruptible service and does not provide individual customers with a specific daily withdrawal entitlement. Transco further states that its ability to withdraw gas from storage and, consequently, the customers, entitlement to storage withdrawals is currently expressed in terms of the total balance of the storage field and the customers' nominations. Transco explains that in the event the customers' aggregate daily nominations exceed the total quantity Transco can withdraw, the customers' nominations are prorated in proportion to each customer's current Storage Gas Balance.

Transco states that the instant application is being filed in accordance with—and is contingent upon Commission approval of—the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipeline Corporation* Docket Nos. RP88–68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiation on long-term restructuring.

Transco proposes to modify the service it currently renders pursuant to Rate Schedule WSS to provide customers with specific minimum daily withdrawal entitlements which are based on each customer's Storage Capacity Quantity. Transco states that a customer's minimum Daily Withdrawal Entitlement would be based upon its individual use of Washington Storage Service as set forth in Exhibit P to the application and would not be affected by the use of storage by other customers receiving service under Rate Schedule WSS. Transco states that its proposal would provide WSS customers with greater certainty as to their daily withdrawal entitlement.

Comment date: August 15, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. ANR Pipeline Company

[Docket No. CP89–1896–000]

August 9, 1989.

Take notice that on August 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1896–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Howard Energy Company, Inc. (Howard), a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Howard. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Michigan, Texas and Wisconsin; and the offshore Louisiana and Texas gathering areas and would redeliver the natural gas for the account of Howard at existing interconnections located in the state of Michigan. ANR indicates that the average day and annual volumes of natural gas to be transported would be 100,000 dt and 36,500,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a))

commenced on June 6, 1989, as reported in Docket No. ST89–4141–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of the notice.

6. Colorado Interstate Gas Company

[Docket No. CP89–1895–000]

August 9, 1989.

Take notice that on August 2, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1895–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86–589, *et al.*, a maximum of 35,000 Mcf per day for Williams Gas Marketing Company (WGMC), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG indicates that service commenced May 18, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3850–000 and estimates the volumes transported to be 35,000 Mcf on peak day, 20,000 Mcf on an average day and 7,300 MMcf on an annual basis. It is asserted that CIG would receive gas from various existing points of receipt on its system in Wyoming, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for WGMC in Kearny County, Kansas.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP89–1902–000]

August 9, 1989.

Take notice that on August 3, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1902–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of KTM, Inc. (KTM), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 20,000 MMBtu per day for KTM. Northwest states that construction of facilities would not be required to provide the proposed service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 20,000 MMBtu, 600 MMBtu and 219,000 MMBtu respectively.

Northwest advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89–4216.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Stingray Pipeline Company

[Docket No. CP89–1893–000]

August 9, 1989.

Take notice that on August 2, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1893–000 an applications pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Superior Natural Gas Corporation (Superior), a marketer of natural gas, under Stingray's blanket certificate issued by Commission Order No. 509 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Superior. Stingray states that construction of facilities would not be required to provide the proposed service.

Stingray further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Stingray advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4006.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89–1885–000]

August 9, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR) 500 Renaisssance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1885–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport, on an interruptible basis, natural gas under its blanket certificate issued in Docket No. CP88–532–000 for Dekalb Energy Canada Ltd. (Dekalb), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would receive the gas at ANR's existing points of receipt located in the state of Wisconsin and redeliver the gas for the account of Dekalb at existing interconnections also located in the state of Wisconsin. ANR indicates that it commenced service for Dekalb under § 284.223 as reported in Docket No. ST89–4145–000.

ANR indicates that service commenced June 1, 1989, as repored in Docket No. ST89–4145–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Black Marlin Pipeline Company

[Docket No. CP89–1905–000]

August 9, 1989.

Take notice that on August 3, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1905–000, an application pursuant to sections 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Shell Offshore Inc./Shell Gas Trading Company, a marketer of natural gas, pursuant to Black Marlin's blanket certificate issued by the Commission's Order No. 509 and Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–75–000, as more fully set forth in the application on file with the Commission and open to public inspection.

Black Marlin further states that the estimated daily and estimated annual quantities would be 150,000 MMBtu and 54,750,000 MMBtu, respectively. Service under Section 284.223 (a) commenced on June 1, 1989, as reported in Docket No. ST89–4073–000. Construction of facilities will not be required to provide the proposed service.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Stingray Pipeline Company

[Docket No. CP89–1913–000]

August 10, 1989.

Take notice that on August 7, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1913–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer, under the blanket certificate

issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is filed with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 27, 1989, under its Rate Schedule ITS, it proposes to receive up to 50,000 million Btu per day from Amoco at specified points located onshore and offshore Louisiana and redeliver the gas at specified points located offshore Texas and onshore Louisiana. Stingray estimates that the peak day, average day and annual volumes would be 50,000 million Btu, 7,500 million Btu, and 2,737,500 million Btu, respectively. It is stated that on July 1, 1989, Stingray initiated a 120-day transportation service for Amoco under § 284.223(a) as reported in Docket No. ST89–4345–000.

Stingray further states that no facilities need be constructed to implement the service. Stingray states that the primary term of the transportation service would expire one year from the initial date of service, but that the service would continue on a month-to-month basis until terminated by 30 days written notice. Stingray proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: September 25, 1989, in accordance with Standard Paragrpah G at the end of this notice.

12. Stingray Pipeline Company

[Docket No. CP89–1906–000]

August 10, 1989.

Take notice that on August 3, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1906–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for Koch Hydrocarbon Company (KHC), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that it would receive the gas for KHC at various existing points of receipt in offshore Louisiana, Louisiana and Texas, and would redeliver the gas at existing delivery points located in Cameron Parish, Louisiana and offshore Texas.

Stingray further states that the maximum daily, average daily and annual quantities that it would transport for KHC would be 150,000 MMBtu equivalent of natural gas, 100,000 MMBtu equivalent of natural gas and 36,500,000 MMBtu equivalent of natural gas, respectively.

Stingray indicates that in a filing made with the Commission on June 26, 1989, in Docket No. ST89–54005, it reported that transportation service for KHC commenced on June 9, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Great Lakes Gas Transmission Company

[Docket Nos. CP81–225–008 [1] CP88–397–004]

August 10, 1989.

Take notice that on July 20, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP81–225–008 and CP88–397–004 a petition to amend the orders issued on December 2, 1987, in Docket No. CP81–225–005 and on October 26, 1988, in Docket No. CP88–397–000, so as to permit Great Lakes to continue providing incremental firm transportation services for Northern Minnesota Utilities, a Division of Utilicorp United Inc. (Northern Minnesota) and TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes states that the Commission has issued orders authorizing Great Lakes to transport incremental volumes of natural gas on a firm basis for Northern Minnesota and TransCanada, respectively, for a term of the earlier of one year from the date of such order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Northern Minnesota and TransCanada have each entered into arrangements with Great Lakes for the continuation of their respective services, it is indicated. No new facilities are required to provide the continuation of these transportation services, it is stated.

Great Lakes states that it currently provides certain transportation and exchange services to Northern Minnesota in conjunction with Northern Minnesota obtaining storage service from ANR Storage Company (ANR). Great Lakes states that by Commission order issued on December 2, 1987, it was authorized to (1) increase in the Summer Period (April 1 to October 31) transportation service volumes from 2,026 Mcf per day to 3,292 Mcf per day transported from an interconnection between the facilities of Great Lakes and Northern Minnesota near Cloquet, Minnesota (Cloquet) to an interconnection between the facilities of Great Lakes and ANR located in Crawford County, Michigan (Crawford); (2) change the total Summer Period quantity from 405,200 Mcf to 658,450 Mcf for this transportation service; and (3) increase the Winter Period (November 1 to March 31) exchange volumes from 8,000 Mcf per day to 13,000 Mcf per day that would be delivered to Great Lakes at Crawford and a thermally equivalent quantity would be delivered at Cloquet and/or two additional existing points of interconnection between Great Lakes and Northern Minnesota located near Grand Rapids and Thief River Falls, Minnesota. This authorization was subsequently extended by the order dated December 2, 1988, in Docket No. CP81–225–005, it is stated. Great Lakes states that Northern Minnesota has requested that the incremental firm services continue until termination of Great Lakes' Rate Schedule T–11 which initial term expires March 31, 1991 and governs these services.

Also, Great Lakes states that it transports natural gas for TransCanada from a point on the international boundary between the United States and Canada near Emerson, Manitoba to points on the international boundary at Sault Ste. Marie and St. Clair, Michigan (St. Clair). Great Lakes states that by Commission order issued on October 26, 1988, in Docket No. CP88–397–000, it was authorized an incremental increase in the transportation quantities by 37,500 Mcf per day for this firm transportation service but with a limited term of the earlier of one year from the date of the order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Great Lakes states that TransCanada has requested that this incremental firm service continue until the termination of Great Lakes' Rate Schedule T–4, which governs this transportation service.

Comment date: August 31, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] These proceedings are not consolidated

14. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1841–000]

August 10, 1989.

Take notice that on July 19, 1989, Northern Natural Gas Company, Division of Enron Corp., (Applicant), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88–1841–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate to construct certain pipeline extensions, loops, compression facilities, meters, and other related facilities to implement transportation services to various shippers pursuant to Section 311(a) of the Natural Gas Policy Act or its blanket transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate certain transmission facilities in order to provide additional capacity on its system designated as Applicant's East Leg which is located between its Ogden Compressor Station in Boone County, Iowa and its Janesville delivery station in Rock County, Wisconsin. Applicant proposes to construct such facilities in two phases. Applicant explains that Phase I construction would consist of (1) a total of approximately 45.02 miles of 30-inch pipeline loops which would be located in Boone County, Iowa and in Lafayette County, Wisconsin, (2) 24.8 miles of 16-inch line which would be located in Green and Dane Counties, Wisconsin, (3) 24.3 miles of 16-inch line which would be located in Benton County, Iowa, (4) an additional 4,000 horsepower of compression at Applicant's Waterloo Compressor Station which is located in Blackhawk County, Iowa and (5) certain station modifications at Applicant's Ogden Compressor Station and its Galena Compressor Station which is located in Jo Daviess, County, Illinois. Applicant proposes to complete construction of Phase I facilities in 1990. Applicant explains part of its Phase I facilities would interconnect with a line to be constructed by Iowa-Illinois Gas and Electric Company (IIGE). In connection with the IIGE's line, Applicant requests authorization to include as intangible plant a contribution in aid-of-construction which Applicant has agreed to pay in the amount of $7,700,000 to IIGE. Applicant further explains that Phase II construction would consist of 4.99 miles of 30-inch pipeline loop, (2) an additional 2,000 horsepower of compression at Applicant's Waterloo Compressor Station, and (3) certain station modifications at its Galena Compressor Station. Applicant states that Phase II facilities are designed to accommodate Madison Gas and Electric Company's request to provide additional service to begin for the 1992 winter season.

Applicant asserts that the proposed construction (Phase I and Phase II) are designed to increase capacity on its East Leg by a total of 203,000 Mcf per day and that the total cost of construction would be approximately $65,570,000 (Phase I—$57.47 million and Phase II—$8.10 million) exclusive of the proposed aid-in-construction to IIGE and the FERC filing fee. Applicant states that it would finance the proposed construction project with internally generated funds.

Applicant states that it conducted an Open Season from October 6, 1988, to October 24, 1988, during which time it received requests for new firm and interruptible transportation services to be provided through the additional capacity proposed herein. Applicant further advises that it has executed precedent agreements to provide firm transportation services on behalf of the following shippers:

Shipper	Phase I volumes (MMBtu/d)	Phase II volumes (MMBtu/d)
Northern Illinois Gas Co	70,000	70,000
Iowa-Illinois Gas & Electric	50,000	50,000
Wisconsin Gas Company	25,000	25,000
Madison Gas & Electric Co	16,500	37,653
Wisconsin Power & Light Co	12,000	12,000
Centran Corp	2,500	2,500
Wisconsin Southern Gas Co., Inc	1,500	1,500
Totals	177,500	198,653

Upon completion of the proposed facilities, Applicant explains that it would render the above firm transportation services pursuant to its blanket transportation certificate issued on December 22, 1986, in Docket No. CP86–435–000 and that it would render these services under its then-applicable rate schedules.

Applicant notes that it has filed an application in Docket No. CP89–1538–000 for authorization to construct a 2.0-mile line crossing of the Mississippi River located west of its Galena Compressor Station; it is proposes therein that such line be operated on an emergency basis. Applicant explains that such line now would be operated as part of proposed expansion herein. Applicant further notes that it previously proposed expansion of its East Leg in pending Docket No. CP83–218 *et al.* in order to render firm transportation services on behalf of certain coal gas shippers [1] which has arranged to purchase coal gas from the Great Plains Coal Gasification Plant located in Mercer County, North Dakota. Applicant explains that Commission authorization in Docket No. CP83–218 *et al.* has never been received for either the construction or for the proposed transportation services. Applicant states that it has contacted each of the coal gas shippers and has advised them that it is considering the withdrawal of its application in Docket No. CP83–218 *et al.* and that other alternative arrangements would be considered to accommodate the coal gas shippers.

Comment date: August 31, 1989, in accordance with Standard Paragraph F at the end of this notice.

15. Stingray Pipeline Company

[Docket No. CP89–1910–000]

August 10, 1989.

Take notice that on August 4, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1910–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Exploration Partners LTD, (Union), a producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule ITS, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Union. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI–A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 20, 1989, as reported in Docket No. ST89–4393–000. Stingray further advises that it

[1] The coal gas shippers were: ANR Pipeline Company, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Transcontinental Gas Pipe Line Corporation, and Natural Gas Pipeline Company of America.

would transport 22,000 MMBtu on an average day and 8,030,000 MMBtu annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89-1880-000]

August 10, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request at Docket No. CP89-1880-000, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Bonneville Fuels Corporation (Bonneville), under its blanket certificate issued at Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Pursuant to a transportation agreement dated April 18, 1989, El Paso requests authority to transport up to 13,188 MMBtu of natural gas per day, on an interruptible basis, for Bonneville. El Paso states the agreement provides for it to receive the gas at various points of receipt along its system and deliver it to various points of delivery along the borderline between the States of Arizona and California. Bonneville has informed El Paso that it expects to have the full 13,188 MMBtu transported on an average day and, based thereon, 4,813,600 MMBtu would be transported annually. El Paso advises that the transportation service commenced on July 1, 1989, as reported at Docket No. ST89-4210-000, pursuant to § 284.223(a) of the Commissions Regulations.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP89-1883-000]

August 11, 1989.

Take notice that on July 31, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1883-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the Stratton Pipeline System (Stratton System) and a petition for a declaratory order which disclaims jurisdiction over the abandoned facilities, all as more fully set forth in the application and petition which are on file with the Commission and open to public inspection.

Tennessee states that it has entered into an Option and Agreement of Sale with Union Pacific Resources Company (UPRC) which provides, *inter alia*, for the conveyance by Tennessee to UPRC of the Stratton System. Upon receipt of the authorization requested herein, Tennessee avers it will convey such facilities to UPRC, and UPRC will continue to operate the facilities in order to deliver gas into Tennessee's interstate pipeline system at Tennessee's Meter No. 1-0008. Therefore, Tennessee requests, on behalf of UPRC, that the Commission confirm that the Stratton System for which abandonment is sought herein by Tennessee will be a non-jurisdictional gathering facility when owned and operated by UPRC.

It is stated that the facilities which are subject to this application and petition for declaratory order are located behind processing plants or serve to deliver gas to a central point in the field at a pipeline interconnection. According to Tennessee, the primary function of these facilities is gathering gas to the plant for processing and delivery and/or delivering the gas into the mainlines of Tennessee and United. As such, Tennessee states that the realignment of the facilities when two plants were shut down for economic/operational reasons did not modify the primary function of the subject facilities which remains gathering.

Tennessee describes states that the Stratton System as follows:

Agua Dulce-Wardner Line 1B-100

(1) Approximately 4.65 miles of 18-inch pipeline beginning at an 18-inch weld ell which adjoins piping on the upstream side of the Champlain Wardner Coastal Meter Station [1] as detailed on Drawing TO-C1-E1-YA-102 located in the Andres De La Fuente Survey A-111 and being situated on Tennessee fee lands. Thence extending through Valve No. 1B-101 and continuing in a southwesterly direction to a point, said point being a reducer. Approximately 3.06 miles of 12-inch pipeline beginning at the hereinbefore referenced reducer and proceeding in a southwesterly direction to a point of termination located at the Wardner Plant, which is no longer operative, and being located in the Luciano Rivas Survey A-286.

[1] The Champlain Wardner Coastal Meter Station is also identified as Tennessee Meter No. 1-0008.

Agua Dulce-Wardner Line-Gulf Plains Lateral Line No. 1B-200

(2) Approximately 0.51 mile of 10-inch pipeline beginning at an 18-inch by 12-inch weld saddle being the tie-in point with the Agua Dulce Wardner Line No. 1B-100 as detailed on Drawing No. TO-F1-1B-200-1 and extending in a westerly direction to a point of termination at the Gulf Plains Plant and being situated in the Luciano Rivas Survey A-286.

Coastal Line No. 1E-100

(3) 0.43 mile of 10-inch pipeline beginning at an 18-inch weld tee being the tie-in point of piping from the Champlain Wardner Coastal Meter Station and the Agua Dulce Wardner Line No. 1B-100 as detailed on Drawing No. TO-C1-E1-YA-102 and extending through Valve No. 1E-101 and continuing in a northerly direction across Tennessee fee lands to a specific point. Thence proceeding in a southeasterly direction to a point of termination at the Coastal Plant, which is no longer operative, and being situated in the Andres De La Fuente Survey A-111.

It is stated that the Stratton System includes all additions or modifications thereto which are used with, useful to, or required for the operation thereof.

Tennessee states that the Stratton System is located near its Compressor Station No. 1 in San Patricio County, Texas and consists of three segments of pipeline. The Agua Dulce-Wardner line (4.65 miles of 18-inch and 3.06 miles of 12-inch pipeline) extended from the discharge side of the Wardner Station Processing Plant to an interconnection with Tennessee's original 24-inch main line. The Agua Dulce-Wardner-Gulf Plains lateral (0.51 mile of 10-inch pipeline) extended from the discharge side of the Gulf Plains Processing Plant to an interconnection with the Agua Dulce-Wardner line. The Coastal line (0.43 mile of 10-inch pipeline) extended from the discharge side of the Coastal Station processing Plant to an interconnection with the Agua Dulce-Wardner line near Tennessee's Meter No. 1-0008. Tennessee states that, today, only the Gulf Plains Plant remains in operation.

According the Tennessee, the Stratton System was constructed by Tennessee in 1944 (Docket No. G-230, 3 FPC 574), and has been fully depreciated for both book and tax purposes.

Tennessee avers that the three segments of the Stratton System were originally installed for the receipt and transportation of gas produced in the

Stratton-Agua Dulce field. The gas was either purchased by Tennessee from the Chicago Corporation (Chicago), predecessor of UPRC, or delivered to Tennessee for transportation for the account of The Manufacturers Light and Heat Company (Manufacturers), predecessor of Columbia Gas Transmission Corporation (Columbia), all as provided by an agreement between Tennessee and Chicago dated September 7, 1943. The gas to be transported by Tennessee for Manufacturers was sold by Chicago to Manufacturers. It is stated that the September 7, 1943, contract provided that the point of delivery to Tennessee for both gas sold by Chicago to Tennessee and gas sold by Chicago to Manufacturers would be at a point on Tennessee's system in the Agua Dulce field. Tennessee states that upon construction of its system, the point of delivery was established at the discharge side of each of the three then existing processing plants.

Tennessee states that the September 7, 1943, contract was superseded by a contract between Tennessee and Chicago dated August 15, 1952 (UPRC's FERC Gas Rate Schedule No. 5). Tennessee adds that by an amendment dated May 30, 1953, the parties agreed that the point of delivery for gas to be purchased by Tennessee was to be at the discharge side of Chicago's Wardner Coastal Meter Station (Tennessee's Meter No. 1–0008). Further, it is stated that pursuant to the May 30, 1953, agreement, although Tennessee retained ownership of the lines, Chicago assumed all responsibility in connection with the maintenance and operation of the Stratton System.

Tennessee further states that its Meter No. 1–0008 has also been established as the delivery point to Tennessee of gas purchased by Columbia from UPRC and delivered to Tennessee for transportation for Columbia's account.

It is stated that Tennessee has entered into other obligations to receive gas at its Meter No. 1–0008, however, Tennessee has no obligation to receive or deliver gas at any point on the Stratton System other than at Tennessee's Meter No. 1–0008. Therefore, Tennessee states, the facilities proposed to be abandoned are not necessary for Tennessee's continued receipt of gas under any gas purchase agreement or any gas transportation agreement.

According to Tennessee, the Wardner and Coastal Plants ceased to operate in 1952, and operation of the Stratton System has evolved in a manner so that it is utilized as a production and gathering facility. By conveying the Stratton System to UPRC, Tennessee adds, it will maintain the same gas supply dedication and the same transportation abilities while eliminating all expenses of maintenance of such system. Accordingly, Tennessee states that such reduction will generate savings to Tennessee's customers. In addition, Tennessee avers that conveyance of such properties to UPRC and decertification of this system will permit flexibility in operations which will enhance UPRC's ability to carry out its production and gathering operations in the Agua Dulce and other nearby fields.

Comment date: September 1, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Stingray Pipeline Company

[Docket No. CP89–1914–000]

August 11, 1989.

Take notice that on August 7, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1914–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Philbro Distributors Corporation (Philbro), a marketer of natural gas, under Stingray's Order No. 509 blanket authorization pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that it would transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 50,000 MMBtu equivalent on an average day and 18,250,000 MMBtu equivalent on an annual basis. It is stated that Stingray would receive the gas for Philbro's account at receipt points on Stingray's system in Louisiana, Texas, offshore Louisiana and offshore Texas, and would deliver equivalent volumes of gas in Louisiana and offshore Texas. It is further stated that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4344.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Stingray Pipeline Company

[Docket No. CP89–1894–000]

August 11, 1989.

Take notice that on August 2, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1894–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation for Gulf Ohio Corporation (Gulf Ohio), a shipper of natural gas, under Stingray's blanket certificate issued by the Commission's Order 509 pursuant to Section 7 of the Natural Gas Act, with corresponding rates, terms and conditions in Docket No. RP89–70–000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Stingray states that pursuant to a Transportation Agreement dated April 11, 1989 between Stingray and Gulf Ohio (Transportation Agreement), it proposes to transport up to 7,000 MMBtu per day on an interruptible basis on behalf of Gulf Ohio. The Transportation Agreement provides for Stingray to receive gas from various existing receipt points that are located in Louisiana, offshore Louisiana and offshore Texas and the redelivery points are located in Louisiana and offshore Texas.

Stingray advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4004.000. Stingray further states that it would transport on an average day 7,000 MMBtu and 2,535,000 MMBtu annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1919–000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Easter Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1919–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Gastrak Corporation (Gastrak), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport natural gas up to

100,000 Dt. per day on an interruptible basis on behalf of Gastrak pursuant to a transportation agreement dated March 30, 1989, between Panhandle and Gastrak, it is stated. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in the States of Colorado, Kansas, Oklahoma and Texas. Panhandle further states it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

It is further stated that the estimated daily and estimated annual quantities would be 100,000 Dt. and 36,500,000 Dt., respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89-4324-000, it is stated.

Comment date: September 25, 1989, in accordance with Standard paragraph G at the end of this notice.

21. Natural Gas Pipeline Company

[Docket No. CP89-1907-000]

August 11, 1989.

Take notice that on August 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1907-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Acacia Gas Corporation (Acacia), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated November 18, 1988, as amended, Natural requests authority to transport up to 50,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for Acacia. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to various existing points of delivery located in Texas and Oklahoma. Acacia has informed Natural that it expects to have only 26,000 MMBtu of gas transported on an average day and, based thereon, estimates that 9,490,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on June 1, 1989, as reported in Docket No. ST89-438-000 pursuant to § 284.223 of the Commission's Regulations.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1920-000]

August 11, 1989.

Take notice that on August 1, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1920-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Amgas, Inc. (Amgas), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 130 dt equivalent of natural gas on a peak day, 20 dt equivalent on an average day and 7,300 dt equivalent on an annual basis for Amgas. Panhandle states that it would perform the transportation service for Amgas under Panhandle's Rate Schedule PT. Panhandle indicates that it would receive the gas at various points on its system and deliver the gas to CILCO in Tazewell County, Illinois.

It is explained that the service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4361. Panhandle indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1928-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1928-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to Dow Chemical Company in Marion County, Indiana.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 3,000 dt equivalent of natural gas, 155 dt equivalent of natural gas and 56,575 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-4330, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1926-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1926-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to the City of Montgomery in Montgomery County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 2,700 dt equivalent of natural gas, 500 dt equivalent of natural gas and 182,500 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89–4326, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1924–000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1924–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to the Cabot Corporation in Douglas County, Illinois.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 1,500 dt equivalent of natural gas, 180 dt equivalent of natural gas and 65,700 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89–4331, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1921–000]

August 11, 1989.

Take notice that on August 8, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–1921–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Vesta Energy Company (Vesta), a shipper and marketer of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86–585–000 and Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 50,000 Dt. per day on an interruptible basis on behalf of Vesta pursuant to a Transportation Agreement dated June 26, 1989 between Panhandle and Vesta (Transportation Agreement). The agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

The shipper states that the estimated daily and estimated annual quantities would be 50,000 Dt. and 18,250,000 Dt., respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89–4327–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Tennessee Gas Pipeline Company

[Docket No. CP89–1931–000]

August 11, 1989.

Take notice that on August 10, 1989 Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas, 77252 filed in Docket No. CP89–1931–000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Columbia Gas Development Corporation (Columbia), a producer, under the blanket certificate issued in Docket No. CP87–115–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Tennessee states that pursuant to a transportation agreement dated July 13, 1989, as amended, under its Rate Schedule IT, it proposes to transport up to 75,000 dekatherms (dt) per day equivalent of natural gas for Columbia. Tennessee states that it would transport the gas for Columbia from receipt points located offshore Louisiana and Texas, and in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Pennsylvania, West Virginia, and New Jersey. Tennessee further states that the points of delivery and ultimate points of delivery are located in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Pennsylvania, Alabama, West Virginia, Rhode Island, New Hampshire, Connecticut, Tennessee, Ohio, and Kentucky.

Tennessee advises that service under § 284.223(a) commenced on July 19, 1989, as reported in Docket No. ST89–4397–000 (filed August 4, 1989). Tennessee further advises that it would transport 75,000 dt on an average day and 27,375,000 dt annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP89–1912–000]

August 11, 1989.

Take notice that on August 7, 1989 Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), referred to as "Applicants", P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1912–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for Southern Natural Gas Company (Southern), rendered under the certificate issued in Docket No. CP82–211, as amended, all as more fully set forth in the request pursuant that is on file with the Commission and open to public inspection.

Applicants state that they would abandon the firm transportation service being provided to Southern under Panhandle's Rate Schedule T–50 and Trunkline's Rate Schedule T–74 (Original Volume No. 2). Applicants advise that by letter dated October 14, 1987, which was received by Panhandle on October 19, 1987, Southern formally effected the terms of the transportation agreement dated December 23, 1981, for termination of this service. Applicants request an October 19, 1988, effective date for the abandonment authorization.

Comment date: September 1, 1989 in accordance with Standard Paragraph F at the end of the notice.

29. Columbia Gas Transmission Corporation

[Docket No. CP–89–1930–000]

August 11, 1989.

Take notice that on August 8, 1989, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP89–1930–000

an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.05 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Endevco Oil and Gas Company (Endevco), a shipper of gas, pursuant to Columbia Gas, blanket transportation certificate issued February 28, 1986, in Docket No. CP86–240–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas states that it will receive the gas from; Panhandle Eastern Pipeline Company at Maumee, Ohio; Texas Gas Transmission Corporation at Lebanon, Ohio; Columbia Gulf Transmission Company at Leach, Kentucky; at various existing interconnections with Texas Eastern Gas Pipeline Company and Tennessee Gas Pipeline Company and deliver the gas for the account of Endevco to Equitrans, Inc. in Pennsylvania.

Columbia Gas proposes to transport for Endevco up to 50,000 MMBtu gas equivalent per peak day and an estimated 40,000 MMBtu and 18,250,000 MMBtu gas equivalent per average day and annually, respectively. Columbia Gas states the transportation service commenced on June 2, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated June 1, 1989. Columbia Gas notified the Commission of the commencement of the transportation service in Docket No. ST89–3995–000.

Comment date: September 25, 1989 in accordanced with Standard Paragraph G at the end of the notice.

30. Panhandle Eastern Pipe Line Company

[Docket No. CP–89–1927–000]

August 11, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1927–000, as a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.05) for authorization to transport natural gas on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket authorization issued in Docket No. CP86–585–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Mountain Iron, pursuant to a transportation service agreement dated June 5, 1989. The transportation agreement is effective for a primary term of one year from the initial date of service and shall continue month-to-month thereafter until terminated by either party upon at least thirty days prior notice. Panhandle proposes to transport 2,150 Dekatherms (Dth) of natural gas on a peak day; 150 dt on an average day; and on an annual basis 54,750 Dth of natural gas for Mountain Iron. Panhandle proposes to receive the subject gas from various existing points of recept on its system. Panhandle will then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Continental Cement Low Flow and United Steel Cement in Ralls County, Missouri. No new facilities or expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on July 1, 1989, as reported in Docket No. ST89–4329–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19413 Filed 8–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10631–002 Virginia]

James River Hydro Associates; Surrender of Preliminary Permit

August 10, 1989.

Take notice that James River Hydro Associates, permittee for the proposed Twelfth Street Hydro Project, has requested that its preliminary permit be terminated. The permit was issued on January 31, 1989, and would have expired on December 31, 1991. The project would have been located on the James River in the City of Richmond, Virginia. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on June 28, 1989, and the preliminary permit for Project No. 10631 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which

case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19417 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-4-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

August 11, 1989.

Take notice that on August 7, 1989, Midwestern Gas Transmission Company (Midwestern) is filing ten copies of First Revised Seventeenth Revised Sheet No. 7 to its FERC gas tariff, to be effective July 1, 1989. This filing is made in accordance with the June 19, 1989 letter order in Docket No. TM89-3-5 where Midwestern was directed to track any modifications made in Tennessee's take-or-pay recovery filings in Docket No. RP88-191. This filing tracks the revised charges implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191-010 filed July 14, 1989, to be effective July 1, 1989, including the revised amortization schedule for Tennessee's carrying charges required by the Commission's Order in Docket No. RP88-191-006 on March 23, 1989.

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. All such motions or protests should be filed on or before August 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19415 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-8-000]

Seagull Interstate Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 11, 1989.

Take notice that on August 1, 1989, Seagull Interstate Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Substitute First Revised Sheet No. 1
Substitute Second Revised Sheet Nos. 53 and 54
Substitute First Revised Sheet Nos. 54A and 54B
Add Original Sheet No. 54C
Substitute First Revised Sheet No. 57
Add Original Sheet Nos. 57A, 57B, 57C, and 57D
Delete Original Sheet No. 78

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19416 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-000 et al.]

Transcontinental Gas Pipeline Corp.; Offer of Settlement

August 8, 1989.

In the matter of Docket Nos. RP88-68-000, RP87-7-12, RP87-7-000, RP89-122-000, RP89-123-000, RP89-163-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ89-2-29-000, TQ89-4-29-000, TA89-1-29-000, CP89-1915-000, CP89-1916-000, CP74-33-013, CP84-335-022, CP61-194-000, CP63-228-000, and G-2432-000.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed an Offer of Settlement in the captioned proceedings. The Offer of Settlement would resolve the above-referenced proceedings and provides for certificate authorizations pursuant to section 7(c) of the Natural Gas Act, which are generally described as follows, all as more fully set forth in the Offer of Settlement.

(1) Article I of the Settlement is intended to resolve long-standing take-or-pay issues on the Transco system and is alleged to provide Transco's customers with over $100 million in take-or-pay savings compared to the charges under Transco's Order No. 500 take-or-pay filing in Docket Nos. RP88-68-000, *et al.*

(2) Article II establishes a new jurisdictional Interim Firm Sales Service (IFS) to be provided by Transco which is designed to permit Transco to meet current producer obligations and prevent the occurrence of additional take-or-pay liability.

(3) Article III resolves the throughput mix issue pending in Docket No. RP87-7-000 on the same basis as reflected in Transco's proposed June 24, 1988 Reserved Issues Settlement in that same proceeding, and establishes the fuel retention percentages applicable to service under Transco's FT and IT Rate Schedules for the period commencing April 1, 1989 through the remaining period of the effectiveness of the Docket No. RP87-7 rates.

(4) As more fully described in separate notices issued contemporaneously, Transco has filed together with the Offer of Settlement filing, four separate certificate applications requesting authority for Transco to:

(a) Implement the IFS Service under proposed Rate Schedule IFS;

(b) Amend Transco's existing certificate in Docket No. CP74-33 for Rate Schedule WSS service to provide for specific daily withdrawal entitlements;

(c) Make its firm transportation capacity rights on consenting upstream pipelines available to any shipper; and

(d) Modify Transco's existing storage Rate Schedules GSS, LSS, LG-A and S-2 to permit customers to nominate for injection gas purchased from third parties.

Transco states that the instant filing represents the parties' response to the Commission's July 19, 1989 Order Rejecting Settlements (48 FERC ¶ 61,052), which rejected Transco's April 3, 1989 settlement filing in Docket Nos. RP88-68-000, et al.

Transco states that the settlement, together with all attachments thereto, has been served pursuant to Rule 602(d)(1) upon all participants listed on the official service lists in the captioned proceedings on file with the

Commission, and upon all persons who were required to be served with Transco's rate filings which initiated several of the captioned proceedings.

Any persons desiring to file comments regarding the certificate authorizations sought in connection with the Offer of Settlement should, on or before August 15, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 602(f)), together with a motion to intervene in accordance with the requirements of the Commissions Regulations under the Natural Gas Act (18 CFR 157.10 and 385.214).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19423 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3631-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 31, 1989 through August 4, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS-COE-J28017-WY, Rating EU3, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, Purpose and Need and Mitigation Plan Sections Revision, 404 Permit, Savery Creek, Carbon County, WY.

Summary: EPA is concerned that the project, as proposed, does not comply with NEPA and the Clean Water Act Section 404(b) Guidelines. No established need for 20,000 acre feet of annual yield is demonstrated. The project as currently described would result in major impacts to the existing aquatic ecosystem and significant degradation of the area's fish and wildlife resources.

ERP No. DS-DOE-A22076-NM, Rating EC2, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM.

Summary: EPA expressed concern about compliance with the applicable requirements of the Resource Conservation and Recovery Act and with standards for the disposal of high-level and transuranic radioactive wastes. EPA is reviewing separately the petition for a no mitigation waiver under RCRA and the Test Phase Plan for demonstrating compliance with the radioactive waste disposal standard.

ERP No. D-DOE-L00003-WA, Rating LO, Hanford Site Eight Surplus Plutonium Production Reactors Decommissioning, Implementation, Richland, WA.

Summary: EPA has no objections to the project as described in the draft EIS. EPA's review has not identified any potential environmental impacts that would require any significant changes to the analysis.

ERP No. D-USA-K10009-TT, Rating EO2, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, Test Range Facility Construction and Support Services, Republic of the Marshall Islands.

Summary: EPA expressed environmental objections because the U.S. Army is presently handling hazardous waste and solid waste in a manner not consistent with the Federal Resource Conservation and Recovery Act, Clean Water Act and Clean Air Act. EPA requested that the final EIS contain a commitment to bring U.S. Army Kwajalein activities into substantive compliance with Federal environmental laws so that the proposed project does not aggravate existing environmental compliance problems.

Final EISs

ERP No. F-BLM-K01006-CA, PLES I Geothermal Project, Geothermal Wellfield Development and 10 MWe Powerplant Construction/Operation, Plan of Operation, Utilization and Injection, Approval, Inyo National Forest, Mono County, CA.

Summary: Review of the final EIS was not deemed necessary.

ERP No. F-FHW-K40063-CA, CA-76 Bypass Expressway Construction, I-5 to Mission Avenue Near Frontier Drive, Funding and 404 Permit, City of Oceanside, San Diego County, CA.

Summary: EPA requested that the Record of Decision contain a commitment to adopt all of the wetlands and endangered species mitigation measures outlined in the final EIS, and that the mitigation measures outlined in final EIS be incorporated into the section 404 permit application to the Army Corps of Engineers, to ensure that mitigation measures outlined in the EIS process are carried out in the permit process.

Dated: August 15, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-19477 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3630-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed August 7, 1989 Through August 11, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890224, FSuppl, SCS, CO, McElmo Creek Unit, Salinity Control Study, Onfarm Irrigation Improvements, Additional Water Delivery and Management Improvements, Funding and Implementation, Montezuma County, CO, Due: September 18, 1989, Contact: Sheldon G. Boone (303) 964-0295.

EIS No. 890225, Draft, UMC, NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC, Due: October 2, 1989, Contact: Major Stuart Wagner (919) 451-5100.

EIS No. 890226, FSuppl. CDB, CA, Azusa Central Business District Redevelopment Project Area, Parcel A/Site 1, Increased Office and Commercial Space Construction, CDB Grant/Section 108 Loan Guarantee, City of Azusa, Los Angeles County, CA, Due: September 18, 1989, Contact: Robb Steel (818) 334-5125.

EIS No. 890227, Final, BOP, MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Alleghany County, MD, Due: September 18, 1989, Contact: William J. Patrick (202) 272-6871.

Amended Notices

EIS No. 890168, Draft, AFS, OK, AR, Ozark/Quachita Mountains Vegetation Management Plan, Implementation, Ouachita, Ozark and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OK, Due: November 6, 1989, Contact: Steve McCorquodale (404) 347-7076. Published FR 6-30-89—Review period extended.

Dated: August 15, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-19478 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59274; FRL-3632-2]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 4 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by:

T 89-20, August 18, 1989.
T 89-21, 89-22, August 23, 1989.
T 89-23, August 25, 1989.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59274)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-20

Close of Review Period. September 1, 1989.

Manufacturer. Cape Industries.

Chemical. (G) Aromatic polyester polyol.

Use/Production. (G) Industrial and commercial use. Prod. range: 200,000 kg/yr.

T 89-21

Close of Review Period. September 6, 1989.

Manufacturer. Confidential.

Chemical. (G) Fatty acidamine-organic salts.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

T 89-22

Close of Review Period. September 6, 1989.

Manufacturer. Confidential.

Chemical. (G) Fatty acidamine-organic salts.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

T 89-23

Close of Review Period. September 8, 1989.

Manufacturer. Confidential.

Chemical. (G) Organoaluminum compound.

Use/Production. (G) Contained destructive use. Prod. range: Confidential.

Dated: August 15, 1989.

Steven Newburg-Rinnn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-19471 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-JD-M

[OPTS-51737; FRL-3632-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 61 such PMNs and provides a summary of each.

DATES: Closes of Review Periods:

P 89-795, September 6, 1989.
P 89-853, 89-854, September 24, 1989.
P 89-855, September 23, 1989.
P 89-856, September 25, 1989.
P 89-858, 89-859, 89-860, September 27, 1989.
P 89-861, 89-862, 89-863, 89-864, 89-865, 89-866, 89-867, 89-868, 89-869, September 30, 1989.
P 89-870, 89-871, October 2, 1989.
P 89-872, September 30, 1989.
P 89-873, 89-874, 89-875, 89-876, 89-877, 89-878, 89-879, October 2, 1989.
P 89-880, 89-881, 89-882, October 3, 1989.
P 89-883, October 4, 1989.
P 89-884, 89-885, 89-886, 89-887, 89-888, 89-889, 89-890, 89-891, 89-892, 89-893, October 8, 1989.
P 89-894, 89-895, 89-896, 89-897, 89-898, October 9, 1989.
P 89-899, October 10, 1989.
P 89-900, 89-901, 89-902, 89-903, October 11, 1989.
P 89-904, 89-905, October 14, 1989.
P 89-906, 89-907, 89-908, 89-909, 89-910, 89-911, 89-912, 89-913, October 15, 1989.

Written comments by:

P 89-795, August 7, 1989.
P 89-853, 89-854, August 25, 1989.
P 89-855, August 24, 1989.
P 89-856, August 16, 1989.
P 89-858, 89-859, 89-860, August 28, 1989.
P 89-861, 89-862, 89-863, 89-864, 89-865, 89-866, 89-867, 89-868, 89-869, August 31, 1989.
P 89-870, 89-871, September 2, 1989.
P 89-872, August 31, 1989.
P 89-873, 89-874, 89-875, 89-876, 89-877, 89-878, 89-879, September 2, 1989.
P 89-880, 89-881, 89-882, September 3, 1989.
P 89-883, September 4, 1989.
P 89-884, 89-885, 89-886, 89-887, 89-888, 89-889, 89-890, 89-891, 89-892, 89-893, September 8, 1989.
P 89-894, 89-895, 89-896, 89-897, 89-898, September 9, 1989.
P 89-899, September 10, 1989.
P 89-900, 89-901, 89-902, 89-903, September 11, 1989.
P 89-904, 89-905, September 14, 1989.
P 89-906, 89-907, 89-908, 89-909, 89-910, 89-911, 89-912, 89-913, September 15, 1989.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51737)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460. (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, SW., Washington, DC 20460. (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–795

Importer. Mitsubishi International Corporation.

Chemical. (S) 2', 2'-dimethyl-3'-hydroxypropyl-2,2-dimethyl-3-hydroxypropionate, di C10–C20 fattyacids ester.

Use/Import. (G) Lubricant on intermediate products in textile manufacturing. Import range: 1,000–10,000 kg/yr.

P 89–853

Manufacturer. Ciba-Geigy Corporation Additive Div.

Chemical. (S) 2-Propanoic acid, polymer with sodium phosphinate.ium salt.

Use/Production. (G) Electrical encapsulation and lamination. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 10 ml/kg species(Rat). Static acute toxicity: LC50 > 1,000 mg/1 time 96 H species(Zebra fish). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 89–854

Manufacturer. Confidential.

Chemical. (G) Acrylic-methacrylic ester copolymer salt.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 89–855

Manufacturer. Confidential.

Chemical. (G) Arylic methacrylic ester copolymer salt.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 89–856

Manufacturer. Confidential.

Chemical. (G) Saturated, oil-free polyester resin.

Use/Production. (G) Resin for use in water-reducible and higher solids. Confidential.

P 89–858

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylene glycols and terephthalic and substituted benzoic acid esters.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 20 g/kg species(Rat). Acute dermal toxicity: LD50 > 2 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin sensitization: negative species(Guinea pig).

P 89–859

Importer. Confidential.

Chemical. (G) Polyether-modified polyurethane.

Use/Import. (G) Paint additive. Import range: Confidential.

P 89–860

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (S) Laminating adhesive, modifier for coatings, inks, and adhesives. Prod. range: Confidential.

P 89–861

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyurethane elastomer.

Use/Production. (S) Binder of pigment for paints and printing inks. Prod. range: Confidential.

P 89–862

Manufacturer. Allied Colloids Inc.

Chemical. (G) Acrylic terpolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Skin sensitization: negative species(guinea pig).

P 89–863

Importer. Sherex Chemical Company, Inc.

Chemical. (G) Fatty anionic surfactant.

Use/Import. (S) Hard surface cleaners with good lime soap dispersiontextile auxilliary-scouring aid. Import range: Confidential.

P 89–864

Importer. Sherex Chemical Company, Inc.

Chemical. (G) Magnesium alkyl.

Use/Import. (G) Catalyst for olefin polymerization. Import range: Confidential.

P 89–865

Importer. Confidential.

Chemical. (G) Polyamide copolymer.

Use/Import. (G) Vehicle for inks. Import range: Confidential.

P 89–866

Importer. Confidential.

Chemical. (G) Metal alkyl.

Use/Import. (G) Polymerization catalyst. Import range: Confidential.

P 89–867

Importer. Confidential.

Chemical. (G) Halogenated alkyl aromatic.

Use/Import. (G) Open, non dispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89–868

Manufacturer. Confidential.

Chemical. (S) Higher alkyl carboxylic acid.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 89–869

Manufacturer. Confidential.

Chemical. (G) Functionalized aliphatic polyurethane.

Use/Production. (G) Dispersively applied coating. Prod. range: 10,000–60,000 kg/yr.

Toxicity Data. Mutagenicity: negative.

P 89–870

Manufacturer. Confidential.

Chemical. (G) Alkyl substituted 3,3-bis(phenyl)isobenzofuranone.

Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: Confidential.

P 89–871

Manufacturer. Bostik Division.

Chemical. (G) Polyurethane.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 89–872

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Reaction product of a sustituted methyloxirane and a polyethylenepolyamine.

Use/Import. (S) Curing agents for epoxy resin coating systems. Import range: Confidential.

P 89-873

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymer of vegetable oil, polylenepolyamines and a polymeric diglycidyl ether.

Use/Import. (S) Curing agent for epoxycoating resins. Import range: Confidential.

P 89-874

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymer of vegetable oil and polylenepolyamines.

Use/Import. (S) Curing agent for epoxy resin coatings systems. Import range: Confidential.

P 89-875

Manufacturer. Confidential.

Chemical. (G) 1,4-butanediol, polymer with 2,2-dimethyl-1,3-propanediol, hexanedioic acid, 3-hydroxy-2-(hydroxymethyl)-2-methylproprionic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hydrozine, poly(oxy(methyl-1,2-ethanediyl), W-hydro-W-(2-aminomethyl ethoxyl),-ether with 2-ethyl-2-(ethyl-(hydroxymethyl)-1,3-propanediol (3:1), and 1,3-bis(1, substitutedl-l-methylethyl)-benezene.

Use/Production. (S) Coating for flexibile sustracts and adhesive for laminating flexible materials. Prod. range: 50,000–100.000 kg/yr.

P 89-876

Importer. Hoechst Celanese Corporation.

Chemical. (G) Polyester resin modified with synthetic monobasic acid.

Use/Import. (S) Binder for paints. Import range: 8–31 kg/yr.

P 89-877

Manufacturer. Confidential.

Chemical. (G) Polyiosobutenyl succinimide.

Use/Production. (G) Fuel additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-878

Importer. Confidential.

Chemical. (G) Sulfo and acetylamino substituted naphthalene disazo dye.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 89-879

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosilicone copolymer.

Use/Import. (S) Primer. Import range: 100–300 kg/yr.

P 89-880

Manufacturer. Sanncor Industries, Incorporation.

Chemical. (G) Polyurethane prepared from polyisocyanates, polyols and polyamines.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 89-881

Importer. Organic Dyestuffs Corporation.

Chemical. (S) Benzene sulfonic acid, 3-[(4-amino-9,10-dihydro-9010 dioxo-3-(sulfo-4-(1,1'3,3'-tetramethyl-butyl)phenoxy) 1-amiracenyl) amino)-2,4,6 trimethyl disodium salt.

Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 4,000–6,000 kg/yr.

P 89-882

Manufacturer. Confidential.

Chemical. (G) Partially hydrolyzed alkyl silicate-polyol-siliane polymer.

Use/Production. (G) Ingredient in paints that are primarily spray applied. Prod. range: Confidential.

P 89-883

Manufacturer. Arco Chemical Company.

Chemical. (G) Urethane catalyst.

Use/Production. (S) Catalyst for polyurethane. Prod. range: Confidential.

P 89-884

Manufacturer. Harcros Chemicals Inc.

Chemical. (G) Alkyl aryl amine sulfonate.

Use/Production. (S) Pesticide emulsifier. Prod. range: 10,000–24,000 kg/yr.

P 89-885

Manufacturer. NL Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (G) Polyester resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-886

Manufacturer. NL Chemicals, Inc.

Chemical. (G) VT-acrylic modified polyester resin.

Use/Production. (G) Vinyl toluene-acrylic modified polyester resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-887

Manufacturer. NL Chemicals, Inc.

Chemical. (G) Silicone modified polyester.

Use/Production. (G) Silicone modified polyester to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-888

Manufacturer. NL Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (G) Alkyd resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-889

Manufacturer. NL Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (G) Alkyd resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-890

Manufacturer. Bedoukian Research Inc.

Chemical. (G) Halo-aliphatic oxy-substituted saturated pyran.

Use/Production. (S) Chemical intermediate. Prod. range: 350–1,000 kg/yr.

P 89-891

Importer. Basf Corporation Chemicals Division.

Chemical. (G) Polyurethane dispersion.

Use/Import. (G) Laminating adhesive. Import range: Confidential.

P 89-892

Manufacturer. Confidential.

Chemical. (G) Modified polymer of butyl acrylate and methyl methacrylate.

Use/Production. (G) Binder. Prod. range: Confidential.

P 89-893

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) Tolutriazole compound.

Use/Production. (S) Antioxidant for hydraulic fluids. Prod. range: Confidential.

P 89-894

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Polyether modified siloxane.

Use/Import. (S) Sufactant for polyurethane foam. Import range: 3,000–6,000 kg/yr.

P 89-895

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Modified organo siloxane.

Use/Import. (G) Additive for paints. Import range: 500–5,000 kg/yr.

P 89-896

Manufacturer. Confidential.

Chemical. (G) Tall-oil fatty acid condensate quaternary.

Use/Production. (G) An additive for the energy production industries. Prod. range: Confidential.

P 89-897

Manufacturer. Baker Performance Chemicals Inc.

Chemical. (G) Potassium dithiocarbamate.

Use/Production. (G) Water clarification. Prod. range: Confidential.

P 89-898

Manufacturer. Confidential

Chemical. (S) Polymeric alpha, omega diocarboxylic acid.

Use/Production. (G) Epoxy loughener. Prod. range: Confidential.

P 89-899

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Carboxylic acid ester.

Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 89-900

Manufacturer. H.B. Fuller Company.

Chemical. (G) Ethylenically unsaturated ethylene urea.

Use/Production. (G) Compound functions as a wet adhesive promotor in emulsion copolymers in coating, paint and adhesive. Prod. range: Confidential.

P 89-901

Manufacturer. Rohm Tech Inc.

Chemical. (G) Aliphatic polyurethane.

Use/Production. (S) Base or top coat for leather finishing. Prod. range: Confidential.

P 89-902

Manufacturer. Lilly Industrial Coatings, Inc.

Chemical. (G) Polymer of benzendicarboxylic acids and aliphatic diols.

Use/Production. (G) Industrial liquid paints. Prod. range: 48,000-96,000 kg/yr.

P 89-903

Manufacturer. Dow Corning Corporation

Chemical. (G) Organo-functional silica.

Use/Production. (S) Silicone construction coating. Prod. range: Confidential.

P 89-904

Manufacturer. Uniroyal Chemical Co., Inc.

Chemical. (G) Para-phenylenediamine.

Use/Import. (G) Chemical intermediate. Import range: Confidential.

P 89-905

Manufacturer. Confidential.

Chemical. (G) Substituted halophenylpyrazolone.

Use/Production. (G) Contained use in an article. Prod. range: 1,000-2,300 kg/yr.

P 89-906

Manufacturer. Confidential.

Chemical. (S) Isobutyl(tert)butoxydimethoxysilane.

Use/Production. (G) Additive for polymerization catalyst. Prod. range: Confidential.

P 89-907

Importer. Harvey E. Giss and Associates.

Chemical. (S) 2,4-di-tert-butylcyclohexanone.

Use/Import. (S) Perfume. Import range: 5,000-12,000 kg/yr.

P 89-908

Manufacturer. Confidential.

Chemical. (G) Aliphatic, methacrylatic functionized polymer.

Use/Production. (S) Binder resin for automative sealant (undercoating). Prod. range: 250,000-530,000 kg/yr.

P 89-909

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Modified resin ester salts.

Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-910

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Modified resin ester salts.

Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-911

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Modified resin ester salts.

Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-912

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Modified resin ester salts.

Use/Production. (S) A binder and grinding add for inks to be printed on paper. Prod. range: Confidential.

P 89-913

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid, quaternary ammonium salt.

Use/Production. (G) Electrolyte for contained use. Prod. range: 5,000-34,000 kg/yr.

Dated: August 4, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-19469 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59873; FRL-3632-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMN(s) and provides a summary of each.

DATES: Close Review Periods:

Y 89-154, August 8, 1989.
Y 89-155, August 10, 1989.
Y 89-156, August 13, 1989.
Y 89-157, August 17, 1989.
Y 89-158, August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

Y 89–154

Manufacturer. Confidential.
Chemical. (G) Tall oil fatty acid modified polyester.
Use/Production. (S) Binder for general metal coating. Prod. range: Confidential.

Y 89–155

Importer. Confidential.
Chemical. (G) Modified polypropylene.
Use/Import. (G) Dispersing agent. Import range: Confidential.

Y 89–156

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) A polyurethane used in the plastic and textile industry. Prod. range: Confidential.

Y 89–157

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane methacrylate graft copolymer.
Use/Production. (S) Overprint varnish. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 460 mg/kg species (Rat).

Y 89–158

Manufacturer. Eastman Kodak Company.
Chemical. (S) 2-Propenamide; 2-Methyl-2-[1-oxo-2-propenyl]amine-1-propanesulfonic acid, monosodium salt.
Use/Production. (G) Contained use in an article. Prod. range: 1,000–4,000 kg/yr.

Dated: August 8, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–19470 Filed 8–17–89; 8:45 am]
BILLING CODE 6560–50–M

[FRL–3631–6]

Superfund Program; De Minimis Landowner Settlements, Prospective Purchaser Settlements]

ACTION: Public notice.

SUMMARY: The Agency is publishing today its Guidance on settlements with *de minimis* landowners under Section 122(g)(1)(B) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), in order to inform the public on this important aspect of the superfund enforcement process. The guidance also addresses the Agency's approach to requests from prospective purchasers of contaminated property that the Agency agree to accept a limit on the liability that would otherwise attach to that purchaser at the time of purchase. This guidance is a companion piece to earlier guidance on *de minimis* contributor settlements published at 52 FR 24333 (June 30, 1987). Also included today are interim models for use in drafting *de minimis* landowner settlements; a model administrative order on consent, and a model civil judicial consent decree. The Agency may revise the interim models based upon its experience gained in drafting *de minimis* landowner settlements.

FOR FURTHER INFORMATION CONTACT: Helen Keplinger, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street, SW., 20460, (202) 382–3077.

SUPPLEMENTARY INFORMATION: Section 122(g) of SARA provides EPA with authority to enter into expedited final settlements with *de minimis* owners of real property on or in which a Superfund facility is located, providing such settlement involves only a minor portion of the response costs at the facility concerned. *De minimis* owners of real property on or in which the Superfund facility is located are those landowners who, in the Judgment of the Agency (as delegatee of the President) during the term of ownership did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, which substance is the subject of the response action. *De minimis* landowner settlements must be practicable and in the public interest, as determined by the Agency.

De minimis landowner settlements under section 122(g) of SARA, while offering some of the same advantages as *de minimis* contributor settlements, do not present the same economy of numbers as typical *de minimis* contributor settlements which may involve the "cash out" of scores of parties and raise substantial revenues. The number of landowners involved will likely be small, and generally will "involve only a minor portion of response costs at the facility." Nonetheless, the Agency expects to use the authority provided in section 122(g) to provide legal repose for qualifying landowners, while reducing the number of parties with whom it must carry out the complex and costly CERCLA enforcement process.

The Agency is aware of CERCLA's impact on private real estate transactions, notwithstanding the so-called "innocent landowner" defense under CERCLA. Despite the clear liability which attaches to landowners who purchase contaiminated property with knowledge of contamination, private transactions concernig such property are a fact. Because of concerns about liablity for cleanup, requests for covenants not to sue have been received by the Agency from prospective purchasers of Superfund sites. It is the Agency's policy not to involve itself in pruely private real estate transactions. However, in very limited circumstances, at sites where enforcement action is ongoing or anticipated, and performance of cleanup, or payment for cleanup, would not otherwise be available, a covenant not to use prospective purchaser might appropriately be considered.

The Guidance follows:

Dated: August 10, 1989.

Edward E. Reich,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

Dated: August 9, 1989.

Robert L. Duprey,

Acting Assistant Administrator for Solid Waste and Emergency Response.

June 6, 1989.

Guidance on Landowner Liability Under Section 107(a)(1) of CERCLA, *De minimis* Settlements Under Section 122(g)(1)(B) of CERCLA, and Settlements With Prospective Purchasers of Contaminated Property.

Index

I. Purpose

The purpose of this memorandum is to provide general guidance on landowner liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), 42 U.S.C. § 9601 *et seq.*, and to provide specific guidance on which landowners qualify for *de minimis* settlements under Section 122(g)(1)(B) and on structuring such settlements.[1] Because the nature of a *de minimis* settlement with a landowner will differ substantially from a *de minimis* settlement with waste contributors, it will usually be more efficient to draft such agreements separately. In addition, because the Agency has received numerous requests from prospective purchasers of contaminated property for covenants not to sue, this memorandum sets forth Agency policy on this issue.

II. Overview

In the event of a release or threatened release of a hazardous substance, owners of property where such substance has been "deposited, stored, disposed of, or placed, or otherwise come to be located" are strictly liable for the costs of response.[2] Under section 107(b)(3), such liability generally extends to releases which are caused by a third party "in connection with a contractual relationship, existing directly or indirectly" with the owner. To address concerns that this strict liability could cause inequitable results with respect to landowners who had not been involved in hazardous substance disposal activities, Congress in SARA clarified the defense to liability available to certain landowners under section 107(b)(3) by specifically defining the term "contractual relationship." Section 101(35)(A) defines "contractual relationship" to include deeds and other instruments transferring title or possession unless the landowner can demostrate that at the time he acquired the property, he had no knowledge or reason to know of the disposal of the hazardous substances at the facility. Accordingly, a person who acquires already contaminated property and who can satisfy the remaining requirements of section 101(35) as well as those of section 107(b)(3) may be able to establish a defense to liability. Although this is an affirmative defense, for which the defendant bears the burden of proof, Congress has provided a settlement mechanism which the Agency may use in its discretion for settlement purposes to resolve the liability of certain landowners prior to or in the early stages of litigation through the application of the *de minimis* settlement provisions of section 122(g)(1)(B) of CERCLA.

III. Background/Landowner Liability

A. Before SARA

Section 107(a)(1) of CERCLA imposes liability for response costs on owners or operators of "facilities" from which there is a release or threatened release of a hazardous substance. A "facility" is defined under Section 101(9) as including, among other things, any building, structure, equipment, pit, pond, storage container, motor vehicle, etc., and any "area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." Courts have consistently held that the standard of liability imposed by Section 107 is strict. *See, e.g., Tanglewood East Homeowners v. Charles Thomas, Inc.*, 849 F.2d 1568 (5th Cir. 1988), *New York v. Shore Realty Corporation*, 759 F.2d 1032, 1042 (2d Cir. 1985), *United States v. Hooker Chemicals and Plastics Corp.*, 680 F. Supp 546 (W.D. N.Y. 1988). The government need not prove that the owner contributed to the release in any manner in order to establish a *prima facie* case. However, Section 107(b) provides the following four affirmative defenses which may be asserted by a person, including a landowner: (1) An act of God; (2) an act of war; (3) an act or omission of a third party; and (4) any combination of the foregoing.[3] In order to prove the third party defense set forth in Section 107(b)(3), the landowner must establish by a preponderance of the evidence that:

> (1) the release or threat of release and * * * damages resulting therefrom were caused solely by * * * an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant * * *;
>
> (2) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and
>
> (3) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

Section 107(b)(3).

Before SARA, the Agency took the position that a real estate deed represented a contractual relationship within the meaning of Section 107(b)(3), thus eliminating the availability of the third party defense for a landowner in the chain of title with a party who had

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[1] Agency guidance regarding *de minimis* settlements with waste contributors has been provided by separate memorandum entitled "Interim Guidance on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA," 52 Fed. Reg. 24333 (June 30, 1987), and by publication of the Agency's "Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent," 52 FR 43393 (November 12, 1987).

[2] See sections 101(9), 101(32), and 107(a)(1) of CERCLA. Liability under CERCLA is also joint and several unless the harm is divisible and there is a reasonable basis for apportioning the harm. *See, e.g., United States v. Monsanto Co.*, 858 F.2d 160, 171-73 (4th Cir. 1988), *United States v. Bliss*, No. 84-2066C-(1) (E.D. Mo. Sept. 27, 1988), *United States v. Mottolo*, Civ. No. 83-547-D (D. N.H. Aug. 29, 1988), *United States v. Tysons*, Civ. No. 84-2663 (E.D. Pa. Jan. 29, 1988), *United States v. Northernaire*, 670 F. Supp 742, 748 (W.D. Mich. 1987), *United States v. Chem-Dyne Corp.*, 572 F. Supp. 802 (S.D. Ohio 1983).

[3] *See United States v. Stringfellow*, 661 F. Supp. 1053 (C.D. Cal. 1987) (holding that these statutory defenses are exclusive). *See also, United States v. Monsanto Co.*, 858 F. 2d 160, (4th Cir. 1988), *United States v. Bliss*, No. 84-2066C-(1) (E.D. Mo. Sept. 27, 1988), *United States v. Hooker Chemicals & Plastics Corp.*, 680 F. Supp. 546 (W.D. N.Y. 1988), *United States v. Bliss*, 667 F. Supp. 1298 (E.D. Mo. 1987), *United States v. Dickerson*, 640 F. Supp. 448 (D. Md. 1986).

caused or contributed to the release. However, this issue was not addressed by a court before SARA's enactment.[4]

B. SARA

Section 101(35)(A) of CERCLA, as amended by SARA, confirms the Agency's position that a real estate deed represents a contractual relationship and specifically defines "contractual relationship" to include "land contracts, deeds, or other instruments transferring title or possession," (for example, leases) unless the property was acquired after the disposal or placement of the hazardous substance which is the subject of the release or threat of release and the landowner establishes by a preponderance of the evidence that:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility;

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to the foregoing, the landowner must satisfy the due care requirements of section 107(b)(3) in order to establish the third party defense. Furthermore, section 101(35)(D) provides that:

Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance.

C. SARA's De Minmis Settlement Provisions

Under section 122(g)(1) of the CERCLA, as amended by SARA, when the Agency determines that a settlement is "practicable and in the public interest," it "shall as promptly as possible reach a final settlement" if the settlement "involves only a minor portion of the response costs at the facility concerned" and the Agency determines that the potentially responsible party satisfies either of two sets of conditions: (A) the party's contribution of waste to the site is minimal (by amount and toxicity) in comparison to other hazardous substances at the facility; or (B) the party (i) is an "owner of the real property on or in which the facility is located;" [5] (ii) "did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility;" [6] and (ii) "did not contribute to the release or threat of release * * * through any act or omission." Subparagraph B does not apply if the party purchased the property "with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance." Section 122(g)(1)(B).[7]

The requirement which must be satisfied in order for the Agency to consider a settlement which landowners under the *de minimis* settlement provisions of Section 122(g)(1)(B) are substantially the same as the elements which must be proved at trial in order for a landowner to establish a third party defense under Section 107(b)(3) and Section 101(35).[8] Section 122(g)(1)(B) of CERCLA authorizes the Agency to enter into settlements with *de minimis* landowners, enabling such landowners to avoid the transaction costs of attempting to establish the 107(b)(3) defense through litigation and enabling the Agency to exercise enforcement discretion in appropriate circumstances. However, inasmuch as section 122(g)(1)(B) comes into play in the settlement context, as distinct from section 107(b)(3) coming into play in the litigation context, the quality and quantum of evidence provided by a landowner in support of his eligibility for a *de minimis* settlement may differ from that necessary for him to establish the third party defense at trial. Furthermore, inasmuch as the Agency's determination as to whether the landowner has satisfied the criteria for a *de minimis* settlement must be made in advance of trial, the terms of the settlement, particularly the question of whether cash consideration will be required, will depend in part on the extent of the litigation risks involved in the particular case. The principles which will guide the Agency in evaluating this evidence are discussed below in Section IV, Paragraph B.3., "Settlement."

IV. Statement of Settlement Policy

The Agency will make an effort in the early stages of a case to determine whether a landowner satisfies the elements necessary to establish a third party defense under Section 107(b)(3) of CERCLA. Such determination may be made from information available to and under development by the Agency to identify all potentially responsible parties for that site. Since it serves no purpose to require a landowner who satisfies the elements of section 107(b)(3) and who wishes to obtain legal repose to incur the litigation costs of establishing the defense at trial, if the Agency determines that the landowner has a persuasive case that each of these elements has been met, the Agency will

[4] The government's argument on this issue was upheld in *United States v. Hooker Chemicals & Plastics Corp.*, 680 F. Supp. 546 (W.D. N.Y. 1988) (decided after passage of SARA, applying pre-SARA law).

[5] Relinquishment of ownership or possession does not necessarily disqualify a person from consideration under the Section 122(g)(1)(B) *de minimis* settlement provision. This approach is consistent with the fact that prior owners of facilities are not precluded from attempting to establish a defense to liability under section 107(b). In order to qualify for a *de minimis* settlement, however, the past owner must demonstrate satisfaction of section 122(g)(1)(B) criteria through the full term of his ownership.

[6] The Agency interprets the phrase "any hazardous substance" to mean a hazardous substance which is the subject of the release or threat of release. Interpreting "any hazardous substance" more broadly would make the *de minimis* landowner settlement provisions unavailable to essentially every party. It is clear that section 122(g) is concerned with a *de minimis* party's connection to the activities giving rise to the release that is the subject of the response action. Under section 122(g)(1)(A), the generator or transporter is not a *de minimis* party if it cannot establish that its contribution was minimal. Similarly, under section 122(g)(1)(B), if the landowner engaged in activities, specified in the statute as "conduct[ing] or permit[ing] the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility," involving the substance which is the subject of the response action, it will not be entitled to *de minimis* status.

[7] For the reasons explained above, the Agency interprets the phrase "any hazardous substance" in the context of actual or constructive knowledge to mean a hazardous substance which is the subject of the release or threat of release.

[8] Even though the language in sections 122(g)(1)(B) and 101(35) is not identical, the scope of the two provisions is substantially the same. For example, the requirements for a *de minimis* settlement under section 122(g)(1)(B) are that the landowner "did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility" and "did not contribute to the release." Substantially similar requirements are imposed by section 101(35). That Section conditions the defense in part on the landowner acquiring the facility "after the disposal or placement of the hazardous substance * * *" and not contributing to the release. Since generation, transportation, storage and treatment of the substances at the site generally all take place before disposal and placement (or at the most concurrently, in the case of "placement" and "storage"), the landowner generally would not have conducted or permitted the generation, transportation, storage, treatment, or disposal of the hazardous substances which are the subject of the release or threat of release if he had acquired the facility after disposal or placement of those substances, as required by section 101(35). This is not to suggest, however, that for purposes of establishing liability under CERCLA, "disposal" will not continue to include ongoing "leaking." In this manner, the scope of section 122(g)(1)(B) and 101(35) is generally the same. Throughout this guidance, liability will be discussed in the context of section 107 of CERCLA, but reference will be made to section 122(g)(1)(B) of CERCLA in the context of settlement.

entertain an offer for a *de minimis* settlement under 122(g)(1)(B) of CERCLA.

A. Threshold Questions for Landowner Eligibility for Settlement

Before the Agency will approve settlements with owners of contaminated property several questions concerning landowner eligibility for settlements must be answered, bearing in mind that section 122(g)(1)(B) does not extend to any party who contributed to the release or threat of release "through any act or omission."

1. Did the Landowner acquire the property without knowledge or reason to know of the disposal of hazardous substances?

Section 122(g)(1)(B) applies only to owners who purchased the property without "actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance." Similarly, section 101(35) extends the third party defense to defendants who acquired the property after the disposal or placement of the hazardous substance only if, at the time of acquisition, the defendant "did not know and had no reason to know that any hazardous substance which is the subject of the release * * * was disposed of * * * at the facility." [9] Section 101(35) expressly provides that in order for a defendant to prove that he had "no reason to know" of the disposal of hazardous substances, he must demonstrate by a preponderance of the evidence that, prior to acquisition, he conducted all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A landowner who demonstrates that he has conducted "all appropriate inquiry" will not be deemed to have constructive knowledge under section 122(g)(1)(B) and, therefore, may be eligible for a *de minimis* settlement.[10]

Under section 101(35)(B), the following factors must be considered when determining whether "all appropriate inquiry" has been made:

> any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

These factors clearly indicate that a determination as to what constitutes "all appropriate inquiry" under all the circumstances is to be made on a case-by-case basis. Generally, when determining whether a landowner has conducted "all appropriate inquiry," the Agency will require a more comprehensive inquiry for those involved in commercial transactions than for those involved in residential transactions for personal use.[11] For example, an investigation along the lines of a survey for contamination may be recommended in some commercial transactions, whereas this type of inquiry would not typically be recommended for the purchaser of personal residential property.[12] In sum, the determination will be made on the basis of what is reasonable under all of the circumstances.

Lenders may also be eligible for *de minimis* settlements in some circumstances. A lender who does not participate in the management of a facility and who only holds "indicia of ownership primarily to protect his security interest" is excepted from the definition of "owner or operator" and, therefore, is not liable. Section 101(20)(A)(ii). If, however, a lender becomes an owner by foreclosing and taking title to the property or by conducting management activities at the site, he is potentially liable.[13] Under these circumstances, the lender may be eligible for a *de minimis* settlement, if he meets the requirements of Section 122, including that he demonstrates that he conducted "all appropriate inquiry" prior to acquisition of the facility.

2. Did Governmental landowners acquire the property involuntarily or through eminent domain proceedings?

Section 101(35)(A)(ii) excepts from the definition of "contractual relationship" acquisitions by governmental entities which occur by condemnation or purchase [14] in connection with the exercise of eminent domain authority, or involuntarily through escheat or any other such involuntary transfer or acquisition. State and local governments who acquire property involuntarily are by definition not owners or operators under section 101(20)(D), as long as they have not caused or contributed to the release.[15] However, section 101(35)(A)(ii) is broader than 101(20)(D) in that 101(35)(A)(ii) extends the defense under section 107(b)(3) to the federal government, as well as to State and local governments, and also applies to eminent domain proceedings.[16]

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[9] The Agency will construe as similar the constructive knowledge requirements of Sections 122 and 101(35), taking into consideration all relevant information available on the issue of knowledge.

[10] The government has taken the position that "owner" for the purposes of liability includes "lessee." A lessee of a facility, who is potentially liable as an "owner," may be eligible for a *de minimis* settlement under section 122(g)(1)(B), if he conducted "all appropriate inquiry" prior to taking possession of the property and meets all of the other criteria of section 122(g)(1)(B). This is also consistent with the approach taken in section 101(35). *See* section 101(35)(A) ("The term 'contractual relationship' for the purpose of section 107(b)(3) includes, but is not limited to land contracts, deeds or other instruments"); *See also United States v. S.C.R.D.I.*, 653 F. Supp. 984, 1003 (D. S.C. 1984) (aff'd *sub nom. United States v. Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988)) (court held lessee an owner); *United States v. Northernaire*, 670 F. Supp. 742, 748 (W.D. Mich. 1987).

[11] The Conference Committee noted that a reasonable inquiry must have been made "in light of best business and land transfer principles", and that "[t]hose engaged in commercial transactions should * * * be held to a higher standard than those who are engaged in private residential transactions." Conference Report on SARA, H.R. 2005, 99th Cong., 2d Sess., p. 167. The Committee also noted that the duty to inquire will be judged as of the time of acquisition, and that as public awareness of environmental hazards increases, the burden of inquiry will increase concomitantly. *Id.* In a recent decision, the U.S. District Court for the Middle District of Pennsylvania held that the United States was not entitled to summary judgment against a group of landowners without an evidentiary showing that, as of 1969, it was customary or good commercial practice among real estate developers to conduct a visual inspection of property prior to purchase, *United States v. Serafini*, 28 Env. Rep. Cas. 1162 (M.D. Pa. Feb. 19, 1988). Although we do not agree with the decision because the criteria set forth in section 101(35)(B) seem, at a minimum, to contemplate a visual inspection, the court in *Serafini* appears to have recognized the evolutionary nature of the "all appropriate inquiry" standard.

[12] In the course of conducting "all appropriate inquiry" as required by section 101(35)(B), information regarding a release or threat of release may become available. If so, the "person in charge of the facility" is required to comply with the notification requirements under Section 103.

[13] *See United States v. Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States v. Mirabile*, 15 Envtl. L. Rep. 20992 (E.D. Pa. September 4, 1985).

[14] The Agency interprets "purchase" in Section 122(g)(1)(B) to include involuntary acquisitions, applied to parties acquiring by inheritance, consistent with the purposes and underlying policy of sections 101(20) and 101(35)(A).

[15] Section 101(20)(D) provides in part: "The term owner or operator does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign."

[16] The legislative history contains useful guidance on how federal agencies should handle acquisitions of contaminated property. *See also*, CERCLA section 120(h).

Governmental entities which fall within this category and exercise due care will escape liability and, therefore, a settlement under section 122(g)(1)(B) will not normally be necessary.[17]

3. Did the Landowner acquire the property by inheritance or bequest without knowledge?

Section 101(35)(A)(iii) excepts acquisitions by inheritance or bequest from the definition of "contractual relationship." However, the Conference Committee report suggests that the "all appropriate inquiry" requirement is nonetheless relevant:

[T]hose who acquire property through inheritance or bequest without actual knowledge may rely on this section if they engage in a reasonable inquiry, but they need not be held to the same standard as those who aquire property as part of a commercial or private transaction, and those who acquire property by inheritance without knowing of the inheritance shall not be liable, if they satisfy the remaining requirements of section 107(b)(3).

Conference Committee Report, pp. 187–188.

It is recommended that inquiry by the heir at the time of acquisition and thereafter be considered, not only for the purpose of determining the existence of a contractural relationship, but also for the purpose of determining whether the due care requirements of the third party defense have been satisfied.[18]

4. Was the property contaminated by third parties outside the chain of title?

Even before the enactment of SARA, it was clear that the third party defense of section 107(b)(3) was available to a landowner whose property was contaminated as the result of the act or omission of a third party who had no contractual relationship with the landowner through a deed or otherwise, as long as the landowner satisfied the other requirements of the third party defense. Examples of this situation include contamination of property by adjacent landowners and "midnight dumping." A landowner who falls within this category and demonstrates that he has exercised due care may be eligible for a *de minimis* settlement under Section 122(g)(1)(B).

With respect to landowners described above, the section 107(b)(3) defense is not available to a landowner who learns of a release or threat of release after acquiring the property and then transfers the property without disclosing this information. Section 101(35)(C). Any such transfer may contribute to the threat of release under section 122(g)(1)(B)(iii) precluding a *de minimis* settlement.

B. Guidelines for De Minimis Settlements with Landowners

1. Goals of settlement

The general goal of a *de minimis* settlement is to allow parties who meet the criteria set forth in section 122(g)(1)(A) or (B) to resolve their potential liability as quickly as possible, thus minimizing litigation costs and allowing the government to focus its resources on negotiations or litigation with the major parties. However, there is a fundamental difference between contributors of hazardous substances who are eligible for settlements under Subparagraph A of section 122(g)(1) and landowners who are eligible for settlements under Subparagraph B. The waste contributor under Subparagraph A will typically have no viable defense to liability, whereas a landowner who qualifies for settlement under Subparagraph B may ultimately be able to prove a third party defense. Nevertheless, the landowner who may have a third party defense may wish to enter into a *de minimis* settlement in order to obtain legal repose and avail himself of the contribution protection provided in sections 113(f)(2) and 122(g)(5) of CERCLA. As discussed below, the government will entertain offers for such settlements in exchange for, at a minimum, access and due care assurances.

2. Information-gathering to aid settlement

Section 122(g)(3) of CERCLA provides that *de minimis* settlements shall be concluded as soon as possible after the necessary information is available. SARA contemplates that a *de minimis* settlement will be reached in the early stages of a case. The Agency has substantial information-gathing authority under sections 104(e) and 122(e) of CERCLA which may be used to aid in the determination of whether a landowner is eligible for a *de minimis* settlement. Generally, however, the information bearing on a landowner's status as a *de minimis* party is most readily available to the landowner, unlike the information regarding the waste contributor's status as a *de minimis* party, which is most readily available to the government through its compilation of information regarding the waste contributions to a site by all parties. Therefore, the Agency will place on the landowner the burden of coming forward with information establishing his eligibility for a *de minimis* settlement. The Agency may then use its information gathering authority to supplement the information produced by the landowner, as appropriate, and to check its veracity.

Information which should be provided by the landowner includes all evidence relevant to the actual or constructive knowledge of the landowner at the time of acquisition including all affirmative steps taken by the landowner to determine the previous ownership and uses of the property, information regarding the condition of the property at the time of purchase, all documentation and evidence of represenations made at the time of sale regarding prior uses of the property, the purchase price of the property and the fair market value of comparable property at the time of acquisition, and information regarding any specialized knowledge on the part of the landowner which may be relevant.

Additionally, the landowner should provide all information relevant to the issues of whether he exercised due care and whether he contributed to the release or threat of release through any act or omission. This information should include the circumstances under which the hazardous substances were discovered, the extent of the landowner's knowledge regarding the substances, all measures taken by the landowner to abate the threats of harm to human health and the environment posed by such substances, and all measures taken by the landowner to prevent foreseeable acts of third parties which may have contributed to the release. The information is to be included in the order or decree, and any settlement agreement is to be made contingent on its accuracy.

3. Settlement

Where the potentially responsible party meets the criteria for settlement under Section 122(g)(1)(B), and in the context of litigation or potential litigation, when the Agency is evaluating its settlement options and its litigation risks, the terms of an acceptable settlement may very with the strength of the evidence relating to the landowner's *de minimis* status. In some instances, a landowner may be able to make a

[17] If governmental entities within this category seek a section 12 settlement for purposees of obtaining legal repose, the Agency may use section 122(g)(1)(B).

[18] The government may, in appropriate circumstances, enter into a settlement with heirs to contaminated property pursuant to the *de minimis* provision in Section 122(g)(1)(B). Footnote 14, *infra*, provides clarification of the Agency's interpretation of the exclusion from eligibility for a *de minimis* landowner settlement pursuant to Section 122(g)(1)(B)(iii) of parties who "purchased" contaminated property "with knowledge."

thoroughly convincing demonstration that each of the elements of the third party defense has been satisfied. In such cases, settlements requiring only that the landowner provide access and due care assurances will be appropriate. Although such cases will rarely be free of all doubt, the Government should be persuaded that there is a very high probability that the landowner would prevail in establishing a third party defense at trial.

If a landowner does not make the thorough and convincing demonstration described above, but is nevertheless able to persuade the Agency that it is likely that he would prevail in establishing the third party defense at trial, he may be considered for a *de minimis* settlement for cash consideration, as well as access and due care assurances. A landowner who cannot make this showing is not eligible for a *de minimis* settlement, but may be eligible for a Section 122 settlement using the same criteria as any other potentially responsible party under CERCLA, the generally applicable guidelines of the Interim CERCLA Settlement Policy, 50 Fed. Reg. 5034 (February 5, 1985), and the interim guidance on Covenants Not To Sue Under SARA, 52 Fed. Reg. 28038 (July 27, 1987). In any event, the United States ulitimately must be able to show that any *de minimis* landowner settlement entered into meets the criteria of Section 122(g)(1)(B) in order to withstand judicial review.

a. *Consideration.* All landowners who enter into *de minimis* settlements should be required to provide access to the property and cooperation in the Agency's response activities. In specific cases, it may be appropriate to obtain cash payments for the response activities at the site. Sitge access and cooperation should also extend to the Agency's response action contractors and to any other parties performing response activities under the Agency's oversight pursuant to court order, administrative order, or consent ageement under section 106 or 122 of CERCLA. The Agency should also require the landowner to provide assurances that he will continue to exercise due care with respect to the hazardous substances at the site.[19] The Agency shall also require that the purchaser file in the local land records a notice acceptable to EPA, stating that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property.[20] Settlements under CERCLA generally also require that the settlor agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising from work performed or expenses incurred pursuant to the agreement, or to seek any other casts, damages, or attorney's fees from the United States arising out of response activities at the facility. These requirements are in addition to any cash component of the *de minimis* settlement, as discussed above.

In exchange for this consideration, the landowner will receive statutory contribution protection under Sections 113(f)(2) and 122(g)(5) of CERCLA. Subject to the reopeners discussed below, the landowner may also receive a convenant not to sue for civil claims seeking injunctive relief under Section 106 of CERCLA and Section 7003 of RCRA.[21] or cost recovery under Section 107(a) of CERCLA with regard to the facility when the Agency determines that such a covenant is in the public interest.[22] However, natural resource damage claims may not be released and should be expressly reserved unless the Federal natural resource trustee has agreed in writing to such a covenant not to sue pursuant to the terms of section 122(j)(2) ofd CERCLA.[23]

b. *Reopeners.* In order to protect the Agency against the possiblity that the information supplied by the landowner regarding his eligibility for a *de minimis* settlement is inaccurate or incomplete, the settlement agreement generally should include a certification by the landowner that he has fully and accurately disclosed all information in his possession regarding those qualifications. The settlement agreement should also include a reservation of rights which would allow the Government to seek further relief from the landowner, including the filing and enforcement of a federal lien,[24] if information not known to the Government at the time of settlement is discovered which indicates that the landowner does not meet the requirements for a *de minimis* settlement. The settlement agreement should expressly reserve the Agency's right to seek further relief from the landowner, where appropriate, including but not limited to: for claims arising from the introduction of any hazardous substance, pollutant, or contaminants at the facility by any person after the effective date of the settlement agreement; for failure of the landowner to exercise due care with respect to any contamination at the facility; for exacerbation by the landowner of the existing release or threat of release of hazardous substances; or for failure to cooperate and/or for interference with the Agency, its response action contractors, or other parties or their contractors conducting response activities under Agency oversight in the implementation of response actions at the facility. In addition, other reopeners may need to be incorporated on a case-by-case basis.

c. *Type of agreement.* Section 122(g)(4) of CERCLA requires that *de minimis* settlements be entered either through judicial consent decrees or administrative orders on consent.[25] Generally, a *de minimis* settlement with a landowner should be concluded by separate agreement, rather than as part of a larger agreement with other potentially responsible parties. Pursuant to Agency delegation 14–14–E (September 13, 1987), and waivers of

[19] The Conference committee made the following statement regarding 107(b)(3)'s due care requirement:

[T]he due care requirement embodied in section 107(b)(3) only requires such person to exercise that degree of care which is reasonable under the circumstances. The requirement would include those steps necessary to protect the public from a health or environmental threat.

Conference Report on SARA, H.R. 2005, 99th Cong., 2d Sess., p. 187.

[20] Where the ROD requires that institutional controls be imposed on the property, a much more extensive notice may be required.

[21] Section 7003 of RCRA may provide an additional basis for compelling cleanup or obtaining cost recovery in appropriate circumstances where a party "has contributed or is contributing to [the past or present] handling, storage, treatment, transportation, or disposal" of any solid or hazardous waste. Where the release or threatened release involves wastes which are not hazardous substances under CERCLA, section 7003 of RCRA can be an important supplemental enforcement mechanism for obtaining cost recovery or injunctive relief.

[22] Any covenant provided should be drafted to apply only to the individual landowner and should not run with the property at issue.

[23] In accordance with section 122(j)(1) of CERCLA, which the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.

[24] Guidance on Federal liens has been provided by separate memorandum entitled "Guidance on Federal Superfund Liens," (issued by AA–OECM, September 22, 1987).

[25] Model language is provided in Attachment I, "Model CERCLA Section 122(g)(4) Administrative Order on Consent for Settlements with Landowners under Section 122(g)(1)(B)" and Attachment II, "Model CERCLA Section 122(g)(4) Consent Decree for Settlements with Landowners under Section 122(g)(1)(B)."

settlement concurrence in "Revision of CERCLA Civil Judicial Settlement Authorities under Delegations 14–13–B and 14–14–E" (Adams/Porter June 17, 1988), the first landowner *de minimis* consent decree negotiated by each Region must be referred to Headquarters and must receive the concurrence of the Assistant Administrator for Enforcement and Compliance Monitoring or his designee ("AA-OECM") and the Assistant Administrator for Solid Waste and Emergency Response or his designee ("AA–OSWER") prior to referral to the Department of Justice for filing. After the Region has concluded one *de minimis* consent decree with a landowner, other consent decrees may then be referred directly to the Department of Justice with consultation by the AA–OECM and the AA–OSWER. All *de minimis* consent decrees will be subject to a thirty-day comment period after lodging.

If the *de minimus* settlement is entered through an administrative order on consent, it must receive the concurrence of the AA–OECM and the AA–OSWER prior to signature by the Regional Administrator if it is the first administrative settlement with a *de minimis* landowner. Additionally, if the total past and projected response costs for the site, excluding interest, exceed $500,000, section 122(g)(4) requires that the *de minimis* administrative order on consent receive the prior written approval of the Attorney General or his designee. Section 122(g)(4) of CERCLA gives the Attorney General thirty days from referral by EPA to approve or disapprove the settlement. If he does not act within this time period, the settlement will be deemed to have been approved unless he has reached agreement with the Agency on an extension of time.[26] Section 122(i) of CERCLA requires notice of all administrative *de minimis* settlements to be published in the Federal Register for a thirty day comment period. The Region must consider all comments received and "may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate." Section 122(i)(3).

C. Policy on Prospective Purchasers

Because of the clear liability which attaches to landowners who acquire property with knowledge of contamination, the Agency has received numerous requests for covenants not to sue from prospective purchasers of contaminated property.[27]

It is the Agency's policy not to become involved in private real estate transactions. However, a covenant not to sue a prospective purchaser might appropriately be considered if an enforcement action is anticipated and if performance of or payment for cleanup would not otherwise be available except from the Superland and if the prospective purchaser participates in a clean-up. A prospective purchaser may participate in cleanup either through the payment of a substantial sum of money[28] to be applied towards a clean-up of the site or through a commitment to perform substantial response actions.

There are a number of concerns, however, associated with entering into such covenants which may, in a given case, outweigh any benefit which the Agency may receive. Given the number of sites on the National Priorities List ("NPL"), most have not been the subject of a remedial investigation/feasibility study ("RI/FS"), nor have responsible party searches been conducted. Therefore, in most instances, the extent of contamination and necessary remedy will be unknown and it may be impossible to determine whether the proposed activities of the prospective purchaser at the site (for example, operating a manufacturing facility or developing the property) will interfere with any remedy ultimately selected by the Agency. Secondly, unless the universe of potentially responsible parties and their financial viability is known, it will be impossible to determine with any certainty that the Agency is receiving a benefit which otherwise could not be obtained. If there are other viable responsible parties, by entering into an agreement with a prospective purchaser for future response costs, the Agency will have merely succeeded in providing those other parties with a set-off against future cost recovery. Furthermore, in some instances, the Agency may ultimately be able to recoup its response costs, or at least an amount equivalent to the consideration offered by a prospective purchaser, through enforcement of the federal lien estblished pursuant to Section 107(1) of CERCLA.

Moreover, the listing of any site on the NPL means that there is a release or threatened release of hazardous substances from the site. Development and commercial use of such sites may pose a danger to those persons present at such sites, and the activities to be carried out by the purchaser, even with the exercise of due care, may aggravate or contribute to the contamination. Where the remedy calls for other than destruction of all contaminants below health based levels, there may be a risk that unknown future uses are inconsistent with the remedy or may interfere with an ongoing cleanup.

The Agency recognizes, however, that in an appropriate case, entering into a convenant not to sue with a prospective purchaser of contaminated property, given appropriate environmental safeguards, may result in an environmental benefit through a payment to be applied to clean-up of the site or a commitment to perform response action. This guidance sets forth criteria which should be met before the Agency will enter into such convenants. These criteria are minimal standards, however, and the Agency will reject any offer unless it determines that entering into a convenant with a prospective purchaser is sufficiently in the public interest to warrant expanding the resources necessary to reach such an agreement in light of competing priorities for the use of limited Agency resources.

1. Criteria for entering into convenants not to sue with prospective purchasers of contaminated property

a. *Enforcement action is anticipated by the Agency at the facility.* It is the policy of the Agency not to become involved in purely private commercial transactions. The Agency will not entertain requests or covenants not to sue from prospective purchasers unless an enforcement action is contemplated with respect to the facility. Therefore, such convenants generally will be considered only with regard to those facilities listed or proposed for listing on the NPL, those facilities at which Fund monies have been expended, or those facilities which are the subject of a pending enforcement action.

b. *A substantial benefit, not otherwise available, will be received by the Agency for cleanup.* The Agency will not entertain requests for covenants not to sue unless entering into such a covenant will produce a substantial

[26] More detailed procedures for the referral of *de minimis* consent orders to Headquarters and the Department of Justice are being developed.

[27] Since settlements with typical prospective purchasers (*i. e.* those who do not currently own the property, are not otherwise involved with the site, and are, therefore, not yet liable under Section 107) will not be reached under Section 122, the procedures and restrictions in that section, such as those relating to covenants not to sue, will not apply.

[28] Such monies could be paid directly to the Superfund (in the event the Agency is undertaking the cleanup) or in appropriate circumstances and with proper controls could be paid to the seller of the property if the seller has agreed to perform substantial response action pursuant to an administrative order or consent decree.

monetary benefit to be applied to response activities at the facility, or an agreement to conduct response actions, which otherwise would not be available. This criterion may be met if the Agency projects that its anticipated response costs are not recoverable from other sources. However, if the Agency determines that its anticipated response costs can be recouped through other means, such as the filing and enforcement of a federal lien, such covenants will not be entertained.

c. *The Agency believes that the continued operation of the facility or new site development, with the exercise of due care, will not aggravate or contribute to the existing contamination or interfere with the remedy.* Unless the Agency believes, based on available information, that the continued operation of the facility or new development of the site will not aggravate or contribute to the existing contamination or interfere with the remedy, such agreements will not be entertained. Information which should be considered by the Agency includes the remedial investigation/feasibility study, if completed, and all other information relevant to the condition of the facility. If the prospective purchaser is to continue the operations of an existing facility, the Agency will require the purchaser to submit information sufficient to determine whether the continued operations are likely to aggravate or contribute to the existing contamination or interfere with the remedy. If the prospective purchaser plans to undertake new operations or development of the facility, comprehensive information regarding these plans will be required. If the available information indicates that the planned activities of the prospective purchaser are likely to aggravate or contribute to the existing contamination, the agreement will not be entered into or will include restrictions which prohibit those operations or portions of those operations which are likely to aggrevate or contribute to the existing contamination or interfere with the remedy.

The Agency's determination as to whether the available information is sufficient for purposes of this evaluation will be made on a case by case basis; however, one key factor which will necessarily be considered is whether the remedial investigation has been completed and the extent of information which has been generated in that process. If the available information is insufficient for purposes of evaluating the impact of the proposed activities, the agreement will not be entered into.

d. *Due consideration has been given to the effect of continued operations or new development on health risks to those persons likely to be present at the site.* The Agency will not entertain requests for covenants not to sue unless due consideration has been given to the effect which continued operations at the facility or new development is likely to have on the health risks to those persons likely to be present at the site.

e. *The prospective purchaser is financially viable.* The prospective purchaser must demonstrate that he is financially viable and capable of fulfilling his obligations under the agreement. The Agency will not entertain requests for covenants not to sue if it appears that the Agency could not recoup its costs in the event that the purchaser breaches his obligations under the agreement.

2. Content and form of settlement

If the foregoing criteria are met, and the Agency determines that entering into the covenant not to sue is in the public interest, the covenant will be embodied in an agreement to be executed by the authorized representative of the prospective purchaser, the Regional Administrator (with the concurrence of the AA–OECM, the AA–OSWER, and the Attorney General), and, where appropriate, the current owner of the facility.[29]

a. *Consideration.* Generally, the consideration required of the prospective purchaser will be a cash payment. In specific cases, it may be possible to dedicate the payments to response activities at the site through an appropriate mechanism.[30] However, the consideration may take the form of a removal, or if a Record of Decision (ROD) has been signed, remedial activities. In addition, the prospective purchaser must agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising from contamination of the facility which exists as of the date of acquisition of the facility, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the facility.[31] The Agency shall also require that the purchaser file in the local land records a notice acceptable to EPA, stating that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property.

The agreement should contain a provision under which the purchaser grants an irrevocable right of entry to the Agency, its response action contractors, and other persons performing response actions under Agency oversight for the purpose of taking response actions at the facility and for monitoring compliance with the agreement.

In exchange for this consideration, the Agency will grant a covenant not to sue to the prospective purchaser for civil liability under Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA arising from contamination of the facility which exists as of the date of acquisition of the facility. The covenant should provide that, with respect to any claim or cause of action asserted by the Agency against the prospective purchaser, the purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to contamination which existed prior to the date of acquisition.

b. *Reservation of rights.* The agreement should expressly reserve the Agency's rights to assert all claims against the prospective purchaser, except for those set forth in the covenant not to sue, including, but not limited to, those claims arising from:

(i) the release or threat of release of any hazardous substance, pollutant or contaminant resulting from the purchaser's operation of the facility;

(ii) the release or threat of release of any hazardous substance, pollutant, or contaminant resulting from the introduction of any hazardous substance, pollutant, or contaminant at the facility by any person after the date of acquisition by the purchaser;

(iii) exacerbation of contamination existing prior to the date of acquisition;

(iv) failure to cooperate and/or interference with the Agency, its response action contractors, or other persons conducting response activities under Agency oversight in the implementation of response actions at the facility;

[29] In the past, this has arisen most often in the bankruptcy context.

[30] Note, however, that at present, the federal Superfund accounting system does not provide for the establishment of site-specific accounts to receive dedicated payments.

[31] In evaluating what is appropriate consideration, the Agency should consider the value of any lien which may be or has been placed on the property pursuant to CERCLA section 107(l), since, in entering into an agreement with a prospective purchaser, the government is relinquishing its right to recover its cleanup costs when the property is subsequently sold to the prospective purchaser. This is because an agreement with a prospective purchaser would effectively constitute a satisfaction of the prospective purchaser's liability for cleanup work at the site, thus terminating any lien under section 107(l)(E).

(v) failure to exercise due care with respect to any contamination at the facility; or

(vi) any and all criminal liability.

The agreement should also expressly reserve the Agency's rights to assert all claims and causes of action against all persons other than the purchaser. Unless the Federal natural resource trustee has agreed in writing to the covenant not to sue, the agreement should also expressly reserve natural resource damage claims.

c. *Scope of response actions.* The agreement should provide that none of its terms is to be construed as limiting or restricting the nature or scope of response actions which may be undertaken by the Agency in exercising its authority under federal law. In most circumstances, the agreement should also state that the purchaser recognizes that the implementation of response actions may interfere with its operation, including closure of the facility or a part thereof.

d. *Compliance with applicable laws and duty to exercise due care.* The agreement should provide that the purchaser is subject to the requirements of all federal and state laws and regulations, including the duty to exercise due care with respect to hazardous substances at the facility.

e. *Disclaimer.* The agreement should contain a statement that the execution of the agreement in no way constitutes an Agency finding as to the risks to human health and the environment which may be posed by contamination at the facility or an Agency representation that the property is fit for any particular use.

3. Procedures

Any agreement entered with a prospective purchaser of contaminated property must receive the concurrence of the AA–OECM and the AA–OSWER. Additionally, such agreement must be approved by the Attorney General. Procedurally, the Regions should handle requests for such covenants in accordance with forthcoming Agency guidance on the referral of administrative settlements under Section 122(g)(4).[33] The settlement analysis required by that guidance should specifically address the criteria set forth in this memorandum for entering into covenants not to sue with prospective purchasers of contaminated property.

V. Purpose and Use of This Guidance

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance or its internal implementing procedures.

Attachments.

Attachment I—Model CERCLA Section 122(g)(4) Administrative Order on Consent For Settlements With Landowners Under Section 122(g)(1)(B)

U.S. EPA Docket No. _____

ADMINISTRATIVE ORDER ON CONSENT

In the Matter of: [Insert Site Name and Location]

Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9622(g)(4)

I. Jurisdiction

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99–499, 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E (Sept. 13, 1987).

This Administrative Order on Consent is issued to [insert name] ("Respondent"). Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Definitions

"Site" shall mean that parcel of property located at [insert address and general description], more particularly described as [insert legal description of the property owned by Respondent]. [Note: Additional definitions may be required.]

III. Statement of Facts

1. [In one or more paragraphs, describe the NPL status of the site and briefly describe the historical hazardous substance activity at the site, including the date on which the hazardous substance activities were terminated.]

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C 9601(14), have been or are threatened to be released into the environment at or from the Site. [Note: Additional information about specific hazardous substances present on- or off-site may be included.]

3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response action at the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response action in the future. [Note: A brief recitation of the specific response action undertaken or planned for the site, *e.g.*, whether an RI/FS and ROD have been completed, should be included.]

4. In performing this response action, EPA has incurred and will continue to incur response costs at or in connection with the Site. [Note: The dollar amount and costs incurred as of a specific date should be included.]

5. [Identify the Respondent, the nature of his ownership interest in the site, the manner in which he acquired the site, *e.g.*, by purchase, bequest, eminent domain proceedings, *etc.*, and the date of acquisition. Add any other facts relevant to the requirements of Section 122(g).]

6. Respondent represents, and for the purposes of this order EPA accepts, that respondent's involvement with the site is limited to the following: [State each fact. Make sure to address the elements of Section 122(g)(1)(B0, and if no cash consideration is involved, Sections 107(b) and 101(35).]

7. Payments required to be made by Respondent pursuant to this Consent Order are a minor portion of the total response costs at the Site which EPA, based upon currently available information, estimates to be between $——— and $———. [Note: This statement need not be included if EPA is settling only for access and due care assurances. The dollar figure inserted should include the total response costs incurred to date as well as EPA's projection of the total response costs to be incurred during completion of the remedial action at the site.]

IV. Determinations

Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

1. The Site as described in Section II of this Consent Order is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

2. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

3. Respondent is an "owner" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1), and a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

4. The past, present, or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

5. Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

6. This Consent Order involves at most only a minor portion of the response costs at

[33] *See supra* note 26.

the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1). [Note: This statement need not be included if the Agency is settling only for access and due care assurances.]

7. Respondent is eligible for a *de minimis* settlement pursuant to section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B).

V. Order

Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREE TO AND ORDERED:

VI. Access and Notice

1. Respondent hereby grants to EPA, its representatives, contractors, agents, and all other persons performing response actions under EPA's oversight, an irrevocable right of access to the Site for the purposes of monitoring the terms of this Consent Order and performing response actions at the Site. Respondent shall file in the land records of _____ County a notice, approved by EPA, to subsequent purchasers of the land, that hazardous substances were disposed of on the site and that EPA makes no representations as to the appropriate use of the property. Nothing herein shall limit EPA's right of access under applicable law.

2. Nothing in this Consent Order shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in fulfilling its responsibilities under federal law. Respondent recognizes that the implementation of response actions at the Site may interfere with the use of his property. Respondent agrees to cooperate with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions.

VII. Due Care

3. Nothing in this Consent Order shall be construed to relieve Respondent of his duty to exercise due care with respect to the hazardous substances at the Site or his duty to comply with all applicable laws and regulations.

VIII. Payment

4. Respondent shall pay the sum of $_____ to the Hazardous Substance Superfund within _____ days [insert short time period, *e.g.*, 10, 30 or 45 days] of the effective date of this Consent Order. [NOTE: If EPA is settling only for access, notice and due care assurances, then this section may be omitted. If EPA is settling for an agreement by the owner to perform response activities [removal—since a consent decree is required for remedial activities] rather than a cash payment, then the following section should be substituted: "*WORK TO BE PERFORMED:* Respondent agrees to perform [insert general description of activities to be performed], as more fully described in the Scope of Work and schedules attached hereto as Exhibit A and incorporated herein, and in accordance with the schedules and standards set forth therein. Based on information provided by Respondent, EPA estimates the present value of this work to be approximately $_____."]

5. The payment specified in Paragraph 4 shall be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

[Insert address for Regional lock box]

6. Respondent shall simultaneously send a copy of its check to:

[Insert name and address of Regional Attorney or Remedial Project Manager]

IX. Civil Penalties

7. In addition to any other remedies or sanctions available to EPA, the Respondent shall be subject to a civil penalty of up to $25,000 per day for each failure or refusal to comply with any term or condition of this Consent Order pursuant to section 122(l) of CERCLA, 42 U.S.C. 9622(l). [NOTE: If the Respondent is to perform the removal action under the Consent Order, stipulated penalties should be considered.]

X. Certification of Respondent

8. The Respondent certifies that to the best of his knowledge and belief he has fully and accurately disclosed to EPA and stated in Paragraph 6, section III, all information currently in his [its] possession and in the possession of his agents, [or in the possession of its officers, directors, employees, contractors or agents] which relates in any way to his [its] qualifications for a *de minimis* settlement under section 122(g)(1)(B) of CERCLA. [NOTE: In very limited circumstances this language may be omitted if EPA determines that the risk of discovering information which would disqualify the Respondent from a *de minimis* settlement is negligible.]

XI. Covenant Not to Sue

9. Subject to the reservation of rights in Paragraphs 11 and 12, section XII, of this Consent Order, upon payment of the amounts specified in Paragraph 4, section VIII, of this Consent Order [NOTE: If work is to be performed instead of a cash payment, this sentence should read: "upon satisfactory completion of the work specified in the Scope of Work." If EPA is settling only for access and due care assurances, this sentence should read: "upon the effective date of this Consent Order."], EPA covenants not to sue or take any other civil or administrative action against the Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard to the Site.

10. In consideration of EPA's covenant not to sue in Paragraph 9, section XI, of this Consent Order, the Respondent agrees not to assert any claims or causes of action against the United States or its contractors or its employees or the Hazardous Substance Superfund arising out of expenses incurred or payments made [or work performed] pursuant to this Consent Order, or to seek any other costs, damages, or attorney's fees from the United States or its contractors or employees arising out of response activities at the Site.

XII. Reservation of Rights

11. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Respondent for:

(a) Any liability as a result of failure to provide access, notice, or otherwise comply with Paragraphs 1 and 2, section VI, of this Consent Order;

(b) Any liability as a result of failure to exercise due care with respect to hazardous substances at the Site;

(c) Any liability as a result of failure to make the payments [or perform the work] required by Paragraph 4, section VIII, of this Consent Order;

(d) Any liability resulting from exacerbation by Respondent of the release or threat of release of hazardous substances from the Site;

(e) Any and all criminal liability; or

(f) Any matters not expressly included in the covenant not to sue set forth in Paragraph 9, section XI, of this Consent Order, including, without limitation, any liability for damages to natural resources. [NOTE: This natural resource damage reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to section 122(j)(2) of CERCLA. In accordance with section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

12. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the Respondent, and the covenant not to sue in Paragraph 9, section XI, of this Consent Order is null and void, if information different from that specified in Paragraph 6, section III, is discovered which indicates that Respondent fails to meet any of the criteria specified in section 122(g)(1)(B) of CERCLA.

13. Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

14. EPA and Respondent agree that the actions undertaken by the Respondent in accordance with this Consent Order do not constitute an admission of any liability by the Respondent. The Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this

Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

XIII. Contribution Protection

15. Subject to the reservation of rights in Paragraphs 11 and 12, section XII, of this Consent Order, EPA agrees that by entering into and upon carrying out the terms of this Consent Order, Respondent will have resolved his liability to the United States for those matters set forth in the covenant not to sue, Paragraph 9, section XI, as provided by section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall have satisfied his liability for those matters within the meaning of section 107(a) of CERCLA, 42 U.S.C. 9607(a).

XIV. Parties Bound

16. This Consent Order shall apply to and be binding upon the respondent and his heirs, agents, and assigns [its officers, directors, employees, agents, successors and assigns]. The signatory represents that he is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent. [NOTE: The preceding sentence and the bracketed phrase in the first sentence should be used if the respondent is a corporation or entity other than a natural person.] In the event that the Respondent transfers title or possession of the Site, he shall notify the United States EPA (at the address included in Paragraph 6, Section VIII) prior to any such transfer and shall continue to be bound by all of the terms and conditions of this Consent Order unless EPA agrees otherwise and modifies this Consent Order accordingly.

XV. Public Comment

17. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVI. Attorney General Approval

18. The Attorney General or his designee has issued prior written approval of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA. [NOTE: Attorney General approval usualy will be required for *de minimis* consent orders because the total past and projected response costs at the site will exceed $500,000, excluding interest. In the event that Attorney General approval is not required, the order shall not include this Paragraph 18, but should include the following as a separate numbered paragraph in the Determinations section (Section IV) above: "The Regional Administrator of EPA, Region _____, has determined that the total response costs incurred to date at or in connection with the Site do not exceed $500,000, excluding interest, and that, based upon information currently known to EPA, total response costs at or in connection with the Site are not anticipated to exceed $500,000, excluding interest, in the future." Use of this determination requires changes to the model Statement of Facts in Section III above; specifically, Paragraph 3 of the Facts should delete "and will undertake response actions in the future." Paragraph 4 of the Facts should delete "and will continue to incur response costs at or in connection with the site."]

XVII. Effective Date

19. The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Paragraph 17, Section XV, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

[Respondent(s)]

By: [Name] _____
[Date] _____

U.S. Environmental Protection Agency

By: [Name] _____
[Date] _____

Attachment II—Model CERCLA Section 122(g)(4) Consent Decree for Settlements With Landowners Under Section 122(g)(1)(B)

United States of America, Plaintiff v. [Insert Name(s) of Defendant(s)] Defendant(s) Civil Action No._____

Judge_____

Consent Decree

[NOTE: If the complaint concerns causes of action which are not resolved by this document or names defendants who are not signatories to this document, the title should be "Partial Consent Decree."]

WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("Plaintiff" or "United States") filed a complaint on [insert date] against [insert defendant's name] ("Defendant") pursuant to [insert causes of action and relief sought, *e.g.*, Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6973, seeking injunctive relief regarding the cleanup of the [insert site name] ("Site") and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site];

WHEREAS, the United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, the Regional Administrator of the United States Environmental Protection Agency, Region _____ ("Regional Administrator"), has determined that prompt settlement of this case is practicable and in the public interest;

WHEREAS, this settlement does not involve the payment of response costs [delete this clause if cash consideration is included pursuant to Section V];

WHEREAS, based on information currently available to the Environmental Protection Agency ("EPA"), the Regional Administrator has determined that Defendant qualifies for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA;

WHEREAS, the United States and the Defendant agree that settlement of this case without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter and the parties to this action. The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

II. Parties Bound

This Consent Decree shall apply to and be binding upon the United States and the Defendant, his heirs, agents, and assigns [its officers, directors, employees, agents, successors and assigns]. The signatory represents that he is fully authorized to enter into the terms and conditions of this Consent Decree and to legally bind the Defendant. [NOTE: The preceding bracketed language should be used if the Defendant is a corporation or entity other than a natural person.]

III. Definitions

"Site" shall mean that parcel of property located at [insert address and general description], more particularly described as [insert legal description of the property owned by Defendant]. [NOTE: It may be necessary to include additional definitions.]

IV. Access and Notice

1. Defendant hereby grants to EPA, its representatives, contractors, agents, and all other persons performing response actions under EPA's oversight, an irrevocable right of access to the Site for the purposes of monitoring the terms of this Consent Decree and performing or monitoring performance of response actions at the Site. Defendant shall file in the land records of _____ County a notice, approved by EPA, to subsequent purchasers of the land that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property. Nothing herein shall limit EPA's right of access under applicable law. In the event that defendant transfers title or possession of the Site, he shall continue to be bound by all of the terms and conditions of this Consent Decree and shall notify the United States EPA prior to any such transfer.

2. Nothing in this Consent Decree shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in exercising its authority under federal law. Defendant recognizes that the implementation of response actions at the Site may interfere with the use of his

property. Defendant agrees to cooperate with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions.

V. Payment

1. Respondent shall pay the sum of $_____ to the Hazardous Substance Superfund within _____ days [insert short time period, *e.g.*, 10, 30 or 45 days] of the effective date of this Consent Order. [NOTE: If EPA is settling only for access, notice and due care assurances, then this section may be omitted. If EPA is settling for an agreement by the owner to perform response activities, rather than a cash payment, then the following section should be substituted: "*WORK TO BE PERFORMED*: Respondent agrees to perform [insert general description of activities to be performed], as more fully described in the Scope of Work and schedules attached hereto as Exhibit A and incorporated herein, and in accordance with the schedules and standards set forth therein. Based on information provided by Respondent, EPA estimates the present value of this work to be approximately $_____."]

22. The payment specified in Paragraph 1 of this Section, shall be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

[Insert address for Regional lock box]

3. Defendant shall simultaneously send a copy of its check to:

[Insert name and address of Regional Attorney or Remedial Project Manager]

VI. Due Care

Nothing in this Consent Decree shall be construed to relieve Defendant of his duty to exercise due care with respect to hazardous substances at the Site or his duty to comply with all applicable laws and regulations.

VII. Civil Penalties

In addition to any other remedies or sanctions available to the United States, Defendant shall be subject to a civil penalty of up to $25,000 per day for each failure or refusal to comply with any term or condition of this Consent Decree pursuant to Section 122(1) of CERCLA, 42 U.S.C. 9622(1). [Note: If the defendant is to perform remedial action under the Consent Decree, stipulated penalties, pursuant to Section 121(e)(2) must be included.]

VIII. Certification of Dependant

The Defendant certifies that, to the best of his [its] knowledge and belief, he [it] has fully and accurately disclosed to EPA all information currently in his [its] possession and in the possession of his agents [and in the possession of its officers, directors, employees, contractors or agents] which relates in any way to his [its] qualifications for a *de minimis* settlement under Section 122(g)(1)(B) of CERCLA. [NOTE: In very limited circumstances this language may be omitted if EPA determines that the risk of discovering information which would disqualify the Defendant from a *de minimis* settlement is negligible. The bracketed language in this paragraph should be used if the Defendant is a corporation or entity other than a natural person.]

IX. Covenant Not To Sue

1. Subject to the reservation of rights in Section X, Paragraphs 1 and 2, of this Consent Decree, upon entry of this Consent Decree, the United States covenants not to sue or take any other civil or administrative action against the Defendant for any and all civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106 or 107(a) or CERCLA, 42 U.S.C. 9606 or 9607(a), or Section 7003 of RCRA, 42 U.S.C. 6973, arising from conditions existing at the Site as of the date of entry of this Consent Decree.

2. In consideration of the United States' covenant not to sue in Paragraph 1 of this Section, the Defendant agrees not to assert any claims or causes of action against the United States or its contractors or its employees or the Hazardous Substance Superfund arising out of expenses incurred or payments Superfund arising out of expenses incurred or payments made [or work performed] pursuant to this Consent Decree, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the Site.

X. Reservation of Rights

1. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Defendant for:

a) Failure to provide access, notice or otherwise comply with Section IV, Paragraphs 1 and 2, of this Consent Decree;

b) Failure to exercise due care with respect to hazardous substances at the Site;

c) Exacerbation of the release or threat of release of hazardous substances from the Site;

d) Any liability resulting from the introduction of any hazardous substance, pollutant, or contaminant by any person at the Site after the entry of this Consent Decree;

e) Any and all criminal liability; or

f) Any matters not expressly included in the covenant not to sue set forth in section IX, paragraph 1, of this Consent Decree, including, without limitation, any liability for damages to natural resources. [*Note*: This natural resource damage reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to section 122(j)(2) of CERCLA. In accordance with section 122(j)(1) of CERCLA. In accordance with section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

2. In the event that the United States asserts any claim or cause of action against the Defendant pursuant to Section X, Paragraph 1, of this Consent Decree, the Defendant shall bear the burden of proving that any release or threat of release which is the subject of the claim or cause of action is attributable solely to conditions existing at the Site as of the date of entry of this Consent Decree.

3. Nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the Defendant, and the covenant not to sue in Section IX, Paragraph 1, of this Consent Decree is null and void, if information not currently known to the United States is discovered which indicates that Defendant fails to meet any of the criteria specified in Section 122(g)(1)(B) of CERCLA.

4. Nothing in this Consent Decree is intended as a release from or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

5. United States and Defendant agree that the actions undertaken by the Defendant in accordance with this Consent Decree do not constitute an admission of any liability by Defendant.

XI. Contribution Protection and Liens

Subject to the reservation of rights in section X, Paragraphs 1 and 3, of this Consent Decree, the United States agrees that by entering to and carrying out the terms of this Consent Decree, Defendant will have resolved his liability to the United States for those matters set forth in the covenant not to sue, section IX, Paragraph 1, as provided in section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall have satisfied his liability for those matters within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

XII. Public Comment

This Consent Decree shall be subject to a thirty-day public comment period. The United States may withdraw consent to this Consent Decree if comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

XIII. Effective Date

The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Section XII of this Consent Decree.

The United States of America

[Defendant]
By: _____

By: _____

SO ORDERED this _____ day of _____ 19____.

[Name]

[Date]

[FR Doc. 89-19468 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration Terminal Agreements 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200276.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

Polish Ocean Lines, Inc. (POL)

Synopsis: The Agreement provides for POL's use of 9.02 acres, in Area 403, at MPA's Dundalk Marine Terminal. POL will: pay MPA $1,917.00 per acre per month; and, guarantee MPA a minimum of 12,500 gross cargo tons per month by direct liner service to the Port of Baltimore. The Agreement will be on a month-to-month basis for a term of six months pending the final negotiations of a long term lease between the parties.

Agreement No.: 224-010968-003.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration

Hapag Lloyd AG/Atlantic Division

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-010968). It provides that the agreement will be on a month-by-month basis for a term of three months pending the final negotiations of a long term lease between the parties.

By Order of the Federal Maritime Commission.

Dated: August 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19394 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

Port of New Orleans and Port of Oakland; Terminal Agreements 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-009.

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans

Coastal Cargo Company

Synopsis: The Agreement amends the basic agreement by rescinding a previous amendment that would have deleted sections 81 through 90 of the Galvez Street Wharf lease from the basic agreement, Agreement No. 224-200060.

Agreement No.: 224-010600-001.

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans (City)

Ceres Gulf, Inc.

Synopsis: The Agreement provides for a five year extension of the Agreement through July 12, 1994.

Agreement No.: 224-200274.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Pasha Properties, Inc. (Pasha)

Synopsis: The Agreement provides for an arrangement whereby the Port assigns to Pasha the responsibility for the management, terminal operation and cargo solicitation services at Berths 10, 11, and 12 of the Port's Outer Harbor Terminal. The provision shall be used for berthing vessels and loading/discharging of cargoes. As compensation, Pasha will pay the Port $9,651.00 per month until January 31, 1990, and thereafter tariff revenue from dockage, wharfage, wharfage demurrage and storage, or $50,878 per month, subject to guaranteed minimum annual compensation of $671,595.00 for the year ending January 31, 1991.

Agreement No.: 224-200-157-001.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Marine Terminals Corporation (MTC)

Synopsis: The Agreement provides for reimbursement of a portion of MTC's costs in making certain repairs to the premises assigned MTC in the Port's Ninth Avenue Terminal Area.

By Order of the Federal Maritime Commission.

Dated: August 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19397 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

Turkey/United States Atlantic and Gulf Rate Agreement 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.: 202-011207-001.

Title: Turkey/United States Atlantic and Gulf Rate Agreement.

Parties:

Farrell Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Pharos Lines, S.A.

Synopsis: The proposed modification adds new provisions for the terms and conditions for associate membership to the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19396 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

United States/Middle East and Indian Subcontinent Discussion Agreement 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.: 202-011239-001.

Title: United States/Middle East Indian Subcontinent Discussion Agreement.

Parties:

The "8900" Lines
The West Coast/Middle East and West Asia Rate Agreement
American President Lines, Ltd.
A.P. Moller-Maersk Line
National Shipping Company of Saudi Arabia
Sea-Land Service, Inc.
Thames Shipping Ltd.
United Arab Shipping Company (S.A.G.)
Waterman Steamship Corporation

Synopsis: The proposed modification would clarify that the separate tariffs of the individual Parties will be the tariffs of this Agreement.

By Order of the Federal Maritime Commission.

Dated: August 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19395 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dentel Bancorporation Victor, IA; Notice to Acquire Bank Holding Company; Correction

This notice corrects a previous Federal Register notice (FR 89-14984) published at page 26842 of the issue for Monday, June 26, 1989.

Under the Federal Reserve Bank of Chicago, the entry for Dentel Bancorporation is amended to read as follows:

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 LaSalle Street, Chicago, Illinois 60690:

1. *Dentel Bancorporation,* Victor, Iowa; to acquire 20 percent of the voting shares and 100 percent of the preferred shares of Colfac Bancshares, Inc., Colfax, Iowa, and thereby indirectly acquire The First National Bank in Colfax, Colfax, Iowa.

Comments regarding this application must be received at the Federal Reserve Bank of Chicago or the offices of the Board of Governors not later than September 5, 1989.

Board of Governors of the Federal Reserve System, August 14, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-19429 Filed 8-17-89; 8:45 am]

BILLING CODE 6210-01-M

Premier Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW. Atlanta, Georgia 30303:

1. *Premier Bancorp, Inc.,* Baton Rouge, Louisiana; to engage *de novo* through its subsidiary, Florida Street National Bank, Baton Rouge, Lousiana, a limited purpose *de novo* bank in voluntary liquidation, in servicing loans pursuant to § 225.25(b)(1); and operating a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y. These activities will be conducted in the State of Lousiana.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California, and Security Pacific Bancorporation Northwest, Seattle, Washington; to engage *de novo* through their subsidiary, Security Pacific Investments, Inc., Seattle, Washington, in dealing in the obligations of the United States, general obligations of states and their political subdivisions, including, but not limited to participating in the sale of securities underwritten by Security Pacific Bank Washington, N.A., and other obligations that state member banks of the Federal Reserve System may be authorized to underwirte and deal in under 12 U.S.C. 24 and 335, including bankers acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-19430 Filed 8-17-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 919]

Resident Research Associateship Program

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for a cooperative agreement for the Resident Research Associateship Program with the National Academy of Sciences.

Authority

This program is authorized under Section 301 of the Public Health Service Act, 42 U.S.C. 241, as amended.

Eligible Applicant

Assistance will be provided only to the National Academy of Sciences/National Research Council (NAS/NRC). No other applications are solicited or will be accepted.

The NAS/NRC is a unique institution because of its ability to assemble the best scientific talent in the country and to apply study procedures that ensure objectivity and maximal credibility.

Created by a Congressional charter in 1863, the National Academy of Sciences is a private honorary society dedicated to the furtherance of science and the use of science for the general welfare. The Academy established the National Research Council (NRC) in 1916 as a means for securing the active participation of specialists from universities, the industry, and the government in the Academy's work. The NRC is charged with the administration of the Resident Research Associateship Program (RRAP).

Because of the unique abilities of NAS/NRC as an unbiased source of technical and scientific expertise in the fields of public health sciences and public health, it is the only organization capable of carrying out the activities contemplated under this cooperative agreement.

Availability of Funds

Approximately $1,000,000 is available in Fiscal Year 1989 to fund this award. It is expected that the award will begin on or about September 28, 1989, for a 12-month budget period within a project period of 1 to 5 years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist the NAS/NRC in the continuation of a postdoctoral research associateship program which emphasizes molecular biology related to infectious disease prevention and control.

Program Requirements

The specific Cooperative Activities, Application Content and Evaluation Criteria are set forth in the application kit.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372 (45 CFR Part 100), "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

The National Academy of Science has been notified of the availability of funds for this project and must submit an original and two copies of the application Form PHS 5161-1 (Rev. 3/89) to Edwin L. Dixon, Grants Management Officer, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, N.E., Room 300, Atlanta, Georgia 30305.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Announcement Number 919, entitled "Resident Research Associateship Program," and contact the following:

Business: Marsha A. Jones, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842-6640 or FTS 236-6640.

Technical: Joseph E. McDade, Ph.D., Assistant Director for Laboratory Science, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-3967 or FTS 236-3967.

Dated: August 14, 1989.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89-19433 Filed 8-17-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward J. McDonnell, District Director. The topic to be discussed is an open forum on acquired immunodeficiency syndrome (AIDS), in conjunction with ACT UP of Provincetown, MA.

DATES: Friday, August 25, 1989, 7:30 p.m. to 9:30 p.m.

ADDRESSES: Provincetown Town Hall, Commercial St., Provincetown, MA 02657.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 15, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19598 Filed 8-16-89; 11:26 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 51, No. 201, dated Friday, October 17, 1986, **Federal Register**, Vol. 50, No. 198, dated Friday, October 11, 1985, **Federal Register**, Vol. 49, No. 133, dated Tuesday, July 10, 1984, **Federal Register**, Vol. 48, No. 196, dated Wednesday, October 12, 1983, and **Federal Register**, No. 223, dated Thursday, November 19, 1981) is amended to update organizational titles and functional statements within the Bureau of Policy Development (BPD), Office of the Associate Administrator

for Program Development. The amendments replace the word "reimbursement" with the word "payment" in the organization titles and in the functional statements within BPD. These changes will more accurately reflect the responsibilities of the Bureau.

The specific changes to Part F. are described below:

• Section FQ.10 The Office of the Associate Administrator for Program Development (FQ) (Organization) is deleted in its entirety and replaced by the following:

FQ. Office of the Associate Administrator for Program Development (FQ)

A. Bureau of Policy Development (FQA)
B. Office of Research and Demonstrations (FQB)

• Section FQ.10.A.4. The Office of Reimbursement Policy (FQA5) (Organization) is deleted in its entirety and replaced by the following:

4. Office of Payment Policy (FQA5)

a. Division of Medical Services Payment (FQA54)
b. Division of Alternative Payment Systems (FQA55)
c. Division of Hospital Payment Policy (FQA56)
d. Division of Payment and Reporting Policy (FQA58)
e. Division of Dialysis and Transplant Payment Policy (FQA59)

• Section FQ.20.A.4., The Office of Reimbursement Policy (FQA5) is deleted in its entirety and replaced with the following section. Section FQ.20.A.4. now reads:

4. Office of Payment Policy (FQA5)

Establishes national program policy on all issues of Medicare or Medicaid payment including provider payment policy, provider accounting and audit policy, and physician and medical services payment policy. Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system. Coordinates with and reviews recommendations from the Prospective Payment Assessment Commission. Develops payment policy for alternative forms of health care delivery such as health maintenance organizations, rural health clinics, hospices, prepaid health plans, comprehensive health centers, ambulatory surgery centers, and kidney dialysis centers. Establishes payment policies as they apply to the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and the End-Stage Renal Disease (ESRD) Programs. Develops cost analysis systems policies for the ESRD Program, conducts ongoing analysis of cost payment data, and provides input of a payment nature to the Annual Report to Congress on the ESRD Program. Reviews requests for exceptions to payment limitations and recommends approval or disapproval. Establishes policy for implementing payment controls and cost containment programs. Establishes policy pertaining to the Federal Financial Participation in State Medicaid administrative costs and third-party liability collection procedures. Maintains liaison with interested professional groups, States, intermediaries, and Departmental components on issues related to payment. Participants in the development and evaluation of proposed legislation in the area of health care payment. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services payment.

• Section FQ.20.A.4.a., Division of Medical Services Reimbursement (FQA54), is deleted in its entirety and replaced by the following:

a. Division of Medical Services Payment (FQA54)

Formulates and evaluates national policies and standards for Medicare and Medicaid payment and fiscal standards for physician services, practitioner services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, and other medical services. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services payment. Drafts program regulations, manuals, guidelines, and other general instructions related to medical services payment. Coordinates with other HCFA bureaus, divisions, and offices, the Social Security Administration, and other Department components in the development of payment policies for medical services. Participates in the development and evaluation of proposed legislation in the area of medical services payment and recommends alternatives to current methods of payment. Provides interpretations of established policies and technical assistance to Departmental and HCFA components, regional offices, State agencies, and carriers.

• Section FQ.20.A.4.b., Division of Alternative Reimbursement Systems (FQA55), is deleted in its entirety and replaced by the following:

a. Division of Alternative Payment Systems (FQA55)

Assumes the primary responsibility within HCFA in formulating and evaluating policies for the payment of alternative methods of health service delivery requiring special methods of cost finding and apportionment. Establishes policies and principles for reimbursing services furnished in ambulatory care settings such as health care prepayment plans, health maintenance organizations, prepaid health plans, nonprovider-based comprehensive health centers, hospices, and rural health clinics. Analyzes and approves payments to be made to hospitals for inpatient hospital services under State payment control systems rather than systems provided for by Medicare. Formulates and evaluates policies and procedures related to hospitals and long-term care activities including approval and verification of methodologies used by the States to determine payment to hospitals, skilled nursing facilities, and intermediate care facilities under medical assistance plans. Serves as the focal point in the Bureau for the coordination of alternative payment and long-term care issues. Develops policies and procedures on Federal Financial Participation in State administrative costs relating to alternative payment or comprehensive health planning activities. Prepares regulations, manuals, program guidelines, and other general instructions related to these policies. Reviews policies developed by other components for their impact on alternative delivery systems and alternative payment for hospitals and long-term care. Conducts studies on the impact of alternative modes of health care delivery on health care payment. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staffs, and other Departmental offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to alternative delivery of payment systems and long-term care services. Reviews Medicaid State plan waivers requested under Section 1915 of the Social Security Act.

• Section FQ.20.A.4.c., Division of Hospital Payment Policy (FQA56), is deleted in its entirety and replaced by the following:

c. Division of Hospital Payment Policy (FQA56)

Develops evaluates, and maintains regulations, policies and standards for payments to hospitals for inpatient services under the prospective payment system (PPS). Develops, evaluates, and maintains policies pertaining to the determination of appropriate amounts of prospective payments to hospitals for services furnished to inpatients. Works with the Prospective Payment Assessment Commission on PPS and reviews the commission's recommendations on and basis for rates of payments. Develops, evaluates, and maintains policies pertaining to the appropriate methods for determining the amount of payments for cost items associated with inpatient hospital services but not yet within the prospecitve payment rates and develops policies for bringing such excepted cost items under PPS. Develops, evaluates, and maintains policies for determining and applying rates of increase and limitations to the costs of hospitals for services furnished to inpatients. Develops, evaluates, and maintains methods for classifying hospitals and hospital services to inpatients, including sole community hospitals, for the purpose of applying rates of increase and limitations on hospitals' costs and for determining prospective payments to hospitals. Develops, evaluates, and maintains criteria for exceptions to the established rates of increase and limitations of hospitals' costs for inpatient services and reviews fiscal intermediaries' recommendations on hospitals' requests for exceptions. Prepares regulations, program guidelines, and instructions related to PPS and those excepted items or adjustments to the system that are paid on a cost-payment basis to hospitals for inpatient services. Works with other offices in the Bureau, HCFA, the Department, and the Prospective Payment Assessment Commission to improve hospital efficiency and reduce Medicare expenditures. Reviews policies and operational guidelines and instructions developed by other components for their impact on the policies governing PPS and limitations on payment for hospital services to inpatients. Participates in the development and evaluation of proposed legislation pertaining to PPS and cost containment for hospital services to inpatients. Provides interpretations of established policies and other policy and technical assistance to regional offices, State agencies, Medicare contractors, hospitals, hospital associations, congressional staff, Departmental offices, and others on policy issues relating to PPS and cost containment policies for hospital inpatient services. Assists in the Administration's professional relations and public information activities to foster understanding and acceptance of the PPS.

• Section FQ.20.A.4.e., Division of Payment and Reporting Policy (FQA58), is deleted in its entirety and replaced by the following functional statement. Sections e. and f. are being renumbered as sections d. and e. Section d. had been previously deleted.

d. Division of Payment and Reporting Policy (FQA58)

Develops and evaluates national policies, regulations, and standards for payment of the costs incurred by providers of services including hospitals not under the Prospective Payment System (PPS) and other classes of providers under both the health insurance and medical assistance programs. Collaborates in and coordinates the development of overall payment policies involving prospective payment and cost payment. Ensures that interrelated policies are consistent. Directs the planning and analysis of Medicare payment initiatives including studies and recommendations for solutions to program related problems. Evaluates the effectiveness of general payment policies in meeting the goals and objectives of HCFA. Evaluates and interprets policy issues and initiatives that cross Division lines, such as PPS under Medicare and State cost control systems. Provides technical and advisory services to HCFA, the Department, officials at the policymaking level, and to officals with similar authority within the executive branch, congressional committees, individual congressmen, and private organizations interested in HCFA's payment policies. Initiates and collaborates in the development and review of legislative proposals on general Medicare and Medicaid payment policies, interprets law (considering intent), and develops policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters). Develops detailed payment specifications which constitute the basis for regulations promulgating payment policies and pertinent public notices. Reviews and evaluates written regulations to be certain they are technically complete and accurately reflect specifications as developed. Develops and issues implementing instructions consistent with overall payment policy, directives and specifications applicable to Medicare. Reviews alternative payment and rate-setting systems for potential adaptation to the health insurance and medical assistance programs. Compiles materials, reports, and decision memoranda and makes recommendations for action by principal administrative policymakers and congressional staff on Federal health care programs. Establishes policies, principles and guidelines related to circumstances requiring atypical payment practices. Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA auditing, accounting practices, general payment policy, and billing procedures at Central Office, regional intermediary, and carrier levels which impact on Office functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures. Collaborates with other components in maintaining consistency among the various payment activities conducted with the Office. Formulates and evaluates national policies for all Medicare and Medicaid program provider financial filing and reporting requirements. Develops policies pertaining to the use of all reporting forms, schedules, and related instructions necessary for reimbursing health care institutions. Receives and analyzes all reported expense data from providers and health care facilities and serves as a source of information on payment data for HCFA and the Department. Develops policies, pertaining to the validity of accounting and audit policies and procedures. Develops and maintains a system of internal controls for the validation of policy decisions. Provides interpretations of overall cost and charge payment policies to regional offices, State agencies, Medicare contractors, providers of services, other health care facilities, congressional staffs, other Departmental offices, and others. Identifies problem areas and develops solutions to such problems, as appropriate. Maintains continuing liaison with Medicare contractors' advisory groups, provider associations, the American Institute of Certified Public Accountants, and others. Chairs the Technical Advisory Group. Develops policies related to accounting and auditing of provider costs and policies for assisting States in implementing programs for auditing institutions participating in Medicare assistance programs. Provides technical assistance

to regional offices, Medicare contractors, and State agencies on the application of cost-based data reporting requirements and policies and procedures for cost accounting and audit. Formulates and evaluates national policies governing payment of skilled nursing facilities (SNFs), home health agencies (HHAs), hospital outpatient departments, outpatient physical therapy facilities, and comprehensive outpatient rehabilitiation facilities under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these providers and facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to payment for the services of these providers and facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Develops methods for classifying SNFs and HHAs and their service for the purpose of developing effective limitations. Develops and evaluates the criteria for exceptions to the limitations and reviews and makes decisions on the intermediary recommendations on providers' requests for exceptions. Analyzes cost data, develops actual limitations which will be applied to health care costs, promulgates required notices of limitations and issues companion instructions and policies needed to implement the limitations. Works with other offices of the Department in developing changes in the cost payment system which are designed to improve provider efficiency through the use of financial incentives or penalties. Reviews policies and operational guidelines and instructions developed by other components for their impact on payment and cost containment policies for these providers and facilities. Provides interpretations of established policies and technical assistance on the application of payment and cost limit policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staff, and other Departmental offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to payment and cost containment for these providers and facilities. Provides centralized data extraction, maintenance, and analysis services for the Office. Provides data and/or analysis to other HCFA components on request.

• Section FQ.20.A.4.f., Division of Dialysis and Transplant Payment Policy (FQA59), is deleted in its entirety and replaced by the following functional statement at Section FQ.20.A.4.e.:

e. Division of Dialysis and Transplant Payment Policy (FQA59)

Formulates and evaluates policies for reimbursing services under the End-Stage Renal Disease (ESRD) program. Establishes policies and procedures for reimbursing ESRD services, transplantation, physician payment, kidney acquisition including payments, organ procurement, histocompatibility services, home and self-dialysis training, and other medical items and services related to the ESRD program. Serves as the focal point in HCFA for coordinating ESRD policies that frequently cross Bureau lines. Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas. Formulates and evaluates accounting policy for payments through ESRD delivery systems. Established policies, procedures, and criteria for reimbursing payment exceptions for ESRD facilities. Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates. Analyzes payment data, develops payment rates for ESRD services, and updates rates. Develops and performs professional evaluation of payment data for rate setting, exceptions processing, and program evaluation. Provides technical assistance in the development of cost reporting and audit programs for ESRD facilities. Provides liaison with the Veterans' Administration and other insurers of dialysis and transplant services. Conducts special studies and reviews of ESRD payment as necessary for rate setting and program evaluation purposes. Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and related parties. Reviews policies developed by other components for their impact on the ESRD program. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staff, and other Departmental offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues. Formulates and evaluates national policies governing payment of ambulatory surgical centers under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to payment for the services of these facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Reviews policies and operational guidelines and instructions developed by other components for their impact on payment and cost containment policies for these facilities. Provides interpretations of established policies and technical assistance on the application of payment and cost limits policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staff, and other Departmental offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to payment and cost containment for these facilities.

Dated: August 7, 1989.

Louis B. Hays,

Acting Administrator.

[FR Doc. 89-19412 Filed 8-17-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, October 13, 1989, at the Stanford University School of Medicine, Sherman Fairchild Auditorium, Stanford, CA 94305.

This meeting will be open to the public on October 13 from 9:00 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, members of the staff of the College and others.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the

Panel members, and substantive program information upon request.

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19410 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Disease; Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 25-26, 1989, at the Sheraton Potomac Hotel, 3 Research Court, Rockville, Maryland 20850.

The meeting will be open to the public from 8:30 a.m. to 9:10 a.m. on October 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:10 a.m. until recess on October 25, and from 8:30 a.m. until adjournment on October 26. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable materal and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19444 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 18, 1989, at the Sheraton Potomac Hotel, 3 Research Court, Rockville, Maryland 20850.

The meeting will be open to the public from 8:30 a.m. to 9:15 a.m. on October 18, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:15 a.m. on October 18, until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning associated with the application and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Science; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19445 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on September 18, 1989, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on September 18, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Basic Sciences I Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment on September 18. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Geoffrey P. Cheung, Ph.D., Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH,

Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19447 Filed 8–17–89; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 14–15, 1989, from 8:30 a.m. to approximately 4:30 p.m. each day at the Holiday Inn Crowne Plaza, 300 Army Navy Drive, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 9, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19411 Filed 8–17–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research: Steering Committee for the National Nursing Research Agenda

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Steering Committee for the National Advisory Council for Nursing Research, National Center for Nursing Research, September 14, 1989, from 1:30 p.m. to 5:00 p.m. in Building 31, Conference Room 6, on the NIH campus in Bethesda, Maryland.

This meeting will be open to the public. The agenda will include an update on the National Nursing Research Agenda and planning for its evaluation.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee, National Nursing Research Agenda, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B03, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: August 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19446 Filed 8–17–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the first meeting of the National Deafness and Other Communication Disorders Advisory Council on September 18, 1989. The meeting will take place from 8:30 a.m. to 5:00 p.m. in the Bethesda Marriott at Pooks Hill.

The morning portion of the meeting will be open to the public and will include introduction of new Advisory Council members and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in § 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on September 18 from 1:00 P.M. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosures of which could constitute a clearly unwarranted invasion of personal privacy.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496–7243, will furnish the meeting agenda, rosters of council members, and substantive program information upon request.

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–19448 Filed 8–17–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environment Health Science; Meeting of National Advisory Environmental Health Sciences Council, September 19–20, 1989, at the National Institute of Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 19–20, 1989, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 19 from 9 a.m. to approximately 2 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public September 19, from approximately 2 p.m. to adjournment on September 20, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and

Manpower Development, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19449 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 5-6, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on October 4 as follows:

Research and Development and Planning Subcommittees, 7th-floor Conference Room, Building 38A, 3:30 p.m. to approximately 4:30 p.m.; and the Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 p.m. to 3:30 p.m. All, but the Extramural Programs Subcommittee, will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on October 5 and from 9 a.m. to approximately 11:00 on October for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on October 4 will be closed to the public, and the regular Board meeting on October 6 will be closed from approximately 11:00 to adjournment of the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19450 Filed 8-17-89; 8:45 a.m.]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance package have been submitted to OMB since the last list was published in the **Federal Register** on August 4, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. *State Contribution Return*—0960-0041—The information collected on the form SSA-3961 is used by the Social Security Administration to identify and account for all contributions due and paid by the States under section 218 of the Social Security Act. The respondents are State agencies.

Number of Respondents: 117
Frequency of Response: 85
Average Burden Per Response: 3 minutes
Estimated Annual Burden: 500 hours

2. *Statement of Funds You Received/Provided* (SSA-2854/2855)—New—The information collected on these forms will be used by the Social Security Administration to verify an allegation that a claimant for Supplemental Security Income payments has borrowed money on an informal basis. If the alleged loan is determined to be bona fide, the proceeds are not considered income to the claimant.

Number of Respondents: 40,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 6,667 hours

3. *Modified Benefit Formula Questionnaire.*—0960-0395—The information collected on the form SSA-150 is used by the Social Security Administration to determine the correct formula to be used in computing the Social Security benefit of someone who also receives a benefit from employment not covered by Social Security.

Number of Respondents: 90,000
Frequency of Response: 1
Average Burden Per Response: 4 minutes
Estimated Annual Burden: 6,000 hours

4. *Child Relationship Statement*—0960-0116—The information collected on the form SSA-2519 is used by the Social Security Administration to determine the entitlement of children to Social Security benefits under the deemed relationship provision.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 12,500 hours

5. *Application for Survivors Benefits*—0960-0062—The information collected on the form SSA-24 is used by the Social Security Administration to satisfy the "jointly prescribed application" provision of Title 38 U.S.C. 3005. That provision requires that survivors who file with either the Social Security Administration (SSA) or the Veterans Administration (VA) shall be deemed to have filed with both agencies, and that each agency's forms must request sufficient information to constitute an application for both SSA and VA benefits.

Number of Respondents: 3,200
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 800 hours

OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 14, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-19480 Filed 8-17-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator Regional Housing Commissioner

[Docket No. D-89-903]

Acting Manager, Region IV (Atlanta); Designation for Memphis Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Valuation Branch
3. Chief, Mortgage Credit Branch

This designation supersedes the designation effective June 29, 1988, (53 FR 28918 August 1, 1988). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of July 24, 1989.

Michael F. Dalton,

Acting Manager, Memphis Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 89–19495 Filed 8–17–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–09–4320–02]

Boise District Advisory Council; Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Advisory Council will meet August 29 to discuss the proposed expansion of the Saylor Creek Bombing Range in the district's Jarbidge and Owyhee Resource Areas. Time permitting, the council will also discuss maintenance of the Gem Motorcycle Park in the Cascade Resource Area, and juniper management in the Owyhee Resource Area.

DATE: The meeting will begin at 9:00 a.m. on Tuesday, August 29. It will be held in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise BLM District 208–334–9661.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89–19418 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–GG

[NV–930–09–4212–24; N–43266]

Partial Termination of Airport Lease Application Involving Lands in Clark County

Notice is hereby given that a portion of the lands involved in airport lease application N–43266, as described below, have been withdrawn.

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 4, lots 6, 11, SW¼NE¼, W½SE¼
Sec. 10, E½NW¼

The segregative effect of the airport lease application, as it pertains to the above-described lands only, is hereby removed upon publication of this notice in the Federal Register.

Dated: August 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–19457 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–HC

[NV–010–09–4320–02]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

A meeting of the Elko District Grazing Advisory Board will be held on September 14, 1989. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Years 1989 and 1990,
2. Proposed Allotment Management Plans, and
3. Proposed agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 p.m. and 1:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 7, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89–19431 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–HC–M

[UT 080–09–4320–02]

Vernal District Grazing Advisory Board; Tour and Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463, that a meeting of the Vernal District Grazing Advisory Board will be held Thursday, September 21, 1989 commencing at 8:00 a.m. The meeting will be held in the District Office Conference Room at 170 South 500 East, Vernal, Utah.

The agenda will include: A field tour of all winter use areas and riparian habitat and an office discussion of (1) drought conditions, (2) Elk use on Diamond Mountain, (3) Riparian Resource Grazing Management, (4) Diamond Mountain RMP, (5) Animal Damage Control, (6) Current grazing legislation, (7) FY 89 and 90 Range Improvement work and proposals, (8) Items from the public, if any.

The meeting is open to the public. Interested persons wishing to participate or present a statement should notify the District Manager at the above mentioned address or phone him at (801) 789–1362 no later than September 20, 1989.

Dated: August 10, 1989.

David E. Little,

Vernal District Manager.

[FR Doc. 89–19455 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–010–41–5410–10–ZFKD; N–48048]

Realty Action: Mineral, Interest Application; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21,

1976, 90 Stat. 2757, Heguy Bros., a general partnership has applied for conveyance of the mineral estate described as follows:

Mount Diablo Meridian

T. 42 N., R. 57 E.,
Sec. 5, Lots 1, 3, 4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 6, Lot 1;
Sec. 9, S½SW¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, S½.
T. 43 N., R. 57 E.,
Sec. 31, Lots 2-4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, SW¼, W½SE¼.

Containing approximately 1749.830 acres.

Additional information concerning this application may be obtained from the Area Manager, Elko Resource Area, Elko District Office, 3900 E. Idaho St., Elko, NV 89801.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, January 27, 1990 whichever occurs first.

Dated: August 8, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-19434 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-NC-M

[UT-050-09-4212-14; U-51883]

Realty Action; Noncompetitive Sale of Public Land in Garfield County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, U-51883; Noncompetitive sale of public lands in Garfield County, Utah.

SUMMARY: The following public lands have been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, at not less than the appraised fair market value of $36,000.00. The lands will not be offered for sale until 60 days after date of publication of this notice.

Parcel and legal description	Acreage	FMV
1. T.31S., R.7 E., Salt Lake Meridian:		
Section 35: SE¼NW¼	40	$4,000
2. T.31S., R.8 E., Salt Lake Meridian:		
Section 19: SE¼SE¼	40	4,000
Section 30: E½E½	160	16,000
SW¼SE¼	40	4,000
Section 31: NE¼NE¼	40	4,000
3. T.31S., R.8 E., Salt Lake Meridian:		
Section 20: NE¼NW¼	40	4,000
	360	$36,000

The public land described above is being offered by direct sale to Tercero Corporation. The public land is isolated, and is surrounded by land owned by Tercero Corporation. The public land is difficult and uneconomic to manage as part of the public lands system and is not suitable for management by another Federal department or agency.

Publication of this notice in the Federal Register segregates the above described public lands from all forms of appropriation under the public land laws and the mining laws. This segregation will end upon issuance of a patent to the lands, upon publication in the Federal Register of a notice terminating the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Beginning December 1, 1989, any land not sold by direct sale will be reoffered for sale to the general public by competitive bidding. Bids will be accepted on a continuing basis until the land is sold or the sale is cancelled. The sale will be held on the first and third Wednesday of each month. Competitive sale will be by sealed bid only. No bid will be accepted for less than the appraised fair market value. Sealed bids for the unsold land will be accepted from 7:45 a.m. until 4:30 p.m. at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701, with bid openings at 2 p.m. on the sale days.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Richfield District, at the address identified above. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Terms and Conditions Applicable to the Sale: Any patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way and other valid existing rights. These include, but are not limited to, the following:

1. All minerals, including oil and gas, shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way will be reserved to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. A Garfield County Road established under principles of R.S. 2477.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, and planning and environmental documents, are available for review at the Henry Mountain Resource Area, P.O. Box 99, Hanksville, Utah 84734, or by telephone at (801) 542-3461.

Dated: August 10, 1989

Sam Rowley,

Acting District Manager.

[FR Doc. 89-19437 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-943-09-4214-11; I-2509]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 30.00 acre withdrawal for the Towsley Springs Recreation Site, continue for an additional 30 years. The land is being used as a recreation site. These lands will remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4789, for the Towsley Springs Recreation Site, be continued for a period of 30 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

T. 21 N., R. 3 W.
Sec. 13, E½NW¼NE¼SW¼, NE¼NE¼SW¼, W½NW¼NW¼SE¼, NE¼SW¼NE¼SW¼, N½SE¼NE¼SW¼ and NW¼SW¼NW¼SE¼.

The area described contains 30.00 acres in Adams County.

The withdrawal is essential for protection of substantial capital improvements on the Recreation Site. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 89-19403 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-66-M

[ID-943-09-4214-11; I-010796 et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 479.43 acres of land withdrawn for Recreation and Administrative Sites continue for an additional 50 years based upon the anticipated remaining useful life of the associated improvements. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 1342, 3093 and Secretarial Order dated May 29, 1908, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(I-15472, SO 5/9/08)

T. 32 N., R. 7 E.
Sec. 23, lots 1 and 3 and SE¼NW¼.

(I-05778, PLO 1342)

Beginning at corner No. 8 of H.E.S. No. 242, T. 28 N., R. 10 E. (unsurveyed), by metes and bounds,
S. 1° 01' E., 396.0 ft.;
N. 52° 00' E., 3118.5 ft.;
N. 32° 00' E., 2062.5 ft.;
N., 820.0 ft.;
W., 329.0 ft.;
S. 51° 00' W., 1740.0 ft.;
S. 43° 00' W., 3393.0 ft.;
S. 20° 00' E., 686.4 ft.;
S. 66° 55' E., 33.0 ft. to corner No. 8, the place of beginning.

(I-010796, PLO 3093)

T. 27 N., R. 9 E.,
Sec. 3 and 4, unsurveyed.
T. 28 N., R. 9 E.
Sec. 34, unsurveyed.
T. 28 N., R. 10 E.,
Metes and Bounds description within sec. 19.

The areas described aggregate 479.43 acres in Idaho County.

The withdrawals are essential for protection of the Recreation and Administrative Sites involved. The withdrawals closed the land to surface entry and mining but not to mineral leasing. No change in the segretative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-19404 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-66-M

[ID-943-09-4214-11; I-67]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 10.00 acre withdrawal for the Papoose Cave Area, continue for an additional 100 years. The land is now being used as a special recreation area. These lands will remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4222, for the Papoose Cave Area, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

T. 24 N., R. 1 W.

Sec. 27, S½NE¼NE¼SE¼ and N½SE¼ NE¼SE¼.

The area described contains 10.00 acres in Idaho County.

The withdrawal is essential for protection of scientific and recreational values. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undetake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-19405 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Concession Contract Negotiations; Signal Mountain Lodge

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Rex G. Maughan and Ruth G. Maughan dba Signal Mountain Lodge, Inc., authorizing it to continue to provide food service, lodging, gift and merchandising sales, gasoline, marina and fishing related facilities and services and a concession permit to provide Snake River float and fishing trips for the public at Signal Mountain at Grand Teton National Park, Wyoming for a period of fifteen (15) years from January 1, 1990, through December 31, 2004.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy, P.O. Box 25287, Denver, CO 80255-0287, for information as to the requirements of the proposed contract.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed by the Superintendent, Grand Teton National Park, Moose, Wyoming 83012, Telephone 307-733-2880.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. Sec. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Sec. 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Dated: July 14, 1989.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 89-19489 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with The Cavern Supply Company, Inc., authorizing it to continue to provide food services, souvenirs, merchandise, nursery, kennels, and parcel checking facilities and services for the public at Carlsbad Caverns National Park, New Mexico for a period of fifteen (15) years from January 1, 1990, through December 31, 2004.

EFFECTIVE DATE: October 17, 1989.

ADDRESS: Interested parties should contact the Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico 88220, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Enviromental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's office, Carlsbad Caverns National Park.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 8, 1989.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 89-19490 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of History Areas Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. at the following location and date.

DATE: September 11, 1989.

LOCATION: 1100 L Street, NW (2nd Floor Conference Room 2410), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin Levy, Senior Historian,

History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Telephone (202) 343–8164.

SUPPLEMENTARY INFORMATION:

The purpose of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on October 18, 1989 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are: Mr. Robert Burley, Chair, Dr. Holly Anglin Robinson, Dr. Alfonz Lengyel, Mrs. Anne Walker.

The meeting will include presentations and discussions on the national historic significance and the integrity of numerous properties being nominated for National Historical Landmark designation. These nominations include 16 properties being considered for an astronomy and astrophysics theme study located in California, District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, Vermont, West Virginia, and Wisconsin; 13 maritime resources located in California, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, Ohio, and Oregon; archeological properties located in Mississippi and Oregon; a constitutional site in Connecticut; a recreation site in Missouri; and a Civil War site in Virginia.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Minutes of the meeting will be available in the office of the History Division, National Park Service, WASO, for public inspection approximately 4 weeks after the meeting.

Dated: August 10, 1989.

Jerry L. Rogers,

Associate Director, Cultural Resources National Park Service, WASO.

[FR Doc. 89–19491 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31387 (Sub-No. 1)[1]]

Canadian National Railway Co., Lease From Grand Trunk Western Railroad Co.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed July 20, 1989, by Canadian National Railway Company to lease Grand Trunk Western Railroad Company's Railport intermodal facility in Chicago, IL. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 18, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 2, 1989. Applicants' reply is due by October 23, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. A revised list will be issued shortly thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31387, (Sub-No. 1), Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representative:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh St., SW., Washington, DC 20590.

Attorney General of the United States, Washington, DC 20590.

Charles A. Spitulnik, Hopkins, Sutter, Hamel & Park, 888 Sixteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: By application filed July 20, 1989, Canadian National Railway Company (CN) and Grand Trunk Western Railroad Company (GTW), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for CN to lease GTW's Railport intermodal facility (Railport) in Chicago, IL. In addition, the parties will enter into a "Haulage Agreement" providing for the operation of CN intermodal trains by GTW personnel over the GTW lines between Port Huron, MI, and Railport. The term of the lease is 3 years, with an option for a 3-year extension. Annual rental will be $227,280 payable in monthly installments. The lease will take effect on the commencement date of the accompanying haulage arrangement. Applicants contemplate consummation of the transaction no later than December 31, 1989, or as soon as the Commission's approval is obtained. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR part 1180 for minor transactions.

CN, a crown corporation of Canada, is a Class I carrier operating in the provinces of Canada, except for Newfoundland, and in the states of Minnesota, New York, and Vermont. It interchanges traffic with U.S. rail carriers at border points in Maine, Michigan, Minnesota, New Hampshire, New York, North Dakota, and Washington. GTW is a Class I railroad operating in Michigan, Ohio, Indiana, and Illinois. It is a wholly owned subsidiary of Grand Trunk Corporation (GTC), which is a wholly owned subsidiary of CN. GTC also owns the Central Vermont Railway, Inc., and the Duluth, Winnipeg and Pacific Railway Company, which are operating railroad companies.

Railport is GTW's western terminus and is not served by any other railroad. GTW conducts switching, blocking, or other direct interchange with other carriers at its Blue Island yard, or via the network of switching and belt line carriers in the Chicago terminal. Railport is used only as an intermodal facility.

Applicants state that Railport will be a crucial factor in the success of CN's dedicated transborder intermodal service (Laser trains) between Montreal and Toronto, in the east, and Chicago in the west. The Laser trains currently operate as GTW trains between Port Huron and Railport. Under the haulage arrangement, GTW will continue to move the trains, but CN will have direct

[1] The docket number has been modified by adding Sub-No. 1 to distinguish this proceeding from Finance Docket No. 31387, *Canadian National Ry. Co.—Partial Revoc. of Class Exempt.—Lease from Grand Trunk West. R. Co.* (not printed), served January 27, 1989, which granted a partial revocation of the class exemption for transactions within a corporate family under 49 CFR 1180.2(d)(3) to the extent that it related to the rail properties involved in this application proceeding.

control over all other aspects of the service.

Moreover, applicants asset that the transaction will benefit both carriers financially. CN will improve the profitability of its intermodal operations. GTW will realize financial benefits from reduced costs. The lease to CN will relieve GTW of the cost of operating and staffing a facility for which it has no independent need.

Applicants contend that the transaction will not reduce competition nor result in a monopoly. It involves two separate markets: (1) The provision of intermodal services in the Chicago terminal area; and (2) the movement of intermodal transborder traffic in the Chicago-Montreal/Toronto corridor. According to the applicants, the transaction will not have anticompetitive effects in either market. GTW will continue to move Laser trains between Port Huron and Chicago under the haulage arrangement. CN will simply replace GTW as operator of Railport and will be responsible for marketing, pricing, and scheduling the service. Railport will continue to handle Laser trains or any other traffic that CN moves through the facility. No other carrier uses Railport as the terminal for handling its intermodal traffic that originates or terminates in Chicago.

Applicants also argue that the transaction is not likely to result in a monopoly or a restraint of trade in freight service transportation. CN states that it will not gain access to any new market since it currently operates in the Chicago-Montreal/Toronto market and indirectly serves the Chicago terminal market. The transaction is merely a means for CN to gain direct control over the Chicago terminal phase of its operations. The transaction, it says, will enhance its competitive position in the transborder intermodal market by improving its service to customers, but it will continue to face stiff competition from motor carriers as well as from other U.S. and Canadian railroads.

Applicants state that no CN employees will be adversely affected by the transaction. However, GTW intends to abolish the 28 non-management positions at Railport and will terminate its arrangement with its operating contractor. Although CN does not intend to offer employment to these affected employees, GTW will offer employment to some of these employees at other locations and will reimburse hired employees for relocation expenses. Moreover, applicants anticipate that the Commission will impose labor protective conditions [3] on its approval of the transaction, and GTW will assume responsibility for payment of any displacement or dismissal allowances or other required benefits to affected employees.

Applicants state that they are seeking approval of this transaction under 49 U.S.C. 11343, rather than handling it as an exempt transaction within the corporate family, 49 CFR 1180.2(d)(3), to secure the exemption from the application of all other laws that is provided by 49 U.S.C. 11341(a). They request that the Commission specifically find that preemption of the requirements of the Railway Labor Act (RLA), 45 U.S.C. 151, *et seq.*, is necessary to permit them to implement the proposed transaction. In view of the recent decision in *Burlington Northern R. Co.* v. *United Trans. Union*, 862 F.2d 1266 (7th Cir. 1988), applicants contend that they must request a specific finding that preemption of the RLA is necessary to permit them to carry out the proposed lease here. *But cf. Brotherhood of Railway Carmen, et al.*, v. *I.C.C.*, Nos. 88–1724 and 88–1694 (DC Cir. July 25, 1989).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves two Class I railroads but has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Since the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representative named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

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

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31387 (Sub-No. 1) is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: August 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley did not participate in the disposition of this proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89–19497 Filed 8–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290; Sub-No. 64X]

Southern Railway-Carolina Division and Southern Railway Co., Abandonment and Discontinuance Exemption Between Hasskamp and Camden, SC

AGENCY: Interstate Commerce Commission.

[3] The labor protection conditions ordinarily imposed in lease transaction are those set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Railway-Carolina Division of 14.0 miles of rail line between Hasskamp and Camden, SC, and the discontinuance of operations by Southern Railway Company over 4 miles of the line between Hasskamp and Hagood, SC, subject to standard labor protective conditions and certain environmental conditions related to post-abandonment plans.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 28, 1989, petitions to stay must be filed by September 5, 1989, and petitions for reconsideration must be filed by September 15, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 64X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

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, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing imparied is available through TDD service (202) 275–1721.]

Decided: August 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioner Andre, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89–19498 Filed 8–17–89; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex Allenwood, Union County, PA

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Proposed Action:* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Correctional complex is needed in its system. A 1000 acre tract of land on the Allenwood Federal Prison Camp near the Town of Allenwood, Pennsylvania will be evaluated. The proposal calls for the construction of a 550 bed high security facility, a 900 bed medium security facility and a 500 bed minimum security camp.

Approximately 300 of the 1000 acres would be used for road access, inmate housing, administration, program and service spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. *In the process of evaluating the tract of land, several aspects will receive a detailed examination including:* utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. *Alternatives:* In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. *Scoping Process:* During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Allenwood. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders, officials and citizens.

5. *DEIS Preparation:* Public notice will be given concerning the availability of the DEIS for public review and comment.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Lloyd McMillan, Site Acquisition Specialist, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272–6871.

Dated: August 9, 1989.

Buddy L. Crain,

Chief, Facilities Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 89–19057 Filed 8–17–89; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 7th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Avtex Fibers, Inc., (ACTWU)	Front Royal, VA	8/7/89	7/19/89	23,212	Synthetic rayon fibers
Bethenergy Mines, Inc. (Workers)	Eighty Four, PA	8/7/89	7/24/89	23,213	Metallurgical coal
Bethenergy Mines, Inc. (Workers)	Ellsworth, PA	8/7/89	7/24/89	23,214	Metallurgical coal
Celsius Energy Co., (Workers)	Denver, CO	8/7/89	7/24/89	23,215	Oil & gas
DPSC (Company)	ADA, OK	8/7/89	7/10/89	23,216	Downhole oil tools
DPSC (Company)	Odessa, TX	8/7/89	7/10/89	23,217	Downhole oil tools
DPSC (Company)	Casper, WY	8/7/89	7/10/89	23,218	Downhole oil tools
Delta Chemicals, Inc. (ICWU)	Searsport, ME	8/7/89	7/12/89	23,219	Chemicals for wood and paper industry
Devlieg-Sundstrand (Workers)	Royal Oak, MI	8/7/89	7/22/89	23,220	Mfg. equipment
Derrick Well Serv., (Company)	Monahans, TX	8/7/89	7/19/89	23,221	Oil & gas
East Texas Pipe Service, Inc.	Hughes Springs, TX	8/7/89	7/28/89	23,222	Oil & gas
Edmar Creations, Inc./Edmar Co. (Company)	Clifton, NJ	8/7/89	7/13/89	23,223	Vanity trays
Gedney & Associates (Company)	Denver, CO	8/7/89	7/27/89	23,224	Oil & gas
General Motors CPC (UAW/GM)	Framingham, MA	8/7/89	7/24/89	23,225	Cars
General Motors-BOC, Body Assembly (UAW)	Lansing, MI	8/7/89	7/18/89	23,226	Bodies for GM cars
Goecience Petroleum Services	Denver, CO	8/7/89	7/14/89	23,227	Oil & gas
Goodall Rubber Co., (Workers)	Braintree, MA	8/7/89	7/21/89	23,228	Rubber & plastic hose
Honeywell/Atmel, Inc. (Workers)	Colorado Springs, CO	8/7/89	7/20/89	23,229	Integrated circuits
Homischfeger Corp. (UAW)	Cedar Rapids, IA	8/7/89	7/17/89	23,230	Construction cranes
Joy Footwear Corp. (Workers)	Hialeah, FL	8/7/89	7/19/89	23,231	Tennis shoes
Kearfott Guidance & Navigation Corp., (Workers)	Wayne, NJ	8/7/89	4/5/89	23,232	Guidance & navigation systems
Leviton Mfg. Co., Inc., (IBEW)	West Kingston, RI	8/7/89	7/25/89	23,233	Electrical wiring devices
Levolor Lorentzen, Inc. (Company)	Fairfield, NJ	7/17/89	6/21/89	23,234	Engineering & research facility
Levolor Lorentzen, Inc. (Company)	Rockaway, NJ	8/7/89	7/19/89	23,235	Venetion blinds
MCENA, Inc., (Workers)	Midland, TX	8/7/89	6/15/89	23,236	Oil & gas
Malouf Mfg., Inc., (Workers)	Willspoint, TX	8/7/89	7/26/89	23,237	Ladies' sportswear
Malouf Mfg., Inc., (Workers)	Canton, TX	8/7/89	7/26/89	23,238	Ladies' sportswear
Marathon Oil Co., (Workers)	Robinson, IL	8/7/89	7/19/89	23,239	Oil & gas
Resources Drilling, Inc. (Workers)	Houston, TX	8/7/89	7/10/89	23,240	Oil & gas
Rheem Mfg. Co., (Company)	Chicago, IL	8/7/89	7/20/89	23,241	Water heaters
Samsung International, Inc. (Workers)	Ledgewood, NJ	8/7/89	7/20/89	23,242	Color TV's
Smith Drilling Co., Inc. (Workers)	Lawrenceville, IL	8/7/89	7/21/89	23,243	Oil & gas
Teledyne Wisconsin Motor (UAW)	West Allis, WI	8/7/89	7/20/89	23,244	Gas engines
(The) Timken Co., (SWLU)	Canton, OH	8/7/89	7/27/89	23,245	Bearings & steel
Tippett & Gee, Inc., (Workers)	Abilene, TX	8/7/89	6/27/89	23,246	Design lignite facilities, etc.
General Motors/BOC Chassis Assembly	Lansing, MI	8/7/89	7/18/89	23,247	Cars

[FR Doc. 89-19503 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 918 et al.]

Ocean Drilling and Exploration Co., New Orleans, Louisiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Odeco International Ocean Odyssey Rig; TA-W-21,918A Washington, TA-W-21,918B California, TA-W-21,918C Alaska.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 25, 1989, applicable to all workers of Ocean Drilling and Exploration Company, New Orleans, Louisiana.

The certification is being amended to include the Ocean Odyssey drilling rig which shut down in 1986 and to specify the divisions in New Orleans, Louisiana to be included under the certification. The Ocean Odyssey had decreased employment and sales in 1986 compared to 1985. The rig operated off the coasts of Washington, California and Alaska during the period between October 1, 1985 and December 31, 1986.

Workers of Odeco, Inc., and Odeco Engineers at New Orleans are intended to be covered, accordingly the notice is amended to include the Ocean Odessey drilling rig of ODECO International and to specify the intended coverage at New Orleans, Louisiana.

The amended notice applicable to TA-W-21918 is hereby issued as follows:

All workers of the Ocean Drilling and Exploration Company, ODECO Engineers, and ODECO Inc. New Orleans, Louisiana and the Ocean Odyssey drilling rig of ODECO International which operated off the coasts of Washington, California and Alaska who became totally or partially separated from employment on or after October 1, 1985 and before December 31, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of August 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-19504 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 941 et.al.]

Range Drilling Co. Arkansas City, Kansas; Dismissal of Applications for Reconsideration

In the matter of TA-W-22,944 Mundy Contract Maintenance, Incorporated Houston, Texas.

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Range Drilling Company,

Arkansas City, Kansas and Mundy Contract Maintenance, Incorporated, Houston, Texas. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-21,941; Range Drilling Company, Arkansas City, Kansas (August 9, 1989)

TA-W-22,944; Mundy Contract Maintenance, Incorporated, Houston, Texas (August 9, 1989)

Signed at Washington, DC this 10th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-19505 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-107-C]

Rocky Hollow Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rocky Hollow Coal Company, Lobata, West Virginia 25677 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-05195) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment are required to be protected by suitable circuit breakers of adquate interrupting capacity which are properly tested and maintained. Such breakers are required to be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. With the use of undervoltage release breakers to meet the requirements for undervoltage protection, it is necessary, after each power outage, for a person to travel to each belt drive location and reset the circuit breakers before the conveyor belts can start and production can resume.

3. The use of undervoltage circuit breakers also creates an extremely hazardous safety condition. Whenever the power blinks, workers are dashing to each belt drive location to reset the circuit breakers. A sense of urgency often causes the workers to take unplanned actions which places their safety and the safety of their fellow workers in jeopardy.

4. As an alternate method, petitioner proposes to use contactors and voltage monitors in lieu of circuit breakers to obtain undervoltage protection with specific equipment and procedures as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1989. Copies of the petition are available for inspection at that address.

Dated: August 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19506 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Performance Review Board; Membership

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces a new appointment of the National Endowment for the Humanities' Performance Review Board.

DATE: Effective July 31, 1989, Jerry Martin, Assistant Chairman for Studies and Evaluation has been designated to replace Susan Metts, Assistant Chairman for Administration, as a Member of the SES Performance Review Board until March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Lynne Cheney,

Chairperson.

[FR Doc. 89-19414 Filed 8-17-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to the permit applications by September 21, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1989. The applications received are as follows:

1. Applicant

Mark A. Chappell, Department of Biology, University of California, Riverside, Riverside, CA 92521.

Activity for Which Permit Requested

Taking, import into U.S. The applicant is conducting a study of the physiological condition of seabirds breeding near Palmer Station, Antarctica, in relation to the effects of the recent oilspill there. The applicant will collect stomach content and blood samples form Adelie penguins (140); blue-eyed shags (10); southern giant petrels (10); and South Polar skuas (10). These specimens will be released after samples are taken. Up to five Adelie penguins will be sacrificed for calibration of body composition measurements.

Location

Palmer Station, Antarctic Peninsula vicinity.

Dates

October 1989—March 1990.

2. Applicant

Richard Rivkin, Horn Point Environmental Laboratories, University of Maryland, Cambridge, MD 21613.

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. The applicant proposes to study the nutrition of planktonic larvae produced by marine benthic invertebrates (asteroids and echinoids). Larvae survival on particulate food, dissolved organic food and/or yolk provided by the parents will be investigated.

The study requires algal cultures to rear mass cultures of larvae to determine food preference and grazing characteristics. Six non-indigenous species of algae are required to feed lavaral cultures for nutritional studies. The six species are: Synechococcus, Dunaliella, Skeletonema, Isochrysis, Thalassiosira, and Nannochoris. Cultures of indigenous species of algae will also be established and used to feed larvae for grazing preference and characteristics.

All cultures will be maintained in enclosed incubators at the Eklund Biological Laboratory. Larvae will be reared within the Aquarium Building at McMurdo. Non-indigenous species of algae will not be released in the environment. All non-indigenous species will be destroyed (heat killed by autoclaving) at the end of the study. Cultures of indigenous species of algae will be transported back to the U.S.A. (University of Maryland) to study physiological characteristics of the antarctic algae.

Location

McMurdo Station, Antarctica.

Dates

October 1989—January 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89-19510 Filed 8-17-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Astronomical Sciences Subcommittee on Radio Astronomy; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Radio Astronomy

Date & Time: September 7 and 8, 1989 9:00 PM—5:00 PM

Place: National Science Foundation Room 1243

Type of Meeting: September 7 and 8, 1989 Open

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic and Solar System Astronomy, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-7620)

Summary Minutes: May be obtained from the contact person at the above address.

Pubpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide service and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 7 and 8

Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding using ground-based rado astronomy technques.

Discussion of activities and initiatives which are needed to address the scientific problems identified above.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-19436 Filed 8-17-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 and NPF-81 to the Georgia Power Company, et al., (the licensee) for the Vogtle Electric Generating Plant, Units 1 and 2, located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provision in the Technical Specifications (TS) relating to reload fuel enrichment.

The proposed action is in accordance with the licensee's applications dated June 12 and July 17, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, increase flexibility by extending fuel irradiation, and permit operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The proposed TS revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.55 weight percent and the licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 36 GWD/MT. The safety considerations associated with fuel storage and reactor operations with higher enrichment and extended irradiation have been evaluated by the licensee. The licensee has concluded that such changes would not adversely affect plant safety. The proposed changes have no effect on the probability of any accident. The increased burnup was considered in the original safety analyses and, therefore, does not change the analysis of fission products that might be released in the event of a serious accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor

operation with higher enrichment and extended irradition, the proposed changes to the TS involve systems located within the restricted areas, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the NRC staff's assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in the August 11, 1988 Federal Register (53 Fr 30355) as part of the Carolina Power and Light Co., *et al.*, Shearon Harris Nuclear Power Plant, Unit 1, Environmental Impact Assessment and Finding of No Significant Impact for the utilization of higher enriched fuel and extended fuel irradiation and is hereby referenced for this Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contributions of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S–4, as set forth in 10 CFR 51.52(c). Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives would have equal or greater environmental impact.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant, Units 1 and 2" dated May 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a signficant effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendments dated June 12, 1989, supplemented July 17, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Burke County Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 11th day of August 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–19458 Filed 8–17–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–133]

Environmental Assessment and Finding of No Significant Impact Regarding an Exemption From the Requirements of 10 CFR 50.54(w) Pacific Gas and Electric Co. Humboldt Bay Power Plant, Unit 3

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) to Pacific Gas and Electric Company (the licensee), for Humboldt Bay Power Plant, Unit 3, located in Humboldt County, California.

Environmental Assessment

Identification of Proposed Action

By application dated June 9, 1989, Pacific Gas and Electric Company requested an exemption. The exemption will reduce the current requirement for minimum primary property damage insurance for the permanently shut down Humboldt Bay Power Plant, Unit 3, from $100,000,000 to $63,160,000.

The Need for the Proposed Action

The licensee is requesting an exemption from the current requirement for primary property damage insurance, in order to reduce the amount of insurance coverage required, and the associated premium payments.

Humboldt Bay Unit 3 was shut down on July 2, 1976 and all spent fuel was subsequently transferred to the spent fuel pool. The operating license was modified to possess-but-not-operate status on July 16, 1985. On July 19, 1988, the NRC approved a decommissioning plan that required safe storage of spent fuel on-site until a Federal respository was available to receive it.

On November 3, 1982, the Commission granted, at the request of the licensee, a previous exemption to the requirements of 10 CFR 50.54(w) provided a minimum of $100,000,000 of primary property damage insurance was maintained. The licensee now asks for a further reduction of the minimum property damage insurance coverage to $63,160,000 and states that the cost of maintaining the insurance will be reduced by about $94,000 per year. The licensee believes the reduced minimum coverage amount to be adequate to cover costs of on-site cleanup following accidents because the reactor may not be operated and all fuel is stored on-site such that a nuclear criticality accident is not credible.

Environmental Impact of the Proposed Action

The proposed action is administrative only and will have no environmental impact since an adequate amount of insurance is being retained to cover on-site recovery from accidents.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The NRC staff is reviewing the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated June 9, 1989 which is available in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Eureka-Humboldt County Library, 421 I Street, Eureka, California.

Dated at Rockville, Maryland, this 11th day of August, 1989.

For the Nuclear Regulatory Commission.
Michael J. Bell,
Chief Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, Office Of Nuclear Material Safety and Safeguards.
[FR Doc. 89-19461 Filed 8-17-89; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Subcommittees on Extreme External Phenomena and Severe Accidents; Meeting

The ACRS Subcommittees on Extreme External Phenomena and Severe Accidents will hold a joint meeting on September 6, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 6, 1989-8:30 a.m. until the conclusion of business.

The Subcommittees will be briefed by the NRC and industry on the Individual Plant Examination for External Events (IPEEE) program.

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 named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees 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 301/492-8192) between 7:30 a.m. and 4:15 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: August 10, 1989.
Gary Quittschreiber,
Chief, Project Review Branch No. 2.
[FR Doc. 89-19511 Filed 8-17-89; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-58 and DPR-74 issued to the Indiana Michigan Power Company (the licensee), for operation of Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendments dated January 27, 1989, footnotes would be added to Tables 3.3-13 and 4.3-9 for both Units 1 and 2 which would allow a portion of the Waste Gas Holdup System Explosive Monitoring System to be inoperable for 160 days on a one-time basis so that it may be replaced. This proposed amendment would also make some editorial changes.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 18, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated January 27, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 11th day of August.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects, III, IV, V & Special Projects, Office of Nuclear Regulatory Commission.

[FR Doc. 89-19459 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

Second Draft of NUREG-1150 for Peer Review; Issuance and Availability

The U.S. Nuclear Regulatory Commission published the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," on July 6, 1989. A special peer review committee has been formed in conformance with the Federal Advisory Committee Act (FACA) to review the document. The first meeting of the committee was held on July 13-15, 1989 (as noticed in the **FEDERAL REGISTER** on June 23, 1989, 54 FR 26455). Public comments on this document are also solicited.

NUREG-1150 summarizes estimates of frequencies and risks of core damage accidents for five nuclear reactors of different designs and discusses perspectives gained through these assessments and their potential uses by the NRC staff.

The first draft of NUREG-1150 was published in February 1987 for public comment. The document was also reviewed by three independent review committees. Major modifications were made to the draft document based on additional staff review and the comments received from the public and the review committees.

Single copies of the second draft of NUREG-1150 can be obtained free of charge, to the extent of supply, by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Information Support Services, Office of Information Resources Management. Telephone requests cannot be accommodated.

Public comments should be sent to Chief, Regulatory Publications Branch, Division of Freedom of Information & Publications Services, P-223, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The 120-day comment period ends on December 18, 1989.

The comment letters and the second draft of NUREG-1150 are available for inspection and copying in the Commission's Public Document Room, 2120 L Street NW., Washington, DC. There is a fee for copying.

Dated at Rockville, MD this 14th day of August, 1989.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 89-19460 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Second Notice on Metropolitan Statistical Area Standards

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ACTION: Notice of intent to revise the standards used to define metropolitan statistical areas (MSAs) and of hearings on the MSA standards.

SUMMARY: OMB solicits further public comment on the standards to define metropolitan statistical areas (MSAs). This notice summarizes public comment received to a notice of December 20, 1988, requesting comments on the existing MSA standards; announces that OMB will hold a public hearing on the MSA standards; presents certain preliminary conclusions; and requests further comments.

DATE: Comments from the public should be submitted no later than October 17, 1989.

ADDRESS: Comments should be addressed to: Office of Information and Regulatory Affairs, Statistical Policy Office, New Executive Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria E. Gonzalez, Office of Information and Regulatory Affairs, Statistical Policy Office, New Executive Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503, (202) 395-7313.

Public Hearing: OMB will hold a public hearing where comments on the MSA standards may be presented. The hearing will be held on Wednesday, September 20, 1989, 1:30 p.m. at the New Executive Office Building, Room 2010, 725 17th St., NW., Washington, DC 20503. Those interested in participating should contact Maria E. Gonzalez, Office of Information and Regulatory Affairs, NEOB, Room 3228, OMB, Washington, DC 20503 (Telephone (202) 395-7313).

SUPPLEMENTARY INFORMATION: On December 20, 1988, OMB published for public comment a notice (hereafter referred to as the December 1988 notice) entitled Metropolitan Statistical Areas (53 No. 244, Federal Register, 51175-51181). OMB set a deadline for comment of February 17, 1989.

OMB received 99 letters of comment on the December 1988 notice. 22 percent were from Members of Congress; 5 percent from Federal agencies; 23 percent from State and local governments; 50 percent from the private sector. The complete set of comments is available to the public in OMB's public docket room: Room 3201, New Executive Office Building, 725 17th St., NW., Washington, DC 20503 (Telephone (202) 395-6880).

OMB intends to announce the final MSA standards for the 1990's before April 1, 1990.

Background: OMB defines metropolitan statistical areas (MSAs) as part of its statistical policy responsibilities under the Paperwork Reduction Act (5 USC 1320). The concept of an MSA is an area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus. MSAs are composed of whole counties, except in New England where they are defined by city and town. The current standards also specify that an MSA of more than one million population that meets certain other specified requirements will be termed a "Consolidated Metropolitan Statistical Area" (CMSA), consisting of major components recognized as "Primary Metropolitan Statistical Areas" (PMSAs). In addition, OMB defines New England county metropolitan areas (NECMAs).

The MSA standards were first used for the 1950 census and have been reviewed at the time of each decennial census since then. The 1980 MSA standards published in the Federal Register (45 FR 956, January 3, 1980) are being reviewed now. OMB intends the 1990 MSA standards to be similar to the 1980 MSA standards, except where we have specifically noted a possible change in the section that follows called "Summary of Comments." After the June 1992 announcement defining MSAs for the 1990's, based on the 1990 MSA standards and the 1990 census results, the determinations will not be reviewed again until after the 2000 census, except for selected changes as specified in the section on intercensal updating.

Summary of Comments

General Comments

1. *Issue:* The present terminology is confusing and should be clarified. The term MSA can mean either the whole set of areas defined under the standard, or just those whose label is "MSA"—those metropolitan areas that are free-standing and not included in any CMSA.

Response: OMB is considering using the term "Metropolitan Areas (MAs)" as the generic descriptor for the overall system, and using CMSAs, PMSAs, and MSAs to identify different kinds of individual areas.

2. *Issue:* A concise statement of the metropolitan area concept is needed.

Response: The general concept of a metropolitan area is that of a geographic area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus. Some areas are defined around two or more nuclei.

A standard set of metropolitan areas in the United States is defined by the Office of Management and Budget as part of its statistical policy responsibilities under the Paperwork Reduction Act.

3. *Issue*: State whether the basic concept of an MSA has remained the same since 1950.

Response: The basic concept of an MSA (see Issue 2) has remained the same since these areas were first defined for the 1950 census. However, the specific criteria used to define the area's nucleus and to implement other aspects of the basic concept have been adjusted from time to time to reflect changes that have occurred in national settlement and commuting patterns, and to maintain definitions that are relatively consistent. After the post-1990 redefinition we intend to address the issue of whether more extensive changes are needed in the procedures for defining metropolitan areas.

4. *Issue*: Provide the official OMB definition, if any, of nonmetropolitan areas.

Response: OMB is responsible for defining metropolitan areas for Federal statistics. Any territory not included in a metropolitan area is referred to as nonmetropolitan. Other Federal agencies may classify the territory outside of metropolitan areas for their own statistical or program purposes; for example, the Bureau of Labor Statistics of the Department of Labor classifies areas outside of MSAs into individual small labor market areas for purposes of estimating labor force and unemployment.

5. *Issue*: Consider returning to a simplier metropolitan classification system.

Response: A system of CMSA/PMSA/MSA classification will continue for 1990. The current system was adopted in 1980, following a review of changes in the distribution patterns of the population since the inception of the formal definitions in 1950, and in response to the data requirements of an increasingly sophisticated data-using public.

6. *Issue*: The MSA standards should emphasize consistency.

Response: OMB assigns a high priority to maintaining the consistency of the metropolitan area concept as presented in the standards over the past 40 years. However, definitional consistency cannot equate to geographic stability. Metropolitan areas are expanded (or contracted, or combined) to reflect growth or change over time.

7. *Issue*: Consider alternative methods for determining when MSAs, central cities, or outlying counties should be disqualified, such as:

A. Disqualifying areas only after two successive censuses show them failing to meet the required thresholds.

B. Adopting lower thresholds for retention than those applicable for initial qualification.

C. Eliminate all "grandfathering" criteria that retain previously qualifying areas; delete any area that does not meet the current standards as soon as a decennial census shows that to be the case.

Response: We will consider this issue before finalizing the standards for the 1990's. We welcome comments on these or other alternative approaches.

8. *Issue*: OMB should not create new MSAs in one year and then combine them with others two years later, as occurred in 1981–1983.

Response: OMB has two options with regard to the announcement of metropolitan areas after the 1990 census data become available:

A. OMB can announce certain newly qualifying areas in June 1991 based on the Census Bureau's 1990 census population counts and using the 1980 census commuting data, since 1990 commuting data will not yet be available. When metropolitan area configurations using the 1990 census commuting data are announced (scheduled for June 1992) the areas announced in 1991 may be modified. This approach is consistent with the procedure followed after the 1980 census and with OMB's established practice of announcing new areas between decennial censuses when they reach the prerequisite thresholds. In addition, it will allow for the earlier publication of the decennial census data for an expanded set of metropolitan areas. However, it will probably result in the announcement of a few areas that will lose separate recognition and become parts of other areas when the 1990 commuting data become available, as was the case after the 1980 census.

B. OMB can wait to announce all redefinitons of metropolitan areas in the United States until the complete set of 1990 census data becomes available, scheduled for June 1992. This option provides consistency and avoids announcing some areas that will probably have only short-term separate recognition. However, it delays the announcement of any areas that have met the required thresholds in 1991. It will also limit the number of metropolitan areas for which statistics appear in the 1990 census publications.

We invite comments on which redefinition option OMB should adopt in

announcing metropolitan areas after the 1990 census.

9. *Issue:* MSAs should be defined by county in New England as in the rest of the country. Alternatively, the New England approach—defining MSAs in terms of subcounty geographic areas—should be adopted nationwide.

Response: New England MSAs are defined by town (township) and city rather than by whole county due to significant differences from the rest of the country in both administrative functions and settlement patterns. Also, except for New England a wide range of statistics was generally not available below the county level when standard metropolitan areas were first established at the time of the 1950 census, and this is still the case. However, OMB does issue a set of metropolitan definitions in terms of whole counties for New England—the New England County Metropolitan Areas (NECMAs)—for data users who wish to use county units.

Given the continued need for a county-based system, and the existence of the supplemental NECMA classification, OMB intends to maintain the present structure.

10. *Issue:* There is confusion among the terms "merged", "consolidated", and "combined" as used in defining metropolitan areas under the standards.

Response: OMB will clarify the meaning of these different terms in the MSA standards. OMB intends to continue using the term "consolidated" for Consolidated Metropolitan Statistical Areas (CMSAs).

11. *Issue:* The percent of population that is urban is an indicator used to qualify outlying counties of an MSA. If a county is included in an MSA, will it be called "urban"?

Response: OMB does not designate counties as "urban" or "rural," and the Census Bureau definitions of "urban" and "rural" are not made in terms of counties. Some other Federal agencies have designated counties as "urban" for the purposes of certain specific programs.

12. *Issue:* State (1) the mathematical approach to rounding and precision of percentages, densities, and ratios in determining qualification, and (2) the sources of the data.

Response: Percentages, densities, and ratios are expressed to the nearest tenth (one decimal place) and comparisons between them are made on that basis. For example, if a commuting interchange is computed at 19.949 percent, it is to be rounded to 19.9 percent; if the percentage is computed as 19.950, it is to be rounded to 20.0 percent. The proposed use of one decimal place in the 1990 standards replaces the use of two decimal places in the 1980 standards.

The source of the data used in these calculations is the most recent decennial census, except in cases of intercensal updating (see Issue 17).

13. *Issue:* Define what is meant by a "statistical program."

Response: "Statistical program" means the use in the Federal statistical system of all resources required to collect, process, and disseminate quantitative information on the economic and social practices and experiences of the people, businesses, and institutions of the United States.

14. *Issue:* There is no distinction in the standards between statistical and programmatic uses of MSA data.

Response: MSAs are defined by OMB as part of its statistical policy responsibilities under the Paperwork Reduction Act of 1980. OMB Bulletin No. 89-11 states that:

"All agencies that conduct statistical activities to collect and publish data for MSAs should use the most recent definitions of MSAs established by OMB.

"OMB establishes and maintains the definitions of MSAs solely for statistical purposes. In periodically reviewing and revising the MSA definitions, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program."

15. *Issue:* Indicate how OMB obtains comments from the public.

Response: OMB solicits comments from the public on the MSA standards through notices in the Federal Register. OMB also solicits comments from selected organizations and persons interested in this subject.

Local Opinion

16. *Issue:* Define local opinion and its appropriate sources, and state its role in the MSA designation process. Expand local opinion to include views of the business community as expressed by chambers of commerce, planning commissions, etc., directly to OMB rather than through the Congressional delegation.

Response: Local opinion is the reflection of the views of the public on selected matters related to the application of the standards for defining MSAs. In the current MSA standards, local opinion is a factor in:

A. Combining two adjacent MSAs whose central cities are within 25 miles of each other.
B. Identification of PMSAs within CMSAs.
C. Titling PMSAs.
D. Titling CMSAs after identification of the largest city.
E. Assignment of an area that, based on commuting, is eligible for inclusion in more than one area.

We believe the appropriate focal point for local opinion is the Congressional delegation, consisting of the Senators of the State(s) involved and the United States Representatives of the area in question. As part of the 1990 area redefinition process, members of the Congressional delegations will be urged to contact a wide range of groups in their communities, including business or other leaders, chambers of commerce, planning commissions, and local officials to solicit comments on specified issues. After the thresholds in the statistical standards have been met, all pertinent local opinion material received by OMB on these matters will be considered in determining the final definition and title of the area. OMB also will consider any pertinent information that it may receive from other sources on the local opinion issue being considered.

Intercensal Updating

17. *Issue:* Clarify the procedures for intercensal updating of MSA definitions, and discuss the possibility of adding outlying counties between decennial censuses. Other comments stated that frequent redefinitions are an inconvenience.

Response: Procedures to update MSA definitions between censuses will be added to the standards. The scope of intercensal MSA updating is determined primarily by data availability. For example, Bureau of the Census commuting data have not been available between censuses; therefore, definitions based on sections of the standards that rely on commuting data, such as those qualifying outlying counties and those defining CMSAs and PMSAs, have not been updated between censuses.

The following draft for a new section of the MSA standards is published for comment.

Section XX. MSA Changes in Definitions Between Censuses

Definitions: A *Census Count* is a special census conducted by the U.S. Bureau of the Census or a decennial census count updated to reflect annexations and boundary changes since the census.

An *Official Estimate:* is a population estimate issued by the U.S. Bureau of the Census for an intercensal year.

A. *Qualification as an MSA.* A potential MSA qualifies for recognition if:

(1) A city reaches 50,000 population according to a Census Count or Official Estimate.

(2) A nonmetropolitan county containing an urbanized area (UA) defined by the Bureau of the Census at the most recent decennial census reaches 100,000 population according to a Census Count or Official Estimate. If the potential MSA centered on the UA consists of two or more counties, their total population must reach 100,000. In New England, the cities and towns qualifying for the potential MSA must reach a total population of 75,000.

(3) The Census Bureau defines a new UA based on a Census Count after the decennial census, and the potential MSA containing the UA meets the population requirements of Section XX. A(2).

If an MSA is qualified intercensally, the qualification of the MSA must be confirmed by the next decennial census, or the area is disqualified.

B. *Addition of counties.* As a general rule, counties are not added to MSAs between censuses. The only exceptions are:

(1) If a qualified central city extends into a county not included in the MSA and the population of the portion of the city in the county reaches 2,500 according to a Census Count, then the county qualifies as a central county and is added to the MSA.

(2) If an MSA qualified intercensally under Section XX. A meets the requirements of section 6 of the standards for combination with an MSA already recognized, that combination may take place and thereby alter the definition of the existing MSA.

C. *Qualification as a central city.* A Census Count serves to qualify a central city (Section 4) which has failed to qualify solely because its population was smaller than required—for example, it did *not* qualify as the largest city in the MSA (Section 4A), or was below 250,000 (4B), below 25,000 (4C), or below 15,000 (4D). If qualification requires comparison with the population of another city, comparison is made with the latest available Official Estimate or Census Count of the population of the other city.

D. *Area titles.* The title of an MSA, PMSA, or CMSA may be altered to include the name of a place that has newly qualified as a central city on the basis described in Section XX. C, and that also meets the requirements of Section 8. Such a change is made by adding the new name at the end of the existing title, but cannot be made if the title already contains three names. Names in area titles are not resequenced except on the basis of a decennial census.

E. Other aspects of the MSA standard are not subject to change between decennial censuses."

MSA Qualification and Outlying County Qualification

18. *Issue:* Revise the minimum population size for MSA qualification.

A. Raise the minimum qualifying population size from 50,000 to 100,000 for all MSAs.

B. Waive the 100,000 minimum qualifying population size if two or more contiguous cities equal or exceed 50,000 population.

Response: The current criterion qualifies a metropolitan area if it contains an incorporated city of 50,000 or more, regardless of the area's total population. This criterion has been used since the metropolitan area system was first adopted for the 1950 census. when additional areas were recognized after 1980 on the basis of urbanized areas populations of 50,000 or more, regardless of the size of the largest city, a criterion was added to require at least 100,000 total area population in such cases. This population may be the total of one or more counties. We proposed to maintain these criteria for 1990.

The proposal to accept two contiguous cities that exceed 50,000 parallels a provision that was part of the metropolitan area criteria from 1958 to 1971. A somewhat similar provision was in effect from 1971 to 1980. All such provisions in the standards represent attempts to identify the population nucleus around which a metropolitan area is to be defined (see Issues 2 and 3). Over time, the standards have moved away from making this identification in terms of corporate city areas and towards a definition in terms of the extent of urban development. This is because the pre-1980 criteria based on two or more contiguous cities or places often produced inconsistent results, since cities in some States have annexed extensively and are contiguous to others some distance away, while in other States city areas are small. The current criteria provide a much more standard treatment based on urbanized areas, whose boundaries to a large extent do not observe corporate limits. Therefore, the current criteria will not be changed for 1990.

19. *Issue:* A county that meets the existing commuting standards through a combined commuting rate to two or more MSAs should be qualified as an outlying country, even if it does not have qualifying commuting to any MSA individually.

Response: The general concept of an MSA reflected in the standards is that of a geographic area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration, as measured by commuting to the nucleus of the MSA. It would not be consistent with this concept to accept commuting to two or more separate MSAs.

20. *Issue:* Change the qualification requirements for including outlying countries in MSAs.

A. Tighten the requires—for example:

(1) Require counties with 15 to 25 percent of their workers commuting to qualify on all four measures of metropolitan character in Sec. 3A(4), instead of two, and increase the 60 persons per square mile density requirement to 100 per square mile.

(2) Require outlying counties to be at least 50 percent urban, have at least 30 percent commuting, have some urbanized area, and have a minimum population density of 150 persons per square mile.

B. Loosen the requirements—for example:

(1) For an MSA with a central city more than 100 miles from any other central city, allow a county to qualify if it has at least 10 percent commuting, provided there is at least 15 percent commuting from its largest city, population density is at least 60 per square mile, the urban percentage is at least 50, and population grew by at least 20 percent in the past intercensal period or 40 percent over the past two intercensal periods. This change is called for because the unusually large size of many counties in the West makes population density an inappropriate measure.

(2) Include counties in an MSA based on media penetration, for example newspaper circulation.

Response: The current standards for qualifying outlying counties establish specific criteria of metropolitan character, and require counties to meet specified combinations of these, with less restrictive requirements for countries with relatively high rates of commuting. Counties may qualify on the basis of alternative combinations of the criteria (for example, by meeting two out of four specified requirements) because this appears to produce metropolitan definitions that are more consistent from region to region. Requiring outlying counties to meet all these indicators would disqualify a large share of those

now qualified and would present a sharp break with past practice.

OMB must consider the appropriateness of any proposed criterion for a nationally applicable standard. Therefore, it would be inappropriate to adopt individualized rules lacking national applicability. A rule based on distance from other MSA central cities would be hard to maintain as additional cities reach metropolitan size. Newspaper circulation data are unsatisfactory for defining metropolitan areas because many metropolitan newspapers also circulate extensively to rural counties and small cities that lie beyond the actual metropolitan area.

Issue: Base commuting interchange rates on full-time employees only. The increase of part-time workers in the labor force may alter previous commuting patterns.

Response: The number of part-time workers has increased both in the 1970's and the 1980's. However, the effect of this increase on commuting rates needs further study, which we plan to undertake after 1990 census data are available. (See also Issue 3)

22. *Issue:* Exclude military base personnel from the computation of job commuting rates.

Response: Resident military personnel are considered a part of the area's population and labor force and should not be treated separately in the calculations.

23. *Issue:* Exclude from the population density calculations areas unsuitable for habitation, such as national forests, reservoirs, wetlands, military test sites, and the like.

Response: Such areas are part of the county. In many instances such landholdings surround or border settlements of people who depend on them for employment and who might otherwise not live in the area.

Central Cities

24. *Issue:* Central cities are not adequately identified by commuting and minimum population standards. These standards should be waived or modified, particularly for previously qualified central cities.

Response: In the 1980 MSA standards, OMB specified two commuting requirements as a means of more clearly identifying which cities were functioning as centers of metropolitan areas. OMB believes population size, combined with the commuting standards, can continue to provide a valid basis for determining which cities are functioning as central cities. (See Issue 7)

25. *Issue:* Do not delete central cities with urban stress conditions or with high minority populations. Consider cultural and social dominance as well as (or in lieu of) other factors. Add tests on population density or percent minority population to the criteria to determine central cities.

Response: Central cities are defined in terms of population size and commuting standards. Urban stress or high minority populations are not unique to central cities of metropolitan areas. The revision of the 1990 standards will not modify the qualification requirements with respect to these issues. (Also see Issue 3)

26. *Issue:* Retain all previously qualified central cities when MSAs merge.

Response: When MSAs meet the criteria for merger, a city that was large enough for central city status in the previous MSA may not meet the required 25,000 or one-third population size to be a central city in the larger area, even though it may continue to meet the commuting requirements. The purpose of the standards is to provide a current depiction of each metropolitan area and the most prominent cities in the enlarged area. It is not appropriate to retain central cities simply because they were previously qualified. However, we will review whether it might be appropriate to establish different thresholds for qualification and for disqualification (also see Issue 7).

27. *Issue:* Consider qualifying as MSAs areas that meet the standards although lacking an incorporated central city.

Response: The Census Bureau is proposing to change its 1990 urbanized area (UA) criteria to permit delineation of UAs without incorporated places; the main population cluster would then be called the "central place" of the UA rather than "central city". Towns in New England (and towns and townships in other States where such units may have municipal-type functions) are eligible under the existing MSA standards for central city status under Section 4 if their population is essentially all urban. Assuming this change in the UA criteria becomes effective, OMB may designate one or more MSAs with no incorporated city, but with a central community of this type. We welcome comments as to whether the "central city" in such an area should be the entire town or township, or only the core community. In the unlikely event of a UA qualifying in a State where there are no governmentally functioning county subdivisions (towns or townships), the "central place" would be only the core unincorporated community.

28. *Issue:* Central cities should be classified into "principal" and "outlying."

Response: OMB does not plan to make this change. Central cities will remain a single category for the MSA standards of the 1990's. (Also see Issue 3)

29. *Issue:* A PMSA should have a single central city if there is a very large population difference (for example, two million or more) between the largest and second largest qualifying cities.

Response: If a minimum population criterion has been met (in the standards, generally 25,000), a city may have strong enough centrality as measured by the requirements of Section 4C of the MSA standards to be designated as central. (Also see Issue 3)

Titles

30. *Issue:* State how area titles are determined under the current standards, and whether city and county names can be reflected in the same title.

Response: Area titles should be indicative of the major communities of the area, preferably the central city(ies), and be recognizable to the user. To be included in a title, a city must qualify as a central city under the MSA standards. There may be up to three names in a title. MSA titles use only city names.

PMSA titles may use city names or county names since some PMSAs do not include a qualifying central city. However, in order to avoid ambiguity, OMB will not combine the names of both cities and counties in a single PMSA title. Local opinion is a factor in determining PMSA titles.

Under the current standards, CMSA titles begin with the name of the CMSA's largest central city. This is generally followed by the first city name appearing in the title of each of the next two largest PMSAs. A regional designation may be substituted for the second and/or third name in a title if there is strong local support and the proposed designation is suitable and unambiguous. Local opinion is a factor in determining CMSA titles.

31. *Issue:* State whether a city must be a CMSA central city in order to be in a PMSA title.

Response: The central city concept is integral to the MSA concept; a city must qualify under the standards as central if its name is to appear in any area title.

32. *Issue:* Specify proposed changes in the titling of MSAs.

Response: OMB is considering changing section 8A(1) of the existing standards to base secondary central cities in titles on population only (deleting the reference to work force); and also is considering replacing section

8A(3) with a provision that would allow local opinion to add a second or third central city to the title, even if that city does not meet the one-third population requirement.

Section 8 on Titles of Metropolitan Statistical Areas would read as follows:

A. The title of a metropolitan statistical area assigned to Level B, C, and D includes the name of the largest central city, and up to two additional names:

(1) The name of each additional city with a population of at least 250,000;

(2) The names of additional cities qualified as central cities by Section 4, provided each is at least one-third as large as the largest central city;

(3) The names of other central cities (up to the maximum of two additional names) if local opinion supports the resulting title.

B. An area title that includes the names of more than one city begins with the name of the largest city and lists the other cities in order of their population according to the most recent national census.*

C. In addition to city names, the title contains the name of each State in which the metropolitan statistical area is located.

OMB welcomes comments on this proposal.

33. *Issue:* Changes in titles and Federal Information Processing Standards (FIPS) codes cause problems for users, especially for those making historical data comparisons.

Response: Changes in the initial name in MSA titles are infrequent. Under the present standards, if a city qualifies as a central city and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population *and* the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

However, title changes may occur from time to time. If the initial name in a title changes, the FIPS code will be changed to reflect the position of the new title in the alphabet.

CMSA/PMSA

34. *Issue:* Change the required level of commuting interchange between adjacent MSAs for consolidation of the areas.

A. Tighten requirements—for example:

(1) Require evidence of a higher order of economic relationships before qualifying areas as consolidated.

(2) Do not allow consolidation unless there is at least 15 percent interchange; allowing 10 percent interchange to qualify if urbanized areas are contiguous is unsatisfactory in more densely populated areas.

B. Loosen requirements—for example:

(1) Allow a specified amount of interchange, such as 100,000, to qualify instead of requiring a specified percentage; consider requiring different base amounts depending on the population of the areas.

(2) Allow consolidation if there is an interchange of at least 10 percent.

Response: The current standards for consolidation require a commuting interchange (the total of workers who live in either of the areas but work in the other) of at least 15 percent of the number of workers living in the smaller of the two areas. If the central cities are located in the same urbanized area, or if the urbanized areas are contiguous, a commuting interchange of 10 percent is sufficient for consolidation. These standards have worked satisfactorily and will be continued.

OMB will continue to use percentages rather than absolute amounts of commuting for qualification because they provide comparability for areas of varying population size.

35. *Issue:* State what limits exist, if any, on the number and geographic extent of MSA mergers and consolidations into "super areas."

Response: The procedures used for the consolidation of MSAs generally preclude the designation of "chains" of areas as CMSAs (for example, from Boston to Washington). Further, any case in which such a chain might emerge would be subject to special review. All current CMSAs are focused either on a single dominant nucleus or on a pair of nuclei.

36. *Issue:* Define central counties on the basis of a single urbanized area and do not reflect other urbanized areas that may be nearby.

Response: Central counties are defined in the standards as the basis for determining the area to which commuting from outlying counties is measured. Any separate urbanized area may give rise to a separate MSA, but once the county containing such an urbanized area has commuting ties with the central county of another area sufficient for it to qualify under the outlying county requirements, the two become merged as a single MSA with two central counties. This ensures that any outlying county with qualifying commuting to either of the central counties or to the two central counties combined will qualify for the enlarged MSA.

37. *Issue:* Raise from 60 to 75 the percent urban requirement for a county to be considered for forming a new PMSA.

Response: The percent urban requirement for designating PMSAs is the same as for consolidating adjacent MSAs. When consolidated statistical areas were established in 1975, a 75 percent urban population was a prerequisite. This figure was lowered to 60 percent in the 1980 standards after a detailed inspection indicated that this would be a more realistic figure. The 60 percent criterion standard will be retained for 1990.

38. *Issue:* In the criteria for qualifying as a core county of a PMSA (Sec. 9 of the standards), requiring less than 35 percent of a county's workers to work outside the county is too low; this cutoff should be raised to 50 percent.

Response: The cutoff in the present PMSA standards will be maintained in the 1990 MSA standards.

39. *Issue:* When an interim MSA adjoins more than one potential CMSA, give preference to including it with an area in its own State.

Response: The MSA standards for determining when adjacent areas should be consolidated (Section 5) are designed to treat such situations consistently and give chief emphasis to the relative commuting ties between the areas.

40. *Issue:* State whether the presence of a small part of a central city in a county precludes that county from separate PMSA status.

Response: For PMSAs other than the one containing the largest central city, the 1980 MSA standards include a criterion that a county may not contain any part of the largest central city of the Level A MSA. We propose to maintain this criterion in the 1990 standards.

41. *Issue:* Change the rules for sequencing central city names in a CMSA title so that the largest central city of the largest PMSA is the first name.

Response: The current standards require the designation of the city with the largest population in the CMSA as the first city in the CMSA title and we propose to maintain this criterion in the 1990 MSA standards.

42. *Issue:* Indicate whether the identification and definition of PMSAs are reviewed every decade by OMB, and whether CMSA/PMSA configurations will be reviewed by the appropriate Congresional delegation before announcing redefinitions after the 1990 census.

Response: All MSAs with a population of at least one million (Level A MSAs) will be reviewed by OMB to

* If a city qualifies as a central city under Section 4, and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population and the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

determine whether two or more PMSAs can be identified according to the standards. This review will include existing as well as potential new areas. In areas where PMSAs could qualify, OMB will write to the appropriate Congressional delegation to obtain local opinion as part of the review of possible PMSA configurations. After OMB has considered local opinion and made a decision on a particular matter, local opinion on the same question will not be considered again until after the next decennial census.

43. *Issue:* Do not break up CMSAs into PMSAs unless the expressed local opinion to do so is broadly based.

Response: After MSAs are defined, they are classified based on total population. MSAs of one million or more are categorized as Level A and are reviewed to see if they contain any areas that could qualify as PMSAs. Local opinion is sought before any PMSAs are qualified; this local opinion should be broadly based and is obtained through the Congressional delegation. If no PMSAs are designated, the area remains an MSA.

Availability of Revised MSA Standards

44. *Issue:* Send copies of the revised MSA standards, when available, to the parties that provided comments based on the **Federal Register** notice.

Response: OMB will publish the revised MSA standards in the **Federal Register** by April 1, 1990, and will make copies available to individual parties that request them. OMB will send copies of the present Notice to persons that commented.

James B. MacRae, Jr.,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-19393 Filed 8-17-89; 8:45 am]

BILLING CODE 3110-01-M

RESOLUTION TRUST CORPORATION

Establishment of the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation.

ACTION: Notice of establishment.

SUMMARY: This action provides notice of the establishment of the Resolution Trust Corporation. This notice is published pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Acting Executive Secretary of the Resolution Trust Corporation, 202-898-3811.

SUPPLEMENTARY INFORMATION: As of August 9, 1989, the Resolution Trust Corporation is established as an agency of the United States, when acting as a corporation, for purposes of subchapter II of chapter 5 and chapter 7 of title 5 of the United States Code pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73.

The duties of the Corporation shall be to carry out a program, under the general oversight of the Oversight Board (an instrumentality of the United States established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) and through the Federal Deposit Insurance Corporation, including managing and resolving all cases involving depository institutions, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989, the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and for which a conservator or receiver had been appointed at any time during the period beginning January 1, 1989, and ending on August 9, 1989, or is appointed within the three-year period beginning on August 9, 1989. The Corporation will also manage the Federal Asset Disposition Association, subject to the provisions of the Act. The Corporation shall terminate not later than December 31, 1996.

Dated: August 9, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 89-19400 Filed 8-17-89; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27122; File No. SR-DTC-89-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Company Relating to Modification to Interim Accounting Procedure for Special Cash Distributions

August 10, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 26, 1989 the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below (SR-DTC-89-13). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1981).

I. Description of the Rule Change

The proposed rule change would modify DTC's interim accounting procedures for the allocation of large cash distributions and extraordinary cash dividends ("special cash distributions") so that all payments relating to such cash distributions can be allocated by DTC on the payable date (if DTC has received a timely payment from the issuer). In addition, DTC will continue to apply the interim accounting procedure during the period from the day after payable date through the due bill redemption date and, on a daily basis, DTC will allocate the special cash distribution (by debit and credit to money settlement accounts) to participants receiving deliveries during that period.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission 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 its filing DTC states that participants have to deliver due-bills and make payments on the due-bills outside of DTC for trades settling from the payable date to the due-bill redemption date. According to DTC this procedure has been burdensome to participants.

According to DTC, the purpose of the proposed rule change is to promote the efficient settlement of trades involving due-bill payments so that special cash distributions can be made within DTC. DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to DTC. DTC further represents that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that DTC does not believe that the proposed rule changes will have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [2] and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

You 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File number SR–DTC–89–13 and should be submitted by September 8, 1989.

[2] 15 U.S.C. 78s(b)(3) (1981).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19483 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27126; File No. SR–MSTC–89–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company relating to an Input Error Correction Fee for Automated Transfers Submitted Inaccurately

August 11, 1989.

Pursuant to section 18(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1989 the Midwest Securities 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

Midwest Securities Trust Company ("MSTC") proposes to institute a $5.00 input error correction charge for automated transfers submitted inaccurately and requiring modification. In addition, MSTC has included in its filing an outline of formats and guidelines to be used by Participants when submitting transfer instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since the automation of transfer processing by transfer agents, MSTC has been faced with an increased number of transfer rejects, requiring registration reformatting, slower turn-around time and increased costs.

In an effort to minimize these problems, MSTC will assess a $5.00 input error correction charge for each transfer which requires a correction, along with any transfer agent reject costs. If the information necessary for an adjustment is not readily available, MSTC will contact the Participant and allow a 24-hour response time. If no reply is received, MSTC will cancel the transfer request and assess the $5.00 input error correction charge. MSTC will provide Participants with copies of the transfer instruction which required reformatting on the last business day of each month.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–MSTC–89–06 and should be submitted by September 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19484 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27114; File No. SR–NYSE–89–07]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Maximum Quote Spreads By Specialists and Competitive Options Traders

On June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Exchange Rules 750 and 758 relating to the requirement of competitive options traders ("COTs") and specialists to maintain certain bid/ask spreads.

The proposed rule change was noticed in Securities Exchange Act Release No. 26971 (June 23, 1989), 54 FR 26197 (July 5, 1989). No comments were received on the proposed rule change.

Currently, pursuant to NYSE Rule 758, COTs must bid and/or offer so as to create differentials of no more than 1/4 of $1 between the bid and the offer for each option contract for which the last preceding transaction price was $.50 or less, no more than 1/2 of $1 where the last preceding transaction price was more than $.50 but did not exceed $10, no more than 3/4 of $1 where the last preceding transaction price was more than $10 but less than $20, and no more than $1 where the last preceding transaction price was $20 or more.

The proposed modifications to NYSE Rule 758 narrows the bid/ask differentials for those options contracts for which the last preceding transaction price was less than $10. Pursuant to the proposed rule change COTs must bid and/or offer so as to create differentials of no more than 1/4 of $1 between the bid and the offer for each option contract for which the last preceding transaction price was less than $1, no more then 3/8 of $1 where the last preceding transaction price was $1 or more but less than $5, and no more than 1/2 of $1 where the last preceding transaction price was $5 or more but less than $10. The proposed rule change, however, retains the maximum bid/ask spreads currently applicable to option contracts for which the last preceding transaction price was between $10 and $20 and those option contracts for which the last preceding transaction price was more than $20.

In addition, the proposed rule change modifies NYSE Rule 750 by applying the NYSE Rule 758 obligation of COTs to maintain bid/ask differentials to specialists bidding and/or offering for their own accounts.

The NYSE states that the proposed rule change is designed to enhance the quality of the Exchange's options market by requiring narrower price differentials between bids and offers and clarifying the applicability of the quotation differential requirements to regular options specialists. The NYSE states further that the proposed rule change will produce Exchange options quotations that are more reflective of current market conditions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder. Specifically, the commission believes that narrowing the maximum allowable bid-ask differentials for options contracts for which the last preceding transaction price was less than $10 will benefit public customers by improving price continuity and providing tighter, more liquid markets. The Commission believes also that modifying NYSE Rule 758 concerning bid/ask differentials so as to conform with existing trading practices regarding such bid/ask differentials should eliminate any possible investor confusion. In addition, the Commission believes that modifying NYSE Rule 750 to apply the NYSE Rule 758 obligation of COTs to maintain minimum bid/ask differentials to specialists bidding and/or offering for their own accounts is a logical and necessary step in ensuring that quotations remain within the maximum bid/ask limits. Specialists are the primary market makers in their options, and should be charged with the obligation to maintain narrow quotes. Finally, the Commission previously approved a substantially identical proposed rule change by the Philadelphia Stock Exchange, Inc., and incorporates the reasoning in that approval order into this order.[4]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19485 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27130; File No. SR–OCC–89–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Require Clearing Members to Submit Data and Other Items Through the Clearing Management and Control System

August 11, 1989.

On June 7, 1989, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–89–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the Federal Register of July 6, 1989.[2] No comments were

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] 15 U.S.C. 78f (1982).

[4] *See* Securities Exchange Act Release No. 21468 (May 18, 1987), 52 FR 19618 (May 26, 1987).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] Securities Exchange Act Release No. 26975 (June 26, 1989), 54 FR 28537 (July 6, 1989).

received. As discussed below, the Securities and Exchange Commission ("Commission") is approving the proposed rule change.

The proposed rule amends OCC's Rule 206.04 giving OCC the option to require clearing members to submit reports, notices, instructions, options clearance and settlement data and other items directly to OCC, through the on-line data entry system known as Clearing Management and Control Systems ("C/MACS").[3] A participant using this on-line data entry system must purchase or lease hardware, or use currently owned qualifying equipment, consisting of two display terminals and one printer to produce "hard-copy" documents.

Notwithstanding these additional costs, OCC indicates that 112 of its clearing members interface with OCC through C/MACS, representing 70% of total cleared volume.[4] OCC further asserts that mandating clearing member use of C/MACS would position OCC for future technological enhancements, eliminate data entry risk and reduce paper and printer costs. Finally OCC represents that C/MACS has the capacity and the capability to take in and handle the participation increase resulting from the approval of this proposal.[5]

The Commission believes that OCC's proposal is consistent with section 17A of the Act[6] because it will require all of its participants to use more effective data processing and communications techniques. This requirement, in turn, will promote safer and more efficient procedures for the clearance and setlement of options.[7]

As the Commission has stated before, C/MACS improves the timeliness and efficiency of OCC's operations while reducing the time and costs of processing options transactions.[8] C/MACS, moreover, has sophisticated security measures that will reduce the risk of unauthorized access[9] while, at the same time, it creates "a detailed data bank that should assist clearing members to monitor members' transactions and to meet their regulatory responsibilities."[10]

The requirement that all members use C/MACS to submit their options clearance and settlement data will extend the benefits of C/MACS to the totality of OCC's clearance and settlement system. This will translate into a generalized reduction of processing costs and a substantial decrease in technical as well as security risks.[11] The compulsory nature of the proposed expansion, however, will require additional expenditures by persons contemplating participation in OCC and by participants who do not currently submit data via C/MACS, in order to cover the costs associated with the purchase and maintenance of the equipment necessary to connect with C/MACS.[12] The Commission, however, does not believe that, given the increasing public familiarity with computer systems, such additional costs reflect an unnecessary cost burden for OCC participants or for those contemplating participation in OCC.

With respect to potential participants, in particular, terminal equipment expenses are not the only expenses they must pay. In fact, such expenses are a relatively insignificant factor affecting participation decisions, when measured against other expenses such as, clearing fund contributions and account maintenance fees.[13] The Commission believes instead that the benefits associated with C/MACS will increase small clearing member market participation to the benefit of the options market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–OCC–89–05) be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegatged authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19486 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

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[3] For a description of C/MACS' operational capabilities see Securities Exchange Act Release No. 20983 (May 22, 1984), 49 FR 22427 (May 29, 1984) (Approving OCC's proposal to establish C/MACS).

[4] Form 19b–4 filed in support of proposed rule change, p. 3.

[5] Letter from James C. Young, Assistant Vice President and Deputy General Counsel OCC, to Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission (August 10, 1989).

[6] 15 U.S.C. 78q–1 (1981).

[7] *See specifically* section 17A (a)(1)(C) of the Act, 15 U.S.C. 78q–1(a)(1)(C) (1981).

[8] Securities Exchange Act Release No. 20983, *supra* note 3, at 22429.

[9] *Id.; see also* Securities Exchange Act Release No. 22939 (February 24, 1986), 51 FR 7172 (February 28, 1986) (Approving OCC's procedures to enable clearing members to access C/MACS via ordinary telephone lines ["dial-up"] rather than by dedicated lines, and reaffirming the Commission's position that C/MACS "contains elaborate safeguards that should protect adequately funds, securities and data," at 7172 [footnote omitted].)

[10] Securities Exchange Act Release No. 20983, *supra* note 2, at 22429.

[11] An important consideration in reaching this conclusion is C/MACS operational and safety record. OCC has not had any significant operational or security problems with respect to C/MACS since its inception in 1984. Letter from James C. Young, *supra* note 5.

[12] In order to connect with C/MACS a participant must own a compatible personal computer ("PC") and a printer. A participant must also pay $1,590.00 plus tax and shipment cost for the software necessary to communicate with C/MACS. In addition, a participant must pay a $200.00 monthly subscription fee.

OCC intends to file a rule proposal that would enable it to increase membership fees from the current $2,000.00 to $4,000.00. The $2,000.00 difference would cover the cost of the software. Therefore, if the proposed rule change is filed and approved by the Commission, a new participant would have to pay only the cost of the hardware and the monthly subscription fee, in addition to membership fees and any other ordinary cost associated with membership.

[13] *See* Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966, 967 (January 6, 1984). (Using similar analysis to discuss the extent to which the burden of costs associated with computer terminal equipment affected decisions by dual clearing agency participants).

[34–27131; File No. SR–MSTC–89–05]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to Institutional Participant Service Programs

August 11, 1989.

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 July 31, 1989 the Midwest Securities 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 interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSTC's rules as summarized in II.A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change*

The proposed rule change formally establishes the Institutional Participant Services Program. The Program is designed to provide book-entry settlement, safekeeping and other depository services on behalf of Institutional Participants. Institutional Participants are defined generally as institutions who maintain an account with MSTC pursuant to the rules and the Institutional Participant Services Program.

Institutional Participants must meet those qualifications for MSTC participation set forth in MSTC article V, rule 1, section 1. That section generally limits MSTC participation to, among others, SEC-registered broker-dealers; Federal or state supervised or regulated banks, savings and loan associations or trust companies; state supervised or regulated insurance companies; SEC-registered investment companies; and other qualifying persons, funds or entities.

Institutional Participants must meet the foregoing requirements, as well as certain other specific financial and reporting qualifications. For example, Institutions subject to state, federal or other governmental regulation must provide MSTC with copies of all financial reports submitted to regulatory authorities. Institutions not subject to such regulation, or if not required to file financial reports with regulatory authorities, must provide MSTC with copies of unaudited quarterly financial statements and audited annual financial statements.

An Institutional Participant must also promptly advise MSTC of any decreases of 10% or more in its net assets, or its revenue or income, during any period.

MSTC may, in its discretion, require Institutions to provide financial statements on a more frequent basis. MSTC may also request such other financial information necessary to assure itself that an Institution's financial condition and performance, including information as to the level and quality of earnings and other generally accepted measures of liquidity, capital adequacy and profitability, do not create undue risks to MSTC, Participants or other Institutional Participants.

The proposed rule also requires that each applicant to become an Institutional Participant demonstrate (to MSTC's satisfaction) (i) sufficient operational capability to utilize the services of MSTC, and (ii) sufficient personnel, operational capability, and physical facilties necessary to fulfill its obligations to MSTC.

In addition, Institutional Participants must (i) have an established business history of a minimum of one year or personnel with sufficient operational background and experience to ensure its ability to conduct business with MSTC, and (ii) maintain a minimum of $5 million in net assets, either directly or under management. Any applicant with less than $5 million may be admitted, but must demonstrate to MSTC's satisfaction (through a demonstrated plan or other documentation) that its net assets (or net assets under management) will reach $5 million within one year of admission as a Participant.

Finally, with respect to MSTC's rules, the proposed rule changes amend MSTC's loss recovery procedures in the case of losses incurred as a result of Participant defaults. Under MSTC's present article VI, rule 2, section 4, if MSTC incurs a loss in excess of a Participant's contribution to the Participants Fund by reason of such Participant's default, the unrecovered portion of such loss (not recovered through insurance) may be made good from the Contingency Reserve Fund, the Participants Fund or existing undivided profits and retained earnings, at the election of MSTC.

The proposed rule change amends article VI, rule 2, section 4 to provide that MSTC will limit assessments of contributions to the Participants Fund of non-defaulting Institutional Participants to cover losses arising from defaults by Institutional Participants; MSTC will also limit assessments of contributions of non-defaulting non-Institutional Participants to cover losses arising from defaults by non-Institutional Participants. An exception is made if the loss resulted from Participant defaults involving a transaction or transactions between an Institutional Participant and a non-Institutional Participant. In this scenario, MSTC may assess the contributions to the Participants Fund of both Institutional Participants and non-Institutional Participants.

The foregoing rule changes regarding Participants Fund assessments and allocation of potential losses are designed to balance the statutory goals of promoting prompt and accurate clearance and settlement of securities transactions (by encouraging participation by Institutions) and the equitable allocation of dues, fees and other charges. The different treatment in potential assessments also reflects MSTC's analysis of risks by both Institutional and non-Institutional Participants. For example, the proposed rules impose specific risk reduction requirements on Institutions that are similarly not imposed on non-Institutional Participants, including requirements relating to minimum net assets, financial reporting, operational background and experience, and business history. The changes also recognize that Institutions will receive specific specialized services, including the appointment of an individual account administrator to assist in monitoring account activity.

Contributions to the Participants Fund of both Institutional Participants and non-Institutional Participants are subject to potential assessments in all other cases not involving Participant defaults, including losses resulting from larceny, embezzlement, or insolvency of a depository (see MSTC article VI, rule 2, sections 5 and 6).

The rule change also contains a Description of Institutional Participants' Services, which are submitted in the form of proposed Procedures. The Description of Services describes the specialized services offered to Institutions, including:

Income Collection. Institutional Participants will receive cash dividend and interest payments on payable date, regardless of whether the funds are collected from the Issuer or Paying Agent by payable date. However, MSTC will reserve the right under article III, rule 1, sections 3 and 4 to reverse credits within specified timeframes in the case of issuer or paying agent defaults. MSTC also reserves the right to defer credit of dividend and interest income until such amounts have been received from the paying agent or issuer if MSTC believes or is concerned that the paying agent or issuer will default or fail to make prompt payment on payable date or anticipated amounts due from the paying agent or issuer are in excess of amounts available or prudent for advance on payable date.

Customer Support. Each Institution will be assigned an individual account administrator. This account administrator will actively assist the Institution in monitoring account activity and handling daily operational inquiries. The administrator will also assist the Institution in processing or resolving certain activities including unusual or unanticipated account activity or securities deliveries.

Annual Operational Review. MSTC will provide each Institution with an annual operational review. Institutions will receive a written report regarding the effectiveness of depository utilization and, if appropriate, MSTC will make cost reduction or securities processing recommendations.

Finally, the proposed rule change sets forth a Fee Schedule for the Institutional Participants' Services Program. The schedule is structured in several board areas, including specific fees for Account Maintenance, Safekeeping, Book-Entry Transactions, Physical Transactions, Dividend Reinvestment Programs etc. The fees incorporate MSTC's development efforts in establishing the Institutional Participant Services Program and recognize MSTC's provision of specialized services to Institutions, including Income Collection, Customer Support and Annual Operational Review. The schedule, uniformly charged to Institutions depending on volume and activity, is also intended to compensate MSTC for the increased monitoring of Institutional Participants and related account activity.

MSTC believes that the proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it (i) provides for direct depository and clearing agency participation by insurance companies, investment companies and other qualifying institutions, (ii) promotes the prompt and accurate clearance and settlement of securities transactions in the National Clearance and Settlement System by qualifying institutions, and (iii) provides for the equitable allocation of fees for services for such Institutions.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.*

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

MSTC has not received any comments from Participants 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 its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 & 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 provision 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 made available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MSTC-89-05 and should be submitted by September 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19487 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27128; File No. SR-OCC-89-06]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

August 11, 1989.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 20, 1989, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change. The proposal would amend OCC's Canadian margin and clearing fund depository receipt forms ("Canadian Receipts").[1] The proposal also would amend OCC's United States margin and clearing fund depository receipt forms ("U.S. Receipts") to conform those receipts to proposed Canadian Receipts. The Commission is publishing this notice to solicit comment on the proposal from interested persons.

The proposal would amend Canadian and U.S. Receipts in several ways. First, the words "And Security Agreement" would be added to the title of those receipts. Second, Canadian Receipts would specify that depositories holding securities under the receipts are acting on behalf of OCC as OCC's agent rather than as agent for the depositing clearing member and that the depositing clearing member has directed the depository to act in such capacity. U.S. Receipts would contain similar language except they would not specify that the depository is not acting as agent for the depositing clearing member. U.S. Receipts also would specify that deposited securities have been pledged, assigned, and transferred to OCC by the depositing member. Third, Canadian and U.S. Receipts would specify that depositories must segregate property held under the receipts from all other property held by the depository "in any other capacity." Fourth, Canadian Receipts would specify that "As continuing security for all existing and future indebtedness and obligations of the (depositing) member to OCC, the (depositing) member hereby pledges, charges, and grants a first, fixed, and specific security interest to and in favor of (OCC) in (securities deposited under the receipt) and any proceeds thereof." U.S. Receipts would contain similar language except they would use the words "pledges, assigns, and transfers" instead of "pledges, charges, and grants" and the security interest granted would not be specified as "first, fixed, and specific." Fifth, Canadian and U.S. Receipts would specify that OCC's ability to liquidate deposited securities is subject to "applicable law" and is a power OCC may exercise in "its own right." Finally, the words "attorneys' fees" would be replaced with "counsel fees (on a solicitor and his own client basis)" in a provision of the Canadian Receipts describing a clearing member's duty to compsensate a depository in connection with litigation. A reference to "counsel fees" would be eliminated in a comparable provision of the U.S. Receipts.

[1] On April 22, 1988, the Commission approved an OCC proposal permitting members to deposit securities issued or guaranteed by the Canadian government ("Canadian government securities") for OCC margin and clearing fund purposes. OCC accepts pledges of Canadian government securities in the form of a depository receipt or confirmation from its clearing banks that Canadian government securities have been pledged through an EDP Pledge System. *See* Securities Exchange Act Release No. 25810 (April 22, 1988), 53 FR 15323.

OCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act. Specifically, OCC believes the proposal is designed to assure the safeguarding of securities and funds in OCC's custody or control by enhancing OCC's lien under Canadian law on securities deposited pursuant to Canadian Receipts. OCC further believes the amendments to U.S. Receipts are necessary to conform those receipts to the proposed Canadian Receipts.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–OCC–89–08.

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 (SR–OCC–89–08) and of any subsequent amendments also will be available for inspection and copying at OCC's principal office. All submissions to file number (SR–OCC–89–08) should be submitted by September 8, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19488 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 11, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number 46436

Date Filed: August 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 7, 1989.

Description: Application of The National Airline Commission of Papua New Guinea, t/a Air Niuguni, pursuant to Section 402 of the Act and Subpart Q of the Regulations requests that it be issued a foreign air carrier permit authorizing it to engage in foreign transportation between Guam and Port Moresby, New Guinea.

Docket No. 46440

Date Filed: August 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1989.

Description: Application of Continental Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests renewal of its certificate for Route 470 authorizing foreign air transportation of persons, property and mail between Houston and Dallas/Ft. Worth, Calgary and Edmonton, Alberta, Canada, and Anchorage and Fairbanks, Alaska.

Docket No. 45611

Date Filed: August 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1989.

Description: Application of United Parcel Service Co. pursuant to Section 401 of the Act and Subpart Q of the Regulations request an amendment to its certificate of public convenience and necessity so as to authorize scheduled all-cargo foreign air transportation to additional countries.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–19402 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map; Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Chicago for Chicago O'Hare International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chicago O'Hare International Airport are in compliance with applicable requirements of Part 150, effective August 7, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or

proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the city of Chicago. The specific maps under consideration are the noise exposure maps: Existing (1988) Noise Exposure Map, Exhibit E–1 and Future (1993) Noise Exposure Map, Exhibit E–2 (both showing unabated contours), located in Appendix E of the submission. The FAA has determined that these maps for Chicago O'Hare International Airport are in compliance with applicable requirements. This determination is effective on August 7, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 268, Des Plaines Illinois 60018

Department of Aviation, City of Chicago, 20 North Clark Street, Suite 3000, Chicago, Illinois 60602.

Also, copies of the Noise Exposure Map document are available at the following public libraries:

Elmwood Park Public Library, Four Conti Parkway, Elmwood Park, Illinois 60635

Franklin Park Public Library, 10311 Grand Avenue, Franklin Park, Illinois 61031

Glenview Public Library, 1930 Glenview Road, Glenview, Illinois 60025

Eisenhower Public Library, 4652 North Olcott, Harwood Heights, Illinois 60656

Palatine Public Library, 500 North Benton Street, Palatine, Illinois 60067

Park Ridge Public Library, 20 South Prospect Avenue, Park Ridge, Illinois 60068

River Grove Public Library, 8638 West Grand Avenue, River Grove, Illinois 60171

Itasca Community Library, 500 West Irving Park Road, Itasca, Illinois 60143

Lombard Public Library, 110 West Maple Street, Lombard, Illinois 60148

Melrose Park Public Library, 801 North Broadway, Melrose Park, Illinois 60160

Mount Prospect Public Library, 10 South Emerson Street, Mount Prospect, Illinois 60056

Niles Public Library, 6960 Oakton Street, Niles, Illinois 60648

Northlake Public Library, 231 North Wolf Road, Northlake, Illinois 60164

Rolling Meadows Public Library, 3110 Martin Lane, Rolling Meadows, Illinois 60008

Roselle Public Library, 40 South Park Street, Reselle, Illinois 60172

Schaumbury Township Public Library, 32 West Library Lane, Schaumbury, Illinois 60194

Schiller Park Public Library, 4200 Old River Road, Schiller Park, Illinois 60176

Villa Park Public Library, 305 South Ardmore, Villa Park, Illinois 60181

Wood Dale Public Library, 520 South Wood Dale Road, Wood Dale, Illinois 60191.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on August 7, 1989.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89–19428 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–13–M

Corrections

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, Opportunity To Request Administrative Review

Correction

In notice document 89-18426 beginning on page 32364 in the issue of Monday, August 7, 1989, make the following correction:

On page 32364, in the third column, in the table, in the second column, the last line should read "02/01/88-07/31/89".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah et al.; Consolidation Decision on Application for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-17823 appearing on page 31718 in the issue of Tuesday, August 1, 1989, make the following corrections:

1. On page 31718, in the first column, in the last paragraph, the first line should read "Docket Number: 89-028".,

2. On the same page, in the second column, in the first complete paragraph, in the sixth line remove "FY", and insert"See Notice at 54 FR 4876, January 31, 1989. *Reasons for this Decision:"*

3. On the same page, in the same column, in the second complete paragraph, in the 12th line, "(ST)" should read "(STP)".

4. On the same page, in the same column, in the third complete paragraph, in the 9th line remove the period before "for", and in the 11th line, "0.40˚" should read "0.4˚".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 227

[Docket No. 90778-9178]

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

Correction

In rule document 89-18302 beginning on page 32085 in the issue of Friday, August 4, 1989, make the following correction:

On page 32085 in the third column, under "EFFECTIVE DATE", the last line should read "August 4, 1989, through April 2, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 81024-9018]

Revision of Patent and Trademark Fees

Correction

In a correction to rule document 89-3486 appearing on page 8053 in the issue of Friday, February 24, 1989, the corrections to § 1.21 should read as follows:

§ 1.21 [Corrected]

4. On the same page, in the third column, in § 1.21(d), ".00" should read "$50.00".

5. On the same page, in the same column, in § 1.21(g), "$15.00" should read "$0.15".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3624-7]

National Drinking Water Advisory Council; Open Meeting

Correction

In notice document 89-18258 appearing on page 32116 in the issue of Friday, August 4, 1989, make the following correction:

On page 32116, in the third column, in the sixth line, "August 20, 1989" should read " August 30, 1989".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s)

Correction

In notice document 89-18826 beginning on page 33077 in the issue of Friday, August 11, 1989, make the following correction:

On page 33078, in the first column, "Agreement No.: 224-010877-002" should read "Agreement No.: 224-010877-001".

BILLING CODE 1505-01-D

federal register

Friday
August 18, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Revision of General Operating and Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 23, 25, 27, 29, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 91, 93, 99, 103, 121, 125, 127, 133, 135, 137, 141

[Docket No. 18334; Amdts. No. 1-36, 21-66, 23-37, 25-68, 27-24, 29-27, 31-5, 33-13, 35-6, 36-18, 43-31, 45-18, 47-24, 61-84, 63-27, 65-34, 71-13, 91-211, 93-56, 99-11, 103-3, 121-206, 125-12, 127-43, 133-10, 135-32, 137-12, 141-11]

RIN 2120-AA13

Revision of General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment reorganizes and realigns the general operating and flight rules to make them more understandable and easier to use. Also, several changes are made to provide more flexibility for certain operations. These changes result from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

EFFECTIVE DATE: This amendment becomes effective on August 18, 1990, except that § 91.203(a)(2) becomes effective September 18, 1989, and remains numbered as § 91.27(a)(2) until August 18, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267-3840 or Edna French (202) 267-8150, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration (FAA) to revise part 91 of the Federal Aviation Regulations (FAR) to make the regulations simpler and more comprehensible. In response to this petition, on January 11, 1979, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) No. 79-2 (44 FR 4572; January 22, 1979) consisting of a verbatim publication of AOPA's proposal.

The FAA received 106 comments in response to the ANPRM. An overwhelming majority of the commenters supported the intent of the proposal to reorganize part 91. However, there were numerous problem areas identified by the commenters relating to the proposed changes that were considered substantive.

On November 18, 1980, the FAA formed a part 91 Working Group to analyze the AOPA proposal and comments received on the ANPRM. It was determined that certain technical and administrative problems existed and that it was not feasible to undertake a substantive revision of part 91 at that time. Subsequently, AOPA withdrew its petition. However, review of AOPA's proposal to reorganize and renumber part 91 revealed that many of the changes had merit and could be implemented. The FAA part 91 Working Group concluded that the reorganization and renumbering of part 91 would be the first step to improve the regulation and make it more understandable and easier to use. Consequently, the FAA published NPRM No. 79-2A (46 FR 45256; September 10, 1981), which proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Other proposals were made to delete redundancies and obsolete compliance dates and to make other minor changes.

Notice No. 79-2A did not contain any substantive changes; however, it did inform the public that the FAA considered that notice to be the first step in a regulatory review of part 91 consistent with the objective of Executive Order 12291. With this in mind, the FAA invited additional specific comments to help identify substantive areas to be reviewed and possibly included in subsequent proposals concerning part 91. The notice further stated that the FAA would not take final action concerning the reorganization until substantive changes were proposed and the public had been given an opportunity to comment on those proposals.

The FAA published Notice No. 79-2B (46 FR 60461; December 10, 1981) to extend the comment period for Notice No. 79-2A by 120 days. That notice was issued in response to a petition from the National Business Aircraft Association to allow additional time for commenters to prepare substantive comments.

The FAA received 69 comments in response to Notice No. 79-2A. The majority of these comments favored the proposal and were discussed in Notice No. 79-2C (50 FR 11292; March 20, 1985).

Notice 79-2C proposed four substantive changes in addition to the numerous changes made to reorganize and clarify existing rules. Two of these changes were made in response to comments received from the public. These changes are as follows:

(1) *Section 91.117.* Allows reciprocating-powered aircraft to be operated at 200 knots in an airport traffic area;

(2) *Section 91.135.* Allows operators desiring authorizations to deviate from positive control area and route segment requirements to utilize a 48-hour oral notification system;

(3) *Section 91.409.* Allows operators of turbine-powered rotorcraft to use an alternate inspection program, such as an FAA-approved inspection program; and

(4) *Sections 91.205, 91.509, and 91.511.* Defines "shore" as it is used in these sections to exclude tidal flats.

Public Comments

Forty-seven comments were received in response to Notice No. 79-2C. A number of commenters recommended regulations that were not proposed in the notice. Because such comments discuss matters which the public has not had an opportunity to consider, they are beyond the scope of the notice and cannot be considered without further notice and public participation. Some of these comments concern proposals that will be considered by the FAA in future rulemaking and, therefore, could be published in a future notice.

There were two areas in particular where several proposals were received that are not within the scope of the notice. First, 11 comments specifically request that balloons be excepted from certain requirements now pertaining to aircraft in general. These comments seek substantive change to the existing regulations not proposed in the notice.

Second, a number of commenters propose substantive changes to the regulations with regard to rotorcraft. Although these comments are not within the scope of this rulemaking, they were considered in the Rotorcraft Regulatory Review Program, Notice No. 5.

Two commenters are opposed to changing masculine references to "airman" to read "he or she." One commenter states that this would keep the text shorter and speed up the reading of the text. The other commenter states that § 1.3(a)(3) already provides that "words importing the masculine gender include the feminine," and the better course would be to refer to the "person," or the "pilot." The FAA agrees with these commenters. Accordingly, references throughout part 91 that use the words "he" or "she" have been changed to refer to the "person," the "pilot," the "crewmember," or the "Administrator."

One commenter writes that the use of "pilot in command" and "PIC" is inconsistent in the proposed rules. The FAA agrees with this commenter and, accordingly, has changed references to "PIC" in §§ 91.123(a) and 91.129(b) to "pilot in command" to make their use consistent throughout part 91.

A commenter suggests that all references to distances expressed in miles should state whether they are statute or nautical miles. The FAA agrees that such references should be clear. Accordingly, references to distance expressed in miles in §§ 91.171(b)(4)(ii) and 91.207(e)(3) are changed by adding the word "nautical" to reflect that the distances are expressed in nautical miles since they reference ground-measured distance. References to visibilities in §§ 91.155(b), 91.167(b)(2)(ii), and 91.303(e) are changed by adding the word "statute" to reflect that visibilities are expressed in statute miles.

Several commenters state that the proposed wording for § 91.1 implies that operations of moored balloons, kites, unmanned rockets, and unmanned free balloons are governed by part 103. This comment has merit and § 91.1 is revised by adding a specific reference to part 101 after the phrase "unmanned free balloons" to make clear that moored balloons, kites, unmanned rockets, and unmanned free balloons operate under part 101.

Another commenter requests clarification of the discussion of § 91.7 in Notice No. 79–2C, where the FAA states that there is no provision for the use of an approved Minimum Equipment List (MEL) in part 91 operations, whereas § 91.213 permits the use of an approved MEL. The FAA points out that at the time Notice No. 79–2C was published, the effective date of current § 91.30 (proposed § 91.213) was stayed indefinitely (44 FR 62884; November 1, 1979). Amendment No. 91–192 (50 FR 51188; December 13, 1985) which took effect on March 13, 1986, terminated the stay.

Section 91.7(b), which was proposed without substantive change from existing § 91.29, provides that a flight should be discontinued when unairworthy mechanical or structural conditions occur. One commenter suggests that this be changed by deleting "mechanical or structural" and making it more general so as to provide for a possible unairworthy electrical system. This suggestion raises a valid point; however, the FAA has determined that the rule should be amended to explicitly reference mechanical, electrical, or structural conditions. Therefore, § 91.7(b) is amended accordingly.

As suggested by one commenter, § 91.21(a)(1) is amended by deleting reference to a "commercial operator." This revision conforms § 91.21(a)(1) with SFAR 38–2 and part 125 which do not provide for a commercial operator's certificate and, instead, provide for the issuance of either an "air carrier operating certificate" or an "operating certificate."

One commenter states that consideration should be given to better defining "appropriately rated pilot" in § 91.109 and provide a definition. The FAA agrees that the phrase "appropriately rated pilot" should be defined better.

The preamble to Amendment No. 91–36 (32 FR 260; January 11, 1967 states that an "appropriately rated pilot" in § 91.21(b) requires a private pilot certificate with an airplane category rating, a multiengine class rating for a small multiengine land plane, and a type rating for a large airplane or a turbojet-powered airplane (large or small).

Accordingly § 91.109(b)(1) is amended to require that the safety pilot hold at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

One commenter urges the FAA to reinsert the current rule regarding visual descent points (VDPs) (current § 91.116). VDPs are not an integral part of the approach procedure. An aircraft that is not equipped to identify a VDP has the same approach minima as a similar aircraft that is equipped to identify the VDP.

Mandatory use of VDPs is considered inappropriate for a number of reasons:

(1) VDPs that use Distance Measuring Equipment (DME) fixes may, because of displacement factors and/or fix errors, result in descent angles that are either too shallow or too steep for the approach.

(2) A mandatory VDP rule discourages the purchase and use of the very equipment necessary to identify the VDP. This is so because compliance can only be required of those aircraft that are equipped to identify the VDP.

For these reasons, the final rule, like the NPRM, does not include a mandatory VDP requirement.

Notice No. 79–2C proposed that § 91.175(a) read: "Unless otherwise authorized by ATC, when an instrument letdown to a civil airport is necessary, each person operating an aircraft except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in Part 97 of this chapter." The lead-in clause is changed to read, "Unless otherwise authorized by the Administrator," because ATC does not have the authority to approve a person's noncompliance with this rule.

Several commenters raise objections to proposed § 91.203(a)(2), which would prevent an aircraft from operating outside of the United States under the temporary authority of the pink copy of the Aircraft Registration Application as provided in § 47.31(b). The commenters assert that the proposal is a substantive change and not a clarification of the present rule; and that the FAA should consider the economic impact on the industry, the consumers, and the historical precedence of past practices. These commenters suggest that the FAA withdraw the proposal and acknowledge the pink copy of the application as a temporary certificate of registration.

Another commenter is of the opinion that the FAA has not provided discussion, as required by Executive Order 12291, on the economic impacts that would result from the delay between application for an issuance or denial of the registration certificate, under the proposals, in the NPRM. The commenter maintains that future investment purchases and leases would also be adversely affected. Several commenters also question the regulatory consistency that the FAA claims as the basis for the change.

These comments were responded to in full in a Notice of Legal Opinion issued December 1988 (53 FR 50208; December 14, 1988). That Notice of Legal Opinion stated that the limitation of temporary authority to operate an aircraft without registration to domestic operations (as also provided in new § 91.203(a)(2)) reflects current U.S. law and practice. Concerning the economic impact of this ruling, the FAA in that Notice of Legal Opinion answered:

> The aviation community has always been able to transfer ownership and register their aircraft with minimal difficulty. In order to mitigate the potential hardship that could result from grounding an aircraft used in international operations, pending receipt of a registration certificate, the Registry will, upon request, telex a copy of the Certificate of Aircraft Registration to the individual whose name appears on the application as the registered owner of the aircraft. The telex copy is issued after confirmation of the information contained on an Aircraft Registration Application and determination of eligibility for registration. The telex, which reflects critical and verified information resulting from the evaluation by the Registry of an application for aircraft registration, may be used as a temporary Certificate of Aircraft

Registration until the original certificate is forwarded for carriage in the aircraft.

This telex certificate will assist owners who submit an application for aircraft registration and who wish to operate the aircraft as soon as possible in international operations. Since the telex, by its terms, is a form of registration certificate, the aircraft may be operated in international air navigation consistent with Article 29 of the Convention [Convention on International Civil Aviation (61 Stat. 1180; T.I.A.S. 1591; 15 U.N.T.S. 295)]. The Registry will telex this copy within a matter of days—often within 48 hours—to be kept in the aircraft until the original Certificate of Aircraft Registration (AC Form 8050-3) is forwarded to the registered owner.

Accordingly, the FAA has determined that the rule should be amended as proposed, and consistent with the Chief Counsel's legal opinion, to provide explicitly that operations of aircraft outside the United States for which an application for registration has been submitted but a certificate of registration has not been issued are not authorized under the Federal Aviation Regulations.

Several judicial decisions have defined the "shore" as including tidal flats. In some parts of the United States, these tidal flats can extend for several miles and, because of the extreme tides prevalent in these areas, the land may be submerged under as much as 25 to 35 feet of water during periods of high tide. The intent of the rule is to require operators carrying passengers for hire over these areas to equip their aircraft with the necessary flotation gear and pyrotechnic devices. Therefore, "shore," when it is used in §§ 91.205, 91.509, and 91.511, is defined to exclude land areas, such as tidal flats, which are intermittently under water.

An incorrect reference to "§ 91.169" was used in proposed § 91.409(e), which has been corrected to "§ 91.409" in the final rule.

It was pointed out by several commenters that the word "stop" in § 91.605(c)(2) was inadvertently included in the proposal and should be deleted. The commenters are correct, and the final rule has been amended accordingly. Also, the word "if" following the word "distance" in that same sentence has been corrected to read "is."

In addition to the specific changes discussed above, minor changes have been made in the wording of the regulations proposed in Notice No. 72-2C. In § 91.3(b), the word "in-flight" has been inserted to clarify that the deviation authority of § 91.3 applies only to in-flight emergencies which affect the safe completion of the flight.

The original intent of § 91.3 was to allow the pilot in command to deviate from certain regulations in the event of an in-flight emergency. Over time, regulations involving non-flight items were inserted into subparts A and B, while flight-related regulations were inserted in other subparts. Therefore, the word "in-flight" is being added to return the language to its original intent.

Other changes are nonsubstantive in nature. Except for such minor revisions, those parts of the proposal for which there were no comments are adopted as proposed. Finally, all other sections of Part 91 remain unchanged except for renumbering (see the cross-reference lists below).

Several amendments to part 91 adopted since Notice No. 79-2C were published are reflected in the final rule. Where reference to other sections of this part were set forth in an amendment, the references have been changed to reflect the appropriate sections as used in the final rule. Those required changes published in the Federal Register prior to June 19, 1989 are discussed below.

Amendment No. 91-188, (50 FR 15380; April 17, 1985) amended current § 91.11, which governs the use of alcohol or drugs by any crewmember performing duty during the operation of an aircraft. This amendment took effect on June 17, 1985. Subsequently, Amendment No. 91-194 (51 FR 1229; January 9, 1986) amended § 91.11(c) to impose a requirement for a crewmember to furnish the results of any test that indicates percentage by weight of alcohol in a crewmember's blood. This amendment took effect on April 9, 1986. Proposed § 91.17 has been revised accordingly.

Amendment No. 91-189 (50 FR 31588; August 5, 1985) removed references to "expect approach clearance time" in § 91.127. This amendment took effect on September 4, 1985. Section 91.185 reflects this amendment.

Amendment No. 91-190 (50 FR 45602; November 1, 1985) added a new paragraph (c) to current § 91.24. This amendment took effect on December 2, 1985. This new paragraph required all aircraft equipped with an operable radar beacon transponder be turned on while airborne in controlled airspace. Subsequently, § 91.24(c) was amended by Amendment No. 91-203 (53 FR 23374; June 21, 1988). Proposed § 91.215(c) has been redesignated as paragraph (d) and the changes brought about by Amendment Nos. 91-190 and 91-203 have been incorporated into revised § 91.215(c).

Amendment No. 91-191 (50 FR 46877; November 13, 1985) amended current § 91.14 (proposed § 91.107) by revising the title and the section to include reference to shoulder harnesses. This amendment took effect on December 12, 1985. Section 91.107 has been revised accordingly. Amendment No. 91-191 also added a new paragraph to current § 91.33 which requires a shoulder harness for specified seats in normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured after December 12, 1986. This paragraph appears as § 91.205(b)(15).

Amendment No. 91-192 (50 FR 51189; December 13, 1985) terminated the suspension of Amendment No. 91-157 (44 FR 43714; July 26, 1979) staying the effective date of current § 91.30. This amendment took effect on March 31, 1986. Subsequently, Amendment No. 206 (53 FR 50195; December 13, 1988) amended § 91.30. Section 91.213 reflects these amendments.

Amendment No. 91-193 (50 FR 51193; December 13, 1985) changed the FAA's description of North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace to coincide with the International Civil Aviation Organization's (ICAO's) description of the NAT MNPS airspace. This has been reflected accordingly in Section 1 of Appendix C of this final rule.

Amendment No. 91-195 (51 FR 31098; September 2, 1986) corrects the reference to the Department of Defense office in current § 91.102 restricting the flight of aircraft near space flight operations. This amendment took effect on September 15, 1986. Section 91.143 reflects this amendment.

Amendment No. 91-196 (51 FR 40692; November 7, 1986) upgraded rotorcraft certification and operational requirements, thus effecting amendments to several FARs. This amendment took effect on January 6, 1987. Current § 91.2 was amended to afford small helicopter operators the opportunity to apply for Category II instrument approach authorization. Proposed § 91.193 has been revised accordingly. Current § 91.23 was amended to reduce the IFR reserve fuel requirement for helicopters from 45 to 30 minutes. Proposed § 91.167 has been amended to reflect this change. Current § 91.116 (proposed § 91.175) was amended to establish a separate takeoff minimum for helicopters under IFR, of one-half mile visibility. Current § 91.171 was amended to include helicopters in the altimeter system and altitude reporting equipment tests and inspection requirements. Proposed § 91.411 has been amended to reflect this change. In order to enable rotorcraft to perform

Category II operations, Amendment No. 91–196 also amended appendix A in part 91 by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears.

Amendment No. 91–197 (52 FR 1836; January 15, 1987) revises the authority citation for part 91 and adds a new paragraph to current § 91.213 which states that a commuter category airplane must have a pilot designated as second in command, unless the airplane has a passenger seating configuration, excluding pilot seats, of nine or less seats, and is type certificated for operations with one pilot. This amendment took effect on February 17, 1987. This rule now appears as § 91.531(a)(3).

Amendment No. 91–198, (52 FR 3391; February 3, 1987) amended current § 91.24(a) and (b) on ATC transponder and altitude reporting equipment and use. This amendment took effect on April 6, 1987. Subsequently, Amendment No. 91–203 (53 FR 23374; June 21, 1988) amended § 91.24(b) and (c) and Amendment No. 91–210 (54 FR 25662; June 16, 1989) revised § 91.24(a). Proposed § 91.215 has been revised accordingly. Amendment No. 91–198 also revised paragraph (b)(2)(iii) of current § 91.90 to allow operations conducted prior to December 1, 1987, in Group II TCAs, to be exempt from the new equipment requirements of current § 91.24. Amendment No. 91–203 (53 FR 23374; June 21, 1988) subsequently revised § 91.90, effective July 21, 1988. Amendment No. 91–205 (53 FR 40323; October 14, 1988) further revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 90–209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. The rule, covering all amendments to date, appears in this revision as § 91.131.

Amendment No. 91–199, (52 FR 9636; March 25, 1987) amended current § 91.35 by renumbering the paragraphs and adding a new paragraph that requires any operator who has installed approved flight recorders and approved cockpit voice recorders to keep the recorded information for at least 60 days, or longer, if requested by the Administrator or the National Transportation Safety Board. This amendment took effect on May 26, 1987. The amended rule now appears as § 91.609.

Amendment No. 91–200, (52 FR 17277; May 6, 1987) amended current § 91.173 by requiring each registered aircraft owner or operator to keep "preventive maintenance" records as well as maintenance, alteration, and records of the 100-hour annual, progressive, and other required or approved inspections, as appropriate, for each engine, propeller, rotor, and appliance of an aircraft. This amendment took effect on June 5, 1987. This amended rule now appears as § 91.417(a)(1).

Amendment No. 91–201, (52 FR 20026; May 28, 1987) adds the reference to part 129 to the exception in current § 91.161(b) from the requirements of §§ 91.165, 91.165, 91.171, 91.173, and 91.174 for aircraft maintained in accordance with a continuous maintenance program as provided for in part 129. The amendment took effect on August 25, 1987. This amended rule now appears as § 91.401(b).

Amendment No. 91–202, (52 FR 34102; September 9, 1987 and 52 FR 35234; September 18, 1987) amended current § 91.27 on civil aircraft certification requirements by adding a new paragraph (c) to require that a copy of the form which authorized the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft. This new rule now appears as § 91.203(c). Current § 91.173 on maintenance records was revised by requiring that such records be made available to the Administrator or an authorized representative of the National Transportation Safety Board and when such a fuel tank is installed as set forth in § 91.35 as amended pursuant to part 43, a copy of the FAA Form 337 be kept on board the modified aircraft. This new rule appears as § 91.417(b) and (c). This amendment took effect on December 8, 1987.

Amendment No. 91–203, (53 FR 23374; June 21, 1988, 53 FR 25050; July 1, 1988, and 53 FR 28592; July 14, 1988) amended or revised §§ 91.24 (ATC transponder and altitude reporting equipment and use), 91.88 (Airport radar service areas), and 91.90 (Terminal control areas), and by adding a new appendix D entitled "Airports/Locations Where the Transponder Requirements of § 91.24(b)(5)(ii) Apply," regarding use of transponders with automatic altitude reporting. This amendment took effect on July 21, 1988. Amendment No. 91–205 (53 FR 40323; October 14, 1988) revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 91–209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. These rules now appear in this revision as §§ 91.215, 91.130, 91.131, and new appendix D to Part 91, respectively.

Amendment No. 91–204, (53 FR 26145; July 11, 1988) amended current § 91.35 on flight recorders and cockpit voice recorders to require digital flight recorders and voice recorders to be installed on selected aircraft operated in general aviation. The specifications for such recorders are set forth in a new Appendix E to Part 91 for airplanes and in a new appendix F to Part 91 for helicopters. The amendment is reflected as § 91.609(b), (c), (d), and (e), and new appendixes E and F to part 91. This amendment becomes effective on October 11, 1991.

Amendment No. 91–205 (53 FR 40323; October 14, 1988) revised the classification and pilot and equipment requirements for conducting operations in terminal control areas (TCA's) by amending § 91.90 to establish a single-class TCA; require the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and, to eliminate the helicopter exception from the minimum equipment requirement. The amendment was effective on January 12, 1989. Subsequently, Amendment No. 91–209 (54 FR 24883; June 9, 1989) amended § 91.90(c)(1) by delaying the application of the section for helicopter operations for one year. Revised § 91.131 covers these amendments.

Amendment No. 91–206 (53 FR 50195; December 13, 1988) amended § 91.30 to permit rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with inoperative instruments and equipment not essential for the safe operation of the aircraft. The amendment also permits general aviation operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft for which a Master Minimum Equipment List has been developed, the option of operating under the minimum equipment list concept, or under other conditions as set forth in the amendment. Amendment No. 91–206 also amended § 91.165 to require that any inoperative instrument or item of equipment permitted to be inoperative under the new amended § 91.30 to be repaired, replaced, removed, or inspected at the next required inspection for the aircraft. These amendments became effective on December 13, 1988 and appear as §§ 91.213 and 91.405 of this revision to part 91.

Amendment No. 91–207 (54 FR 265; January 4, 1989) amended §§ 91.1 and 91.61 to extend the controlled airspace and the applicability of certain air traffic rules to coincide with presidential action to extend the territorial sea of the United States for international purposes, from 3 to 12 nautical miles from the U.S. coast. This amendment became effective

on December 27, 1988. These amended rules now appear as §§ 91.1 and 91.101.

Amendment No. 91–208 (54 FR 950; January 10, 1989) added a new § 91.26 to require that any traffic alert and collision avoidance system installed in a U.S. registered civil aircraft must be approved by the Administrator, and if installed, must be on and operating during the aircraft's operation. The amendment became effective on February 9, 1989. The amendment appears herein as § 91.221.

Amendment No. 91–209 (54 FR 24883; June 9, 1989) delays the effective date of certain navigational equipment requirements of helicopter operations in a Terminal Control Area (TCA) by the amendment of § 91.91.90(c)(1). The amendment became effective on June 6, 1989. Section 91.131 covers this amendment.

Amendment No. 91–210 (54 FR 25682; June 16, 1989), effective June 16, 1989, amended § 91.24(a) to allow certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990. This amendment appears as § 91.215(a).

References to part 91 found in other sections of the Federal Aviation Regulations have also been amended to incorporate the revised numbering of part 91. These miscellaneous amendments are found at the end of the amendments to part 91.

Furthermore, §§ 91.615 through 91.645 as identified in Notice No. 79–2C (50 FR 11292; March 20, 1985) now appear in this final rule as §§ 91.503 through 91.533.

Regulatory Evaluation

FAA analysis indicates that these amendments will not have a significant impact on the public or any level of government on an annual basis. The final rule includes changes to clarify the existing rules by simplifying the language, deleting obsolete requirements, consolidating similar regulations, updating equipment requirements to reflect the state-of-the-art, and relaxing certain operating and flight rule requirements.

Benefits

Section 91.117 allows reciprocating-powered aircraft to be operated in an airport traffic area at indicated airspeeds not greater than 200 knots. The FAA is unable to determine operator time and fuel cost savings because they will largely depend on the type of aircraft involved, desired speed, and weather and traffic conditions. The aggregate annual cost savings to these operators will not be significant because: (1) The normal cruise speed for most single engine reciprocating-powered aircraft does not exceed 156 knots, and (2) pilots of most multiengine reciprocating-powered aircraft, while operating within an airport traffic area, will not exceed the normal aircraft cruising speed which is not significantly greater than 156 knots in many of these aircraft.

Section 91.135 provides for a 2-day advance oral notification for submitting requests for authorizations to deviate from positive control area and route segment requirements. The old rule required a 4-day advance written notification of the proposed operation to ATC. A request for an authorization to deviate from these requirements is an infrequent occurrence. Consequently, the new rule will have minor benefits in terms of cost savings.

Sections 91.205, 91.509, and 91.511 clarify the definition of "shore" as that area of land adjacent to the water which is above the high water mark, thereby excluding tidal flats. From a safety standpoint, a tidal area covered with water is not as safe an emergency landing place as a dry shoreline. The main benefit is improved survivability from accidents in areas where for-hire operators may not be in compliance with the intent of the present rule. There is insufficient information in accident records to be able to estimate how many deaths could have been avoided through the use of life jackets and pyrotechnic signaling devices in these instances.

Costs

Any cost associated with defining "shore" in § 91.205 as the high water line is expected to be negligible. The only parties potentially affected are small for-hire operators who do not comply with the obvious intention of the rule as presently worded. The FAA believes these operators are very few (probably less than 20 operators) in number. Such operators are likely to be traversing tidal flats in areas like Alaska. If such operators do not comply with the rule as written now, then the cost of compliance would be a maximum of about $105 per year per aircraft. This assumes a $50 cost for an approved flotation device per seat and a flotation device useful life of 5 years ($10 per passenger seat per year), 10 seats per aircraft for these specific operators, plus $5 per year per aircraft for a pyrotechnic signaling device.

Section 91.409 allows operators of turbine-powered rotorcraft to use alternate inspection programs such as inspections under an FAA-approved continuous airworthiness maintenance program. The operators may now schedule inspections in a manner that allows the highest level of utilization of their rotorcraft.

The FAA estimates that in 1984 there were approximately 3,000 active turbine-powered rotorcraft in non-air taxi use. The FAA assumes that about one-half of the operators of these aircraft would use the new inspection options.

The value of using these options is difficult to estimate. At a minimum, the major effect of this proposed rule would be one additional day per year of rotorcraft utility. The usefulness of this can be set at least at the cost of capital for 1 day. Using an average aircraft value of $300,000 and a use of 250 days per year, the cost of capital can be estimated at $180 per day ($300,000 at 15 percent interest divided by 250 days). Thus, the minimum benefit is approximately $0.27 million per year (half the fleet, 1500 turbine-powered rotorcraft times $180). As the fleet grows, the value of this benefit also increases.

Because of the reorganization and resulting renumbering of provisions, persons who regularly refer to existing part 91 must familiarize themselves with the new structure. It is also recognized that many non-regulatory materials containing references to present part 91 sections may have to be modified. To assist in reference to the new provisions, a redesignation table, similar to the cross-reference table published herein, will be included in subsequent editions of the Code of Federal Regulations. The FAA believes that any short-term costs associated with transition to the reorganized part 91 will be outweighed by the benefits inherent in a more logically organized set of regulations.

Trade Impact

The FAA has determined that this regulation will have no impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." As discussed above, the regulatory evaluation for part 91 indicates that there are no negative or significant economic impacts associated with the proposed rule.

All but four of the changes to part 91 are editorial or clarifying changes. Three of the four changes result only in minimal benefits being applied. The other is a change to § 91.205 which, while it is basically clarifying, may involve some minimal cost and benefit. Any economic impact would be minor—approximately $100 per aircraft per year and would affect only a few small for-hire operators in Alaska who do not comply with the intent of the rule as presently worded. Thus, the change could not be construed to cause "significant economic impact on a substantial number" of small entities within the meaning of the RFA. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Conclusion

The FAA has determined that this document is not considered major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It causes only four minor changes, three of which will provide benefits with no additional costs to the aviation public. The fourth will impose negligible costs which are substantially outweighed by the benefits provided. Other amendments provide general benefits by deleting obsolete requirements, relaxing certain operating and flight rule requirements, and updating and clarifying the text. Under the provisions of Executive Order 12291, the amendments in this final rule will not have a major economic effect on consumers, industries, Federal, State, or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets. It is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the full economic evaluation is filed in the public docket and may be obtained by contacting the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph of this document.

Cross Reference

To identify where present regulations are relocated in the new rule, the following cross-reference lists are provided:

CROSS REFERENCE TABLE

Old section	New section
91.1	91.1 and 91.703.
91.2	91.193.
91.3	91.3.
91.4	91.5.
91.5	91.103.
91.6	91.189.
91.7	91.105.
91.8	91.11.
91.9	91.13.
91.10	91.13.
91.11	91.17.
91.12	91.19.
91.13	91.15.
91.14	91.107.
91.15	91.307.
91.17	91.309.
91.18	91.311.
91.19	91.21.
91.20	91.705.
91.21	91.109.
91.22	91.151.
91.23	91.167.
91.24	91.215.
91.25	91.171.
91.26	91.221.
91.27	91.209.
91.28	91.715.
91.29	91.7.
91.30	91.213.
91.31	91.9.
91.32	91.211.
91.33	91.205.
91.34	91.191.
91.35	91.609.
91.36	91.217.
91.37	91.605.
91.38	91.329.
91.39	91.313.
91.40	91.315.
91.41	91.317.
91.42	91.319.
91.43	91.711.
91.45	91.611.
91.47	91.607.
91.49	91.609.
91.50	Deleted.
91.51	91.219.
91.52	91.207.
91.53	Deleted.
91.54	91.23.
91.55	91.817.
91.56	91.815.
91.57	91.25.
91.58	91.613.
91.59	91.321.
91.61	91.101.
91.63	91.903.
91.65	91.111 and 91.123.
91.67	91.113.
91.69	91.115.
91.70	91.117.
91.71	91.303.
91.73	91.209.
91.75	91.123.
91.77	91.125.
91.79	91.119.
91.81	91.121.
91.83	91.153 and 91.169.
91.84	91.707.
91.85	91.127.
91.87	91.129.
91.88	91.130.
91.89	91.127.
91.90	91.131.
91.91	91.137.
91.93	91.305.
91.95	91.133.
91.97	91.135.
91.100	91.139.
91.101	91.709.

CROSS REFERENCE TABLE—Continued

Old section	New section
91.102	91.143.
91.103	91.713.
91.104	91.141.
91.105	91.155.
91.107	91.157.
91.109	91.159.
91.115	91.173.
91.116	91.175.
91.117	Deleted.
91.119	91.177.
91.121	91.179.
91.123	91.181.
91.125	91.183.
91.127	91.185.
91.129	91.187.
91.161	91.401.
91.163	91.403.
91.165	91.405.
91.167	91.407.
91.169	91.409.
91.170	91.415.
91.171	91.411.
91.172	91.413.
91.173	91.417.
91.174	91.419.
91.175	91.421.
91.181	91.501.
91.183	91.503.
91.185	91.505.
91.187	91.507.
91.189	91.509.
91.191	91.511.
91.193	91.513.
91.195	91.515.
91.197	91.517.
91.199	91.519.
91.200	91.521.
91.201	91.523.
91.203	91.525.
91.205	Deleted.
91.207	Deleted.
91.209	91.527.
91.211	91.529.
91.213	91.531.
91.215	91.533.
91.301	91.801.
91.302	91.803.
91.303	91.805.
91.305	91.807.
91.306	91.809.
91.307	91.811.
91.308	91.813.
91.309	91.819.
91.311	91.821.
Appendix A	Appendix A.
Appendix B	Appendix B.
Appendix C	Appendix C.
Appendix D	Appendix D.
Appendix E	Appendix E.
Appendix F	Appendix F.

CROSS REFERENCE TABLE

New section	Old section
91.1	91.1.
91.3	91.3.
91.5	91.4.
91.7	91.29.
91.9	91.31.
91.11	91.8.
91.13	91.9 and 91.10.
91.15	91.13.
91.17	91.11.
91.19	91.12.
91.21	91.19.
91.23	91.54.
91.25	91.57.

CROSS REFERENCE TABLE—Continued

New section	Old section
91.101	91.61.
91.103	91.5.
91.105	91.7.
91.107	91.14.
91.109	91.21.
91.111	91.65.
91.113	91.67.
91.115	91.69.
91.117	91.70.
91.119	91.79.
91.121	91.81.
91.123	91.75 and 91.65.
91.125	91.77.
91.127	91.85 and 91.89.
91.129	91.87.
91.130	91.88.
91.131	91.90.
91.133	91.95.
91.135	91.97.
91.137	91.91.
91.139	91.100.
91.141	91.104.
91.143	91.102.
91.151	91.22.
91.153	91.83.
91.155	91.105.
91.157	91.107.
91.159	91.109.
91.167	91.23.
91.169	91.83.
91.171	91.25.
91.173	91.115.
91.175	91.116.
91.177	91.119.
91.179	91.121.
91.181	91.123.
91.183	91.125.
91.185	91.127.
91.187	91.129.
91.189	91.6.
91.191	91.34.
91.193	91.2.
91.201	New.
91.203	91.27.
91.205	91.33.
91.207	91.52.
91.209	91.73.
91.211	91.32.
91.213	91.30.
91.215	91.24.
91.217	91.36.
91.219	91.51.
91.221	91.26.
91.301	New.
91.303	91.71.
91.305	91.93.
91.307	91.15.
91.309	91.17.
91.311	91.18.
91.313	91.39.
91.315	91.40.
91.317	91.41.
91.319	91.42.
91.321	91.59.
91.323	91.38.
91.401	91.161.
91.403	91.163.
91.405	91.165.
91.407	91.167.
91.409	91.169.
91.411	91.171.
91.413	91.172.
91.415	91.170.
91.417	91.173.
91.419	91.174.
91.421	91.175.
91.501	91.161.
91.503	91.163.
91.505	91.165.
91.507	91.167.

CROSS REFERENCE TABLE—Continued

New section	Old section
91.509	91.169.
91.511	91.191.
91.513	91.193.
91.515	91.195.
91.517	91.197.
91.519	91.199.
91.521	91.200.
91.523	91.201.
91.525	91.203.
91.527	91.209.
91.529	91.211.
91.531	91.213.
91.533	91.215.
91.601	New.
91.603	91.49.
91.605	91.37.
91.607	91.47.
91.609	91.35.
91.611	91.45.
91.613	91.58.
91.701	New.
91.703	91.1.
91.705	91.20.
91.707	91.84.
91.709	91.101.
91.711	91.43.
91.713	91.103.
91.715	91.28.
91.801	91.301.
91.803	91.302.
91.805	91.303.
91.807	91.305.
91.809	91.306.
91.811	91.307.
91.813	91.308.
91.815	91.56.
91.817	91.55.
91.819	91.309.
91.821	91.311.
91.901	New.
91.903	91.63.
91.905	New.
Appendix A	Appendix A.
Appendix B	Appendix B.
Appendix C	Appendix C.
Appendix D	Appendix D.
Appendix E	Appendix E.
Appendix F	Appendix F.
Newly Established Rules	91.201, 91.301, 91.601, 91.701, 91.901, 91.905.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 23

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

14 CFR Part 25

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

14 CFR Part 27

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

14 CFR Part 31

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 36

Aircraft noise, Type certification.

14 CFR Part 43

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

14 CFR Part 45

Nationality, Air safety, Safety, Aviation safety, Air transportation, Transportation, Airplanes, Helicopters, Rotorcraft.

14 CFR Part 47

Aliens, Transportation, Nationality, Air safety, Safety, Aviation safety, Air transportation, Citizenship and naturalization, Corporations, Treaties.

14 CFR Part 61

Airmen, Balloons, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Students, Foreign persons, Transportation, International agreements, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse, Compensation, Education, Teachers.

14 CFR Part 63

Airmen, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse.

14 CFR Part 65

Airmen, Parachutes, Transportation, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Drug abuse.

14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo,

Smoking, Airports, Airworthiness directives and standards.

14 CFR Part 93

Special air traffic rules.

14 CFR Part 99

Air defense zone, Identification of foreign aircraft.

14 CFR Part 103

Safety, Ultralight, Ultralight certification, Ultralight operations, Ultralight pilot, Ultralight registration.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

14 CFR Part 127

Aircraft, Air carriers, Narcotics, Airworthiness, Cargo, Airmen, Pilots, Air traffic control, Helicopters, Drugs, Airspace, Weapons, Alcohol, Hours of work, Children, Infants, Smoking, Beverages.

14 CFR Part 133

Aircraft, Airworthiness, Narcotics, Pilots, Drugs, Mail.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Narcotics, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Alcohol, Airports, Hours of work, Hazardous materials, Weapons, Baggage, Transportation, Mail, Helicopters, Smoking, Beverages, Air traffic control, Handicapped, Drugs, Airspace, Chemicals, Airplanes.

14 CFR Part 137

Aircraft, Narcotics, Rotorcraft, Pilots, Air traffic control, Airports.

14 CFR Part 141

Airmen, Balloons, Parachutes, Aircraft pilots, Pilots, Educational facilities, Students, Transportation, Air safety, Safety, Aviation safety, Air transportation, Airplanes, Helicopters, Rotorcraft, Education, Schools, Teachers, Business and industry.

The Rule

For the reasons set forth above, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended to read as follows; and parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141 of the Federal Aviation Regulations (14 CFR parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141) are amended as follows:

1. By amending part 91 by revising subparts A–E and appendices A–F and by adding subparts F–J to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

Special Federal Aviation Regulations

* * * * *

Subpart A—General

Sec.

Subpart B—Flight Rules

General

Visual Flight Rules

Instrument Flight Rules

Subpart C—Equipment, Instrument, and Certificate Requirements

Subpart D—Special Flight Operations

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Subpart A—General

§ 91.1 Applicability.

(a) Except as provided in paragraph (b) of this section and § 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; § 91.323; § 91.605; § 91.609; §§ 91.703 through 91.715; and 91.903.

§ 91.3 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.5 Pilot in command of aircraft requiring more than one required pilot.

No person may operate an aircraft that is type certificated for more than one required pilot flight crewmember unless the pilot in command meets the requirements of § 61.58 of this chapter.

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§ 91.9 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

(b) No person may operate a U.S.-registered civil aircraft—

(1) For which an Airplane or Rotorcraft Flight Manual is required by § 21.5 of this chapter unless there is available in the aircraft a current, approved Airplane or Rotorcraft Flight Manual or the manual provided for in § 121.141(b); and

(2) For which an Airplane or Rotorcraft Flight Manual is not required by § 21.5 of this chapter, unless there is available in the aircraft a current approved Airplane or Rotorcraft Flight Manual, approved manual material, markings, and placards, or any combination thereof.

(c) No person may operate a U.S.-registered civil aircraft unless that aircraft is identified in accordance with part 45 of this chapter.

(d) Any person taking off or landing a helicopter certificated under part 29 of this chapter at a heliport constructed over water may make such momentary flight as is necessary for takeoff or landing through the prohibited range of the limiting height-speed envelope established for the helicopter if that flight through the prohibited range takes place over water on which a safe ditching can be accomplished and if the helicopter is amphibious or is equipped with floats or other emergency flotation gear adequate to accomplish a safe emergency ditching on open water.

§ 91.11 Prohibition against interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

§ 91.15 Dropping objects.

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

§ 91.17 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) A crewmember shall do the following:

(1) On request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood, when—

(i) The law enforcement officer is authorized under State or local law to conduct the test or to have the test conducted; and

(ii) The law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited by paragraph (a)(1), (a)(2), or (a)(4) of this section.

(2) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

(d) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(3) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

§ 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

§ 91.21 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft:

(1) Aircraft operated by a holder of an air carrier operating certificate or an operating certificate; or

(2) Any other aircraft while it is operated under IFR.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the operator of the aircraft has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) In the case of an aircraft operated by a holder of an air carrier operating certificate or an operating certificate, the determination required by paragraph (b)(5) of this section shall be made by that operator of the aircraft on which

the particular device is to be used. In the case of other aircraft, the determination may be made by the pilot in command or other operator of the aircraft.

§ 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.

(a) Except as provided in paragraph (b) of this section, the parties to a lease or contract of conditional sale involving a U.S.-registered large civil aircraft and entered into after January 2, 1973, shall execute a written lease or contract and include therein a written truth-in-leasing clause as a concluding paragraph in large print, immediately preceding the space for the signature of the parties, which contains the following with respect to each such aircraft:

(1) Identification of the Federal Aviation Regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale, and certification by the parties thereto regarding the aircraft's status of compliance with applicable maintenance and inspection requirements in this part for the operation to be conducted under the lease or contract of conditional sale.

(2) The name and address (printed or typed) and the signature of the person responsible for operational control of the aircraft under the lease or contract of conditional sale, and certification that each person understands that person's responsibilities for compliance with applicable Federal Aviation Regulations.

(3) A statement that an explanation of factors bearing on operational control and pertinent Federal Aviation Regulations can be obtained from the nearest FAA Flight Standards district office.

(b) The requirements of paragraph (a) of this section do not apply—

(1) To a lease or contract of conditional sale when—

(i) The party to whom the aircraft is furnished is a foreign air carrier or certificate holder under part 121, 125, 127, 135, or 141 of this chapter, or

(ii) The party furnishing the aircraft is a foreign air carrier, certificate holder under part 121, 125, 127, or 141 of this chapter, or a certificate holder under part 135 of this chapter having appropriate authority to engage in air taxi operations with large aircraft.

(2) To a contract of conditional sale, when the aircraft involved has not been registered anywhere prior to the execution of the contract, except as a new aircraft under a dealer's aircraft registration certificate issued in accordance with § 47.61 of this chapter.

(c) No person may operate a large civil aircraft of U.S. registry that is subject to a lease or contract of conditional sale to which paragraph (a) of this section applies, unless—

(1) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has mailed a copy of the lease or contract that complies with the requirements of paragraph (a) of this section, within 24 hours of its execution, to the Aircraft Registry Technical Section, P.O. Box 25724, Oklahoma City, Oklahoma 73125;

(2) A copy of the lease or contract that complies with the requirements of paragraph (a) of this section is carried in the aircraft. The copy of the lease or contract shall be made available for review upon request by the Administrator, and

(3) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has notified by telephone or in person the FAA Flight Standards district office nearest the airport where the flight will originate. Unless otherwise authorized by that office, the notification shall be given at least 48 hours before takeoff in the case of the first flight of that aircraft under that lease or contract and inform the FAA of—

(i) The location of the airport of departure;

(ii) The departure time; and

(iii) The registration number of the aircraft involved.

(d) The copy of the lease or contract furnished to the FAA under paragraph (c) of this section is commercial or financial information obtained from a person. It is, therefore, privileged and confidential and will not be made available by the FAA for public inspection or copying under 5 U.S.C. 552(b)(4) unless recorded with the FAA under part 49 of this chapter.

(e) For the purpose of this section, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft and a contract of conditional sale under section 101 of the Federal Aviation Act of 1958. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.

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§ 91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.

The Administrator of the FAA will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses which are wholly excluded from the Program.

§ 91.27-91.99 [Reserved]

Subpart B—Flight Rules

General

§ 91.101 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

§ 91.103 Preflight action.

Each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include—

(a) For a flight under IFR or a flight not in the vicinity of an airport, weather reports and forecasts, fuel requirements, alternatives available if the planned flight cannot be completed, and any known traffic delays of which the pilot in command has been advised by ATC;

(b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:

(1) For civil aircraft for which an approved Airplane or Rotorcraft Flight Manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and

(2) For civil aircraft other than those specified in paragraph (b)(1) of this section, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature.

§ 91.105 Flight crewmembers at stations.

(a) During takeoff and landing, and while en route, each required flight crewmember shall—

(1) Be at the crewmember station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and

(2) Keep the safety belt fastened while at the crewmember station.

(b) Each required flight crewmember of a U.S.-registered civil airplane shall, during takeoff and landing, keep the shoulder harness fastened while at the crewmember station. This paragraph does not apply if—

(1) The seat at the crewmember's station is not equipped with a shoulder harness; or

(2) The crewmember would be unable to perform required duties with the shoulder harness fastened.

§ 91.107 Use of safety belts.

(a) No pilot may take off a U.S.-registered civil aircraft (except an airship or free balloon that incorporates a basket or gondola) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and shoulder harness, if installed. The pilot in command shall ensure that all persons on board have been notified to fasten their safety belt and shoulder harness, if installed, before takeoff or landing.

(b) During the takeoff and landing of a U.S.-registered civil aircraft (except an airship or a free balloon that incorporates a basket or gondola) each person on board that aircraft must occupy an approved seat or berth with a safety belt and shoulder harness, if installed, properly secured about that person. However, a person who has not reached the second birthday may be held by an adult who is occupying an approved seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(c) This section does not apply to operations conducted under part 121, 125, 127, or 135 of this chapter. Paragraph (b) of this section does not apply to persons subject to § 91.105.

§ 91.109 Flight instruction; Simulated instrument flight and certain flight tests.

(a) No person may operate a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, instrument flight instruction may be given in a single-engine airplane equipped with a single, functioning throwover control wheel in place of fixed, dual controls of the elevator and ailerons when—

(1) The instructor has determined that the flight can be conducted safely; and

(2) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(b) No person may operate a civil aircraft in simulated instrument flight unless—

(1) The other control seat is occupied by a safety pilot who possesses at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

(2) The safety pilot has adequate vision forward and to each side of the aircraft, or a competent observer in the aircraft adequately supplements the vision of the safety pilot; and

(3) Except in the case of lighter-than-air aircraft, that aircraft is equipped with fully functioning dual controls. However, simulated instrument flight may be conducted in a single-engine airplane, equipped with a single, functioning, throwover control wheel, in place of fixed, dual controls of the elevator and ailerons, when—

(i) The safety pilot has determined that the flight can be conducted safely; and

(ii) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(c) No person may operate a civil aircraft that is being used for a flight test for an airline transport pilot certificate or a class or type rating on that certificate, or for a part 121 proficiency flight test, unless the pilot seated at the controls, other than the pilot being checked, is fully qualified to act as pilot in command of the aircraft.

§ 91.111 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.

(c) No person may operate an aircraft, carrying passengers for hire, in formation flight.

§ 91.113 Right-of-way rules: Except water operations.

(a) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

(b) *General.* When weather conditions permit, regardless of whether an operation is conducted under instrument flight rules or visual flight rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft. When a rule of this section gives another aircraft the right-of-way, the pilot shall give way to that aircraft and may not pass over, under, or ahead of it unless well clear.

(c) *In distress.* An aircraft in distress has the right-of-way over all other air traffic.

(d) *Converging.* When aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft in the other's right has the right-of-way. If the aircraft are of different categories—

(1) A balloon has the right-of-way over any other category of aircraft;

(2) A glider has the right-of-way over an airship, airplane, or rotorcraft; and

(3) An airship has the right-of-way over an airplane or rotorcraft.

However, an aircraft towing or refueling other aircraft has the right-of-way over all other engine-driven aircraft.

(e) *Approaching head-on.* When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(f) *Overtaking.* Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right-of-way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land or to overtake that aircraft.

§ 91.115 Right-of-way rules: Water operations.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on, or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing

circumstances, including the limitations of the respective craft.

§ 91.117 Aircraft speed.

(a) No person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more that 250 knots (288 m.p.h.).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area at an indicated airspeed of more than 200 knots (230 m.p.h.). This paragraph (b) does not apply to any operations within a terminal control area. Such operations shall comply with paragraph (a) of this section.

(c) No person may operate an aircraft in the airspace underlying a terminal control area, or in a VFR corridor designated through a terminal control area, at an indicated airspeed of more than 200 knots (230 m.p.h.).

(d) If the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with any routes or altitudes specifically prescribed for helicopters by the Administrator.

§ 91.121 Altimeter settings.

(a) Each person operating an aircraft shall maintain the cruising altitude or flight level of that aircraft, as the case may be, by reference to an altimeter that is set, when operating—

(1) Below 18,000 feet MSL, to—

(i) The current reported altimeter setting of a station along the route and within 100 nautical miles of the aircraft;

(ii) If there is no station within the area prescribed in paragraph (a)(1)(i) of this section, the current reported altimeter setting of an appropriate available station; or

(iii) In the case of an aircraft not equipped with a radio, the elevation of the departure airport or an appropriate altimeter setting available before departure; or

(2) At or above 18,000 feet MSL, to 29.92" Hg.

(b) The lowest usable flight level is determined by the atmospheric pressure in the area of operation as shown in the following table:

Current altimeter setting	Lowest usable flight level
29.92 (or higher)	180
29.91 through 29.42	185
29.41 through 28.92	190
28.91 through 28.42	195
28.41 through 27.92	200
27.91 through 27.42	205
27.41 through 26.92	210

(c) To convert minimum altitude prescribed under §§ 91.119 and 91.177 to the minimum flight level, the pilot shall take the flight level equivalent of the minimum altitude in feet and add the appropriate number of feet specified below, according to the current reported altimeter setting:

Current altimeter setting	Adjustment factor
29.92 (or higher)	None
29.91 through 29.42	500
29.41 through 28.92	1,000
28.91 through 28.42	1,500
28.41 through 27.92	2,000
27.91 through 27.42	2,500
27.41 through 26.92	3,000

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained. A pilot in command may cancel an IFR flight plan if that pilot is operating in VFR weather conditions outside of positive controlled airspace. If a pilot is uncertain of the meaning of an ATC clearance, the pilot shall immediately request clarification from ATC.

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

(c) Each pilot in command who, in an emergency, deviates from an ATC clearance or instruction shall notify ATC of that deviation as soon as possible.

(d) Each pilot in command who (though not deviating from a rule of this subpart) is given priority by ATC in an emergency, shall submit a detailed report of that emergency within 48 hours to the manager of that ATC facility, if requested by ATC.

(e) Unless otherwise authorized by ATC, no person operating an aircraft may operate that aircraft according to any clearance or instruction that has been issued to the pilot of another aircraft for radar air traffic control purposes.

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§ 91.125 ATC light signals.

ATC light signals have the meaning shown in the following table:

Color and type of signal	Meaning with respect to aircraft on the surface	Meaning with respect to aircraft in flight
Steady green	Cleared for takeoff.	Cleared to land.
Flashing green	Cleared to taxi	Return for landing (to be followed by steady green at proper time).
Steady red	Stop	Give way to other aircraft and continue circling.
Flashing red	Taxi clear of runway in use.	Airport unsafe—do not land.
Flashing white	Return to starting point on airport.	Not applicable.
Alternating red and green.	Exercise extreme caution.	Exercise extreme caution.

§ 91.127 Operating on or in the vicinity of an airport: General rules.

(a) Unless otherwise required by part 93 of this chapter, each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section and, if applicable, of § 91.129.

(b) Each person operating an aircraft to or from an airport without an operating control tower shall—

(1) In the case of an airplane approaching to land, make all turns of that airplane to the left unless the airport displays approved light signals

or visual markings indicating that turns should be made to the right, in which case the pilot shall make all turns to the right;

(2) In the case of a helicopter approaching to land, avoid the flow of fixed-wing aircraft; and

(3) In the case of an aircraft departing the airport, comply with any traffic patterns established for that airport in part 93.

(c) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area except for the purpose of landing at, or taking off from, an airport within that area. ATC authorization may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

(d) Except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the airplane flight manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of the airplane and may use a different flap setting approved for that airplane if it is necessary in the interest of safety.

§ 91.129 Operation at airports with operating control towers.

(a) *General.* Unless otherwise authorized or required by ATC, each person operating an aircraft to, from, or on an airport with an operating control tower shall comply with the applicable provisions of this section.

(b) *Communications with control towers operated by the United States.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

(c) *Communications with other control towers.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower that is operated by any person other than the United States unless—

(1) If that aircraft's radio equipment so allows, two-way radio communications are maintained between the aircraft and the tower; or

(2) If that aircraft's radio equipment allows only reception from the tower, the pilot has the tower's frequency monitored.

(d) *Minimum altitudes.* When operating to an airport with an operating control tower, each pilot of—

(1) A turbine-powered airplane or a large airplane shall, unless otherwise required by the applicable distance from cloud criteria, enter the airport traffic area at an altitude of at least 1,500 feet above the surface of the airport and maintain an altitude of at least 1,500 feet within the airport traffic area, including the traffic pattern, until further descent is required for a safe landing;

(2) A turbine-powered airplane or a large airplane approaching to land on a runway being served by an ILS, if the airplane is ILS equipped, shall fly that airplane at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) An airplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

However, paragraphs (d) (2) and (3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(e) *Approaches.* When approaching to land at an airport with an operating control tower, each pilot of—

(1) An airplane shall circle the airport to the left; and

(2) A helicopter shall avoid the flow of fixed-wing aircraft.

(f) *Departures.* No person may operate an aircraft taking off from an airport with an operating control tower except in compliance with the following:

(1) Each pilot shall comply with any departure procedures established for that airport by the FAA.

(2) Unless otherwise required by the departure procedure or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane shall climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(g) *Noise abatement runway system.* When landing or taking off from an airport with an operating control tower and for which a formal runway use program has been established by the FAA, each pilot of a turbine-powered airplane and each pilot of a large airplane assigned a noise abatement runway by ATC shall use that runway. However, consistent with the final authority of the pilot in command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

(h) *Clearances required.* No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

§ 91.130 Airport radar service areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures.* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic patterns.* No person may take off or land an aircraft at a satellite airport within an airport radar service

area except in compliance with FAA arrival and departure traffic patterns.

(f) *Equipment requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft within an airport radar service area unless that aircraft is equipped with the applicable equipment specified in § 91.215.

§ 91.131 Terminal control areas.

(a) *Operating rules.* No person may operate an aircraft within a terminal control area designated in part 71 of this chapter except in compliance with the following rules:

(1) No person may operate an aircraft within a terminal control area unless that person has received an appropriate authorization from ATC prior to operation of that aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(3) Any person conducting pilot training operations at an airport within a terminal control area shall comply with any procedures established by ATC for such operations in terminal control area.

(b) *Pilot requirements.* (1) No person may takeoff or land a civil aircraft at an airport within a terminal control area or operate a civil aircraft within a terminal control area unless:

(i) The pilot-in-command holds at least a private pilot certificate; or,

(ii) The aircraft is operated by a student pilot who has met the requirements of § 61.95.

(2) Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, at the following TCA primary airports, no person may takeoff or land a civil aircraft unless the pilot-in-command holds at least a private pilot certificate:

(i) Atlanta Hartsfield Airport, GA.

(ii) Boston Logan Airport, MA.

(iii) Chicago O'Hare International Airport, IL.

(iv) Dallas/Fort Worth International Airport, TX.

(v) Los Angeles International Airport, CA.

(vi) Miami International Airport, FL.

(vii) Newark International Airport, NJ.

(viii) New York Kennedy Airport, NY.

(ix) New York La Guardia Airport, NY.

(x) San Francisco International Airport, CA.

(xi) Washington National Airport, DC.

(xii) Andrews Air Force Base, MD

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) An operable VOR or TACAN receiver (except for helicopter operations prior to January 1, 1990; and

(2) An operable two-way radio capable of communications with ATC on appropriate frequencies for that terminal control area.

(d) *Transponder requirement.* No person may operate an aircraft in a terminal control area unless the aircraft is equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.215, except as provided in paragraph (d) of that section.

§ 91.133 Restricted and prohibited areas.

(a) No person may operate an aircraft within a restricted area (designated in part 73) contrary to the restrictions imposed, or within a prohibited area, unless that person has the permission of the using or controlling agency, as appropriate.

(b) Each person conducting, within a restricted area, an aircraft operation (approved by the using agency) that creates the same hazards as the operations for which the restricted area was designated may deviate from the rules of this subpart that are not compatible with the operation of the aircraft.

§ 91.135 Positive control areas and route segments.

(a) Except as provided in paragraph (b) of this section, no person may operate an aircraft within a positive control area or positive control route segment designated in part 71 of this chapter unless the aircraft is—

(1) Operated under IFR at a specific flight level assigned by ATC;

(2) Equipped with instruments and equipment required for IFR operations;

(3) Flown by a pilot rated for instrument flight; and

(4) Equipped, when in a positive control area, with—

(i) The applicable equipment specified in § 91.215; and

(ii) A radio providing direct pilot/controller communication on the frequency specified by ATC for the area concerned.

(b) ATC may authorize deviations from the requirements of paragraph (a) of this section. In the case of an inoperative transponder, ATC may immediately approve an operation within a positive control area allowing flight to continue, if desired, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made, or both. A request for authorization to deviate from a requirement of paragraph (a) of this section, other than for operation with an inoperative transponder as outlined above, must be submitted at least 48 hours before the proposed operation to the ATC center having jurisdiction over the positive control area concerned. ATC may authorize deviation on a continuing basis or for an individual flight, as appropriate.

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§ 91.137 Temporary flight restrictions.

(a) The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to—

(1) Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;

(2) Provide a safe environment for the operation of disaster relief aircraft; or

(3) Prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

(b) When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

(1) The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is operating under the ATC approved IFR flight plan.

(4) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility

specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.

(5) The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

(d) When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

(2) The aircraft is operating under an ATC approved IFR flight plan.

(3) The aircraft is carrying incident or event personnel, or law enforcement officials.

(4) The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

(e) Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

(1) Aircraft identification, type and color.

(2) Radio communications frequencies to be used.

(3) Proposed times of entry of, and exit from, the designated area.

(4) Name of news media or organization and purpose of flight.

(5) Any other information requested by ATC.

§ 91.139 Emergency air traffic rules.

(a) This section prescribes a process for utilizing Notices to Airmen (NOTAMs) to advise of the issuance and operations under emergency air traffic rules and regulations and designates the official who is authorized to issue NOTAMs on behalf of the Administrator in certain matters under this section.

(b) Whenever the Administrator determines that an emergency condition exists, or will exist, relating to the FAA's ability to operate the air traffic control system and during which normal flight operations under this chapter cannot be conducted consistent with the required levels of safety and efficiency—

(1) The Administrator issues an immediately effective air traffic rule or regulation in response to that emergency condition; and

(2) The Administrator or the Associate Administrator for Air Traffic may utilize the NOTAM system to provide notification of the issuance of the rule or regulation.

Those NOTAMs communicate information concerning the rules and regulations that govern flight operations, the use of navigation facilities, and designation of that airspace in which the rules and regulations apply.

(c) When a NOTAM has been issued under this section, no person may operate an aircraft, or other device governed by the regulation concerned, within the designated airspace except in accordance with the authorizations, terms, and conditions prescribed in the regulation covered by the NOTAM.

§ 91.141 Flight restrictions in the proximity of the Presidential and other parties.

No person may operate an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM).

§ 91.143 Flight limitation in the proximity of space flight operations.

No person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration within areas designated in a Notice to Airmen (NOTAM) for space flight operations except when authorized by ATC, or operated under the control of the Department of Defense Manager for Space Transportation System Contingency Support Operations.

§§ 91.145–91.149 [Reserved]

Visual Flight Rules

§ 91.151 Fuel requirements for flight in VFR conditions.

(a) No person may begin a flight in an airplane under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed—

(1) During the day, to fly after that for at least 30 minutes; or

(2) At night, to fly after that for at least 45 minutes.

(b) No person may begin a flight in a rotorcraft under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed, to fly after that for at least 20 minutes.

§ 91.153 VFR flight plan: information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing a VFR flight plan shall include in it the following information:

(1) The aircraft identification number and, if necessary, its radio call sign.

(2) The type of the aircraft or, in the case of a formation flight, the type of each aircraft and the number of aircraft in the formation.

(3) The full name and address of the pilot in command or, in the case of a formation flight, the formation commander.

(4) The point and proposed time of departure.

(5) The proposed route, cruising altitude (or flight level), and true airspeed at that altitude.

(6) The point of first intended landing and the estimated elapsed time until over that point.

(7) The amount of fuel on board (in hours).

(8) The number of persons in the aircraft, except where that information is otherwise readily available to the FAA.

(9) Any other information the pilot in command or ATC believes is necessary for ATC purposes.

(b) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in § 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescribed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface (regardless of MSL altitude)—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile except as provided in § 91.155(b)	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5 statute miles	1,000 feet below, 1,000 feet above, 1 mile horizontal.

(b) When the visibility is less than 1 statute mile, a helicopter may be operated outside controlled airspace at 1,200 feet or less above the surface if operated at a speed that allows the pilot adequate opportunity to see any air traffic or other obstruction in time to avoid a collision.

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

(d) Except as provided in § 91.157, no person may take off or land an aircraft, or enter the traffic pattern of an airport, under VFR, within a control zone—

(1) Unless ground visibility at that airport is at least 3 statute miles; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff, or while operating in the traffic pattern, is at least 3 statute miles.

(e) For the purposes of this section, an aircraft operating at the base altitude of a transition area or control area is considered to be within the airspace directly below that area.

§ 91.157 Special VFR weather minimums.

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance, the special weather minimums of this section instead of those contained in § 91.155 apply to the operation of an aircraft by that person in a control zone under VFR.

(b) No person may operate an aircraft in a control zone under VFR except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) in a control zone under VFR unless flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter) at any airport in a control zone under VFR—

(1) Unless ground visibility at that airport is at least 1 statute mile; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff is at least 1 statute mile.

(e) No person may operate an aircraft (other than a helicopter) in a control zone under the special weather minimums of this section, between sunset and sunrise (or in Alaska, when the sun is more than 6 degrees below the horizon) unless:

(1) That person meets the applicable requirements for instrument flight under part 61 of this chapter; and

(2) The aircraft is equipped as required in § 91.205(d).

§ 91.159 VFR cruising altitude or flight level.

Except while holding in a holding pattern of 2 minutes or less, or while turning, each person operating an aircraft under VFR in level cruising flight more than 3,000 feet above the surface shall maintain the appropriate altitude or flight level prescribed below, unless otherwise authorized by ATC:

(a) When operating below 18,000 feet MSL and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude +500 feet (such as 3,500, 5,500, or 7,500); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude +500 feet (such as 4,500, 6,500, or 8,500).

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level +500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level +500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380); or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360, or 400).

§§ 91.161-91.165 [Reserved]

Instrument Flight Rules

§ 91.167 Fuel requirements for flight in IFR conditions.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if—

(1) Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing; and

(2) For at least 1 hour before and 1 hour after the estimated time of arrival at the airport, the weather reports or forecasts or any combination of them indicate—

(i) The ceiling will be at least 2,000 feet above the airport elevation; and

(ii) Visibility will be at least 3 statute miles.

§ 91.169 IFR flight plan: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a).

(2) An alternate airport, except as provided in paragraph (b) of this section.

(b) *Exceptions to applicability of paragraph (a)(2) of this section.* Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument

approach procedure for the first airport of intended landing and, for at least 1 hour before and 1 hour after the estimated time of arrival, the weather reports or forecasts, or any combination of them, indicate—

(1) The ceiling will be at least 2,000 feet above the airport elevation; and

(2) The visibility will be at least 3 statute miles.

(c) *IFR alternate airport weather minimums.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate airport weather minimums:

(1) If an instrument approach procedure has been published in part 97 of this chapter for that airport, the alternate airport minimums specified in that procedure or, if none are so specified, the following minimums:

(i) Precision approach procedure: Ceiling 600 feet and visibility 2 statute miles.

(ii) Nonprecision approach procedure: Ceiling 800 feet and visibility 2 statute miles.

(2) If no instrument approach procedure has been published in part 97 of this chapter for that airport, the ceiling and visibility minimums are those allowing descent from the MEA, approach, and landing under basic VFR.

(d) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.171 VOR equipment check for IFR operations.

(a) No person may operate a civil aircraft under IFR using the VOR system of radio navigation unless the VOR equipment of that aircraft—

(1) Is maintained, checked, and inspected under an approved procedure; or

(2) Has been operationally checked within the preceding 30 days, and was found to be within the limits of the permissible indicated bearing error set forth in paragraph (b) or (c) of this section.

(b) Except as provided in paragraph (c) of this section, each person conducting a VOR check under paragraph (a)(2) of this section shall—

(1) Use, at the airport of intended departure, an FAA-operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station or, outside the United States, a test signal operated or approved by an appropriate authority to check the VOR equipment (the maximum permissible indicated bearing error is plus or minus 4 degrees); or

(2) Use, at the airport of intended departure, a point on the airport surface designated as a VOR system checkpoint by the Administrator, or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 4 degrees); or

(3) If neither a test signal nor a designated checkpoint on the surface is available, use an airborne checkpoint designated by the Administrator or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 6 degrees); or

(4) If no check signal or point is available, while in flight—

(i) Select a VOR radial that lies along the centerline of an established VOR airway;

(ii) Select a prominent ground point along the selected radial preferably more than 20 nautical miles from the VOR ground facility and maneuver the aircraft directly over the point at a reasonably low altitude; and

(iii) Note the VOR bearing indicated by the receiver when over the ground point (the maximum permissible variation between the published radial and the indicated bearing is 6 degrees).

(c) If dual system VOR (units independent of each other except for the antenna) is installed in the aircraft, the person checking the equipment may check one system against the other in place of the check procedures specified in paragraph (b) of this section. Both systems shall be tuned to the same VOR ground facility and note the indicated bearings to that station. The maximum permissible variation between the two indicated bearings is 4 degrees.

(d) Each person making the VOR operational check, as specified in paragraph (b) or (c) of this section, shall enter the date, place, bearing error, and sign the aircraft log or other record. In addition, if a test signal radiated by a repair station, as specified in paragraph (b)(1) of this section, is used, an entry must be made in the aircraft log or other record by the repair station certificate holder or the certificate holder's representative certifying to the bearing transmitted by the repair station for the check and the date of transmission.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.173 ATC clearance and flight plan required.

No person may operate an aircraft in controlled airspace under IFR unless that person has—

(a) Filed an IFR flight plan; and

(b) Received an appropriate ATC clearance.

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.*

Unless otherwise authorized by the Administrator, when an instrument letdown to a civil airport is necessary, each person operating an aircraft, except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in part 97 of this chapter.

(b) *Authorized DH or MDA.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH or MDA, the authorized DH or MDA is the highest of the following:

(1) The DH or MDA prescribed by the approach procedure.

(2) The DH or MDA prescribed for the pilot in command.

(3) The DH or MDA for which the aircraft is equipped.

(c) *Operation below DH or MDA.* Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—

(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and for operations conducted under part 121 or part 135 unless that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The flight visibility is not less than the visibility prescribed in the standard instrument approach being used; and

(3) Except for a Category II or Category III approach where any necessary visual reference requirements are specified by the Administrator, at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.
(iii) The threshold markings.
(iv) The threshold lights.
(v) The runway end identifier lights.
(vi) The visual approach slope indicator.
(vii) The touchdown zone or touchdown zone markings.
(viii) The touchdown zone lights.
(ix) The runway or runway markings.
(x) The runway lights.

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist:

(1) Whenever the requirements of paragraph (c) of this section are not met at either of the following times:

(i) When the aircraft is being operated below MDA; or

(ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown.

(2) Whenever an identifiable part of the airport is not distinctly visible to the pilot during a circling maneuver at or above MDA, unless the inability to see an identifiable part of the airport results only from a normal bank of the aircraft during the circling approach.

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no pilot operating an aircraft under parts 121, 125, 127, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimum for IFR takeoff prescribed for that airport under part 97 of this chapter. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts:

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

(2) For aircraft having more than two engines—½ statute mile visibility.

(3) For helicopters—1/2 statute mile visibility.

(g) *Military airports.* Unless otherwise prescribed by the Administrator, each person operating a civil aircraft under IFR into or out of a military airport shall comply with the instrument approach procedures and the takeoff and landing minimum prescribed by the military authority having jurisdiction of that airport.

(h) *Comparable values of RVR and ground visibility.* (1) Except for Category II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum shall be converted to ground visibility in accordance with the table in paragraph (h)(2) of this section and shall be the visibility minimum for takeoff or landing on that runway.

RVR (feet)	Visibility (statute miles)
1,600	¼
2,400	½
3,200	⅝
4,000	¾
4,500	⅞
5,000	1
6,000	1¼

(i) *Operations on unpublished routes and use of radar in instrument approach procedures.* When radar is approved at certain locations for ATC purposes, it may be used not only for surveillance and precision radar approaches, as applicable, but also may be used in conjunction with instrument approach procedures predicated on other types of radio navigational aids. Radar vectors may be authorized to provide course guidance through the segments of an approach to the final course or fix. When operating on an unpublished route or while being radar vectored, the pilot, when an approach clearance is received, shall, in addition to complying with § 91.177, maintain the last altitude assigned to that pilot until the aircraft is established on a segment of a published route or instrument approach procedure unless a different altitude is assigned by ATC. After the aircraft is so established, published altitudes apply to descent within each succeeding route or approach segment unless a different altitude is assigned by ATC. Upon reaching the final approach course or fix, the pilot may either complete the instrument approach in accordance with a procedure approved for the facility or continue a surveillance or precision radar approach to a landing.

(j) *Limitation on procedure turns.* In the case of a radar vector to a final approach course or fix, a timed approach from a holding fix, or an approach for which the procedure specifies "No PT," no pilot may make a procedure turn unless cleared to do so by ATC.

(k) *ILS components.* The basic ground components of an ILS are the localizer, glide slope, outer marker, middle marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. A compass locator or precision radar may be substituted for the outer or middle marker. DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure or surveillance radar may be substituted for the outer marker. Applicability of, and substitution for, the inner marker for Category II or III approaches is determined by the appropriate part 97 approach procedure, letter of authorization, or operations specification pertinent to the operations.

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in Parts 95 and 97 of this chapter; or

(2) If no applicable minimum altitude is prescribed in those parts—

(i) In the case of operations over an area designated as a mountainous area in part 95, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, when within 22 nautical miles of the VOR concerned (based on the pilot's reasonable estimate of that distance).

(b) *Climb.* Climb to a higher minimum IFR altitude shall begin immediately after passing the point beyond which that minimum altitude applies, except that when ground obstructions intervene, the point beyond which that higher minimum altitude applies shall be crossed at or above the applicable MCA.

§ 91.179 IFR cruising altitude or flight level.

(a) *In controlled airspace.* Each person operating an aircraft under IFR in level cruising flight in controlled airspace shall maintain the altitude or flight level assigned that aircraft by ATC. However, if the ATC clearance

assigns "VFR conditions on-top," that person shall maintain an altitude or flight level as prescribed by § 91.159.

(b) *In uncontrolled airspace.* Except while in a holding pattern of 2 minutes or less or while turning, each person operating an aircraft under IFR in level cruising flight in uncontrolled airspace shall maintain an appropriate altitude as follows:

(1) When operating below 18,000 feet MSL and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude (such as 3,000, 5,000, or 7,000); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude (such as 2,000, 4,000, or 6,000).

(2) When operating at or above 18,000 feet MSL but below flight level 290, and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level (such as 190, 210, or 230); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level (such as 180, 200, or 220).

(3) When operating at flight level 290 and above, and—

(i) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 290 (such as flight level 290, 330, or 370); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 310 (such as flight level 310, 350, or 390).

§ 91.181 Course to be flown.

Unless otherwise authorized by ATC, no person may operate an aircraft within controlled airspace under IFR except as follows:

(a) On a Federal airway, along the centerline of that airway.

(b) On any other route, along the direct course between the navigational aids or fixes defining that route. However, this section does not prohibit maneuvering the aircraft to pass well clear of other air traffic or the maneuvering of the aircraft in VFR conditions to clear the intended flight path both before and during climb or descent.

§ 91.183 IFR radio communications.

The pilot in command of each aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible—

(a) The time and altitude of passing each designated reporting point, or the reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(b) Any unforecast weather conditions encountered; and

(c) Any other information relating to the safety of flight.

§ 91.185 IFR operations: Two-way radio communications failure.

(a) *General.* Unless otherwise authorized by ATC, each pilot who has two-way radio communications failure when operating under IFR shall comply with the rules of this section.

(b) *VFR conditions.* If the failure occurs in VFR conditions, or if VFR conditions are encountered after the failure, each pilot shall continue the flight under VFR and land as soon as practicable.

(c) *IFR conditions.* If the failure occurs in IFR conditions, or if paragraph (b) of this section cannot be complied with, each pilot shall continue the flight according to the following:

(1) *Route.* (i) By the route assigned in the last ATC clearance received;

(ii) If being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) In the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) In the absence of an assigned route or a route that ATC has advised may be expected in a further clearance, by the route filed in the flight plan.

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segnent being flown:

(i) The altitude or flight level assigned in the last ATC clearance received;

(ii) The minimum altitude (converted, if appropriate, to minimum flight level as prescribed in § 91.121(c)) for IFR operations; or

(iii) The altitude or flight level ATC has advised may be expected in a further clearance.

(3) *Leave clearance limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect-further-clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect-further-clearance time if one has been received, or if none has been received, upon arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

§ 91.187 Operation under IFR in controlled airspace: Malfunction reports.

(a) The pilot in command of each aircraft operated in controlled airspace under IFR shall report as soon as practical to ATC any malfunctions of navigational, approach, or communication equipment occurring in flight.

(b) In each report required by paragraph (a) of this section, the pilot in command shall include the—

(1) Aircraft identification;

(2) Equipment affected;

(3) Degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(4) Nature and extent of assistance desired from ATC.

§ 91.189 Category II and III operations: General operating rules.

(a) No person may operate a civil aircraft in a Category II or III operation unless—

(1) The flight crew of the aircraft consists of a pilot in command and a second in command who hold the appropriate authorizations and ratings prescribed in § 61.3 of this chapter;

(2) Each flight crewmember has adequate knowledge of, and familiarity with, the aircraft and the procedures to be used; and

(3) The instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system that is being used.

(b) Unless otherwise authorized by the Administrator, no person may operate a civil aircraft in a Category II or Category III operation unless each ground component required for that operation and the related airborne equipment is installed and operating.

(c) *Authorized DH.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH, the authorized DH is the highest of the following:

(1) The DH prescribed by the approach procedure.

(2) The DH prescribed for the pilot in command.

(3) The DH for which the aircraft is equipped.

(d) Unless otherwise authorized by the Administrator, no pilot operating an aircraft in a Category II or Category III

approach that provides and requires use of a DH may continue the approach below the authorized decision height unless the following conditions are met:

(1) The aircraft is in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and where that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing.

(2) At least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.

(iii) The threshold markings.

(iv) The threshold lights.

(v) The touchdown zone or touchdown zone markings.

(vi) The touchdown zone lights.

(e) Unless otherwise authorized by the Administrator, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, prior to touchdown, the requirements of paragraph (d) of this section are not met.

(f) No person operating an aircraft using a Category III approach without decision height may land that aircraft except in accordance with the provisions of the letter of authorization issued by the Administrator.

(g) Paragraphs (a) through (f) of this section do not apply to operations conducted by the holders of certificates issued under part 121, 125, 129, or 135 of this chapter. No person may operate a civil aircraft in a Category II or Category III operation conducted by the holder of a certificate issued under part 121, 125, 129, or 135 of this chapter unless the operation is conducted in accordance with that certificate holder's operations specifications.

§ 91.191 Category II manual.

(a) No person may operate a civil aircraft of United States registry in a Category II operation unless—

(1) There is available in the aircraft a current, approved Category II manual for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in that manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II operation have been inspected and maintained in accordance with the maintenance program contained in that manual.

(b) Each operator shall keep a current copy of the approved manual at its principal base of operations and shall make it available for inspection upon request of the Administrator.

(c) This section does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

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§ 91.193 Certificate of authorization for certain Category II operations.

The Administrator may issue a certificate of authorization authorizing deviations from the requirements of §§ 91.189, 91.191, and 91.205(f) for the operation of small aircraft identified as Category A aircraft in § 97.3 of this chapter in Category II operations if the Administrator finds that the proposed operation can be safely conducted under the terms of the certificate. Such authorization does not permit operation of the aircraft carrying persons or property for compensation or hire.

§§ 91.195-91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

§ 91.201 [Reserved]

§ 91.203 Civil aircraft: Certifications required.

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by parts 121 and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization under § 91.611) must have on it the registration number assigned to the aircraft under part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special identification number, that has been affixed to an aircraft, may only be obtained upon application to an FAA Flight Standards district office.

(2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

(b) No person may operate a civil aircraft unless the airworthiness certificate required by paragraph (a) of this section or a special flight authorization issued under § 91.715 is displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

(a) *General.* Except as provided in paragraphs (c)(3) and (e) of this section, no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs (or FAA-approved equivalents) for that type of operation, and those instruments and items of equipment are in operable condition.

(b) *Visual-flight rules (day).* For VFR flight during the day, the following instruments and equipment are required:

(1) Airspeed indicator.

(2) Altimeter.

(3) Magnetic direction indicator.

(4) Tachometer for each engine.

(5) Oil pressure gauge for each engine using pressure system.

(6) Temperature gauge for each liquid-cooled engine.

(7) Oil temperature gauge for each air-cooled engine.

(8) Manifold pressure gauge for each altitude engine.

(9) Fuel gauge indicating the quantity of fuel in each tank.

(10) Landing gear position indicator, if the aircraft has a retractable landing gear.

(11) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and at least one pyrotechnic signaling device. As used in this section, "shore" means that area of the land adjacent to the water which is above the high water mark and excludes land

areas which are intermittently under water.

(12) Except as to airships, an approved safety belt with an approved metal-to-metal latching device for each occupant 2 years of age or older.

(13) For small civil airplanes manufactured after July 18, 1978, an approved shoulder harness for each front seat. The shoulder harness must be designed to protect the occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. Each shoulder harness installed at a flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. For purposes of this paragraph—

(i) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(ii) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

(14) An emergency locator transmitter, if required by § 91.207.

(15) For normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of 9 or less, manufactured after December 12, 1986, a shoulder harness for—

(i) Each front seat that meets the requirements of § 23.785 (g) and (h) of this chapter in effect on December 12, 1985;

(ii) Each additional seat that meets the requirements of § 23.785(g) of this chapter in effect on December 12, 1985.

(c) *Visual flight rules (night).* For VFR flight at night, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section.

(2) Approved position lights.

(3) An approved aviation red or aviation white anticollision light system on all U.S.-registered civil aircraft. Anticollision light systems initially installed after August 11, 1971, on aircraft for which a type certificate was issued or applied for before August 11, 1971, must at least meet the anticollision light standards of part 23, 25, 27, or 29 of this chapter, as applicable, that were in effect on August 10, 1971, except that the color may be either aviation red or aviation white. In the event of failure of any light of the anticollision light system, operations with the aircraft may be continued to a stop where repairs or replacement can be made.

(4) If the aircraft is operated for hire, one electric landing light.

(5) An adequate source of electrical energy for all installed electrical and radio equipment.

(6) One spare set of fuses, or three spare fuses of each kind required, that are accessible to the pilot in flight.

(d) *Instrument flight rules.* For IFR flight, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section, and, for night flight, instruments and equipment specified in paragraph (c) of this section.

(2) Two-way radio communications system and navigational equipment appropriate to the ground facilities to be used.

(3) Gyroscopic rate-of-turn indicator, except on the following aircraft:

(i) Large airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch and roll and installed in accordance with § 121.305(j) of this chapter; and

(ii) Rotorcraft with a third attitude instrument system usable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(4) Slip-skid indicator.

(5) Sensitive altimeter adjustable for barometric pressure.

(6) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

(7) Generator or alternator of adequate capacity.

(8) Gyroscopic pitch and bank indicator (artificial horizon).

(9) Gyroscopic direction indicator (directional gyro or equivalent).

(e) *Flight at and above 24,000 ft. MSL (FL 240).* If VOR navigational equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 240 unless that aircraft is equipped with approved distance measuring equipment (DME). When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately, and then may continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made.

(f) *Category II operations.* For Category II operations the instruments and equipment specified in paragraph (d) of this section and appendix A to this part are required. This paragraph does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

§ 91.207 Emergency locator transmitters.

(a) Except as provided in paragraphs (d) and (e) of this section, no person may operate a U.S.-registered civil airplane unless—

(1) There is attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO–C91 for the following operations:

(i) Those operations governed by the supplemental air carrier and commercial operator rules of parts 121 and 125;

(ii) Charter flights governed by the domestic and flag air carrier rules of part 121 of this chapter; and

(iii) Operations governed by part 135 of this chapter; or

(2) For operations other than those specified in paragraph (a)(1)(i) of this section, there must be attached to the airplane a personal type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO–C91.

(b) Each emergency locator transmitter required by paragraph (a) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter in the event of crash impact is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(c) Batteries used in the emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced (or recharged, if the batteries are rechargeable)—

(1) When the transmitter has been in use for more than 1 cumulative hour; or

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge), as established by the transmitter manufacturer under TSO–C91, paragraph (g)(2) of this section, has expired.

The new expiration date for replacing (or recharging) the battery must be legibly marked on the outside of the transmitter and entered in the aircraft maintenance record. Paragraph (c)(2) of this section does not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

(d) Notwithstanding paragraph (a) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry an airplane with an inoperative emergency locator

transmitter from a place where repairs or replacements cannot be made to a place where they can be made.

No person other than required crewmembers may be carried aboard an airplane being ferried under paragraph (d) of this section.

(e) Paragraph (a) of this section does not apply to—

(1) Turbojet-powered aircraft;

(2) Aircraft while engaged in scheduled flights by scheduled air carriers;

(3) Aircraft while engaged in training operations conducted entirely within a 50-nautical mile radius of the airport from which such local flight operations began;

(4) Aircraft while engaged in flight operations incident to design and testing;

(5) New aircraft while engaged in flight operations incident to their manufacture, preparation, and delivery;

(6) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

(7) Aircraft certificated by the Administrator for research and development purposes;

(8) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys;

(9) Aircraft equipped to carry not more than one person; and

(10) An aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification, or replacement, subject to the following:

(i) No person may operate the aircraft unless the aircraft records contain an entry which includes the date of initial removal, the make, model, serial number, and reason for removing the transmitter, and a placard located in view of the pilot to show "ELT not installed."

(ii) No person may operate the aircraft more than 90 days after the ELT is initially removed from the aircraft.

§ 91.209 Aircraft lights.

No person may, during the period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon)—

(a) Operate an aircraft unless it has lighted position lights;

(b) Park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—

(1) Is clearly illuminated;

(2) Has lighted position lights; or

(3) Is in an area which is marked by obstruction lights;

(c) Anchor an aircraft unless the aircraft—

(1) Has lighted anchor lights; or

(2) Is in an area where anchor lights are not required on vessels; or

(d) Operate an aircraft, required by § 91.205(c)(3) to be equipped with an anticollision light system, unless it has approved and lighted aviation red or aviation white anticollision lights. However, the anticollision lights need not be lighted when the pilot in command determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

§ 91.211 Supplemental oxygen.

(a) *General.* No person may operate a civil aircraft of U.S. registry—

(1) At cabin pressure altitudes above 12,500 feet (MSL) up to and including 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration;

(2) At cabin pressure altitudes above 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen during the entire flight time at those altitudes; and

(3) At cabin pressure altitudes above 15,000 feet (MSL) unless each occupant of the aircraft is provided with supplemental oxygen.

(b) *Pressurized cabin aircraft.* (1) No person may operate a civil aircraft of U.S. registry with a pressurized cabin—

(i) At flight altitudes above flight level 250 unless at least a 10-minute supply of supplemental oxygen, in addition to any oxygen required to satisfy paragraph (a) of this section, is available for each occupant of the aircraft for use in the event that a descent is necessitated by loss of cabin pressurization; and

(ii) At flight altitudes above flight level 350 unless one pilot at the controls of the airplane is wearing and using an oxygen mask that is secured and sealed and that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude of the airplane exceeds 14,000 feet (MSL), except that the one pilot need not wear and use an oxygen mask while at or below flight level 410 if there are two pilots at the controls and each pilot has a quick-donning type of oxygen mask that can be placed on the face with one hand from the ready position within 5 seconds, supplying oxygen and properly secured and sealed.

(2) Notwithstanding paragraph (b)(1)(ii) of this section, if for any reason at any time it is necessary for one pilot to leave the controls of the aircraft when operating at flight altitudes above flight level 350, the remaining pilot at the controls shall put on and use an oxygen mask until the other pilot has returned to that crewmember's station.

§ 91.213 Inoperative instruments and equipment.

(a) Except as provided in paragraph (d) of this section, no person may take off an aircraft with inoperative instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for that aircraft.

(2) The aircraft has within it a letter of authorization, issued by the FAA Flight Standards district office having jurisdiction over the area in which the operator is located, authorizing operation of the aircraft under the Minimum Equipment List. The letter of authorization may be obtained by written request of the airworthiness certificate holder. The Minimum Equipment List and the letter of authorization constitute a supplemental type certificate for the aircraft.

(3) The approved Minimum Equipment List must—

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section; and

(ii) Provide for the operation of the aircraft with the instruments and equipment in an inoperable condition.

(4) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the letter authorizing the use of the list.

(b) The following instruments and equipment may not be included in a Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.

(3) Instruments and equipment required for specific operations by this part.

(c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under Part 121, 125, or 135 of this chapter shall use

that Minimum Equipment List in connection with operations conducted with that aircraft under this part without additional approval requirements.

(d) Except for operations conducted in accordance with paragraph (a) or (c) of this section, a person may takeoff an aircraft in operations conducted under this part with inoperative instruments and equipment without an approved Minimum Equipment List provided—

(1) The flight operation is conducted in a—

(i) Rotorcraft, nonturbine-powered airplane, glider, or lighter-than-air aircraft for which a master Minimum Equipment List has not been developed; or

(ii) Small rotorcraft, nonturbine-powered small airplane, glider, or lighter-than-air aircraft for which a Master Minimum Equipment List has been developed; and

(2) The inoperative instruments and equipment are not—

(i) Part of the VFR-day type certification instruments and equipment prescribed in the applicable airworthiness regulations under which the aircraft was type certificated;

(ii) Indicated as required on the aircraft's equipment list, or on the Kinds of Operations Equipment List for the kind of flight operation being conducted;

(iii) Required by § 91.205 or any other rule of this part for the specific kind of flight operation being conducted; or

(iv) Required to be operational by an airworthiness directive; and

(3) The inoperative instruments and equipment are—

(i) Removed from the aircraft, the cockpit control placarded, and the maintenance recorded in accordance with § 43.9 of this chapter; or

(ii) Deactivated and placarded "Inoperative." If deactivation of the inoperative instrument or equipment involves maintenance, it must be accomplished and recorded in accordance with part 43 of this chapter; and

(4) A determination is made by a pilot, who is certificated and appropriately rated under part 61 of this chapter, or by a person, who is certificated and appropriately rated to perform maintenance on the aircraft, that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

An aircraft with inoperative instruments or equipment as provided in paragraph (d) of this section is considered to be in a properly altered condition acceptable to the Administrator.

(e) Notwithstanding any other provision of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit issued in accordance with §§ 21.197 and 21.199 of this chapter.

§ 91.215 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under part 121, 127 or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's.

(1) *Through July 1, 1992:*

(i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1991; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After July 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (a)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

(b) *All airspace.* No person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In terminal control areas and positive control areas;

(2) *Effective July 1, 1989—All aircraft.* In all airspace within 30 nautical miles of a terminal control area primary airport from the surface upward to 10,000 feet MSL;

(3) *Effective July 1, 1989.* Notwithstanding paragraph (b)(2) of this section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider may conduct operations in the airspace within 30 nautical miles of a terminal control area primary airport provided such operations are conducted—

(i) Outside any terminal control area and positive control area; and

(ii) Below the altitude of the terminal control area ceiling or 10,000 feet MSL whichever is lower; and

(4) *Effective December 30, 1990—All aircraft.* (i) In the airspace of an airport radar service area, and

(ii) In all airspace above the ceiling and within the lateral boundaries of an airport radar service area upward to 10,000 feet MSL; and

(5) *All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider. (i) In all airspace of the 48 contiguous states and the District of Columbia:*

(A) *Through June 30, 1989.* Above 12,500 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL.

(B) *Effective July 1, 1989.* At and above 10,000 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL; and

(ii) *Effective December 30, 1990.* In the airspace from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in Appendix D of this part excluding the airspace below 1,200 feet AGL outside of the airport traffic area for that airport.

(c) *Transponder-on operation.* While in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.413 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

(d) *ATC authorized deviations.* ATC may authorize deviations from paragraph (b) of this section—

(1) Immediately, to allow an aircraft with an inoperative transponder to continue to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both;

(2) Immediately, for operations of aircraft with an operating transponder

but without operating automatic pressure altitude reporting equipment having a Mode C capability; and

(3) On a continuing basis, or for individual flights, for operations of aircraft without a transponder, in which case the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least one hour before the proposed operation.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder—

(a) When deactivation of that equipment is directed by ATC;

(b) Unless, as installed, that equipment was tested and calibrated to transmit altitude data corresponding within 125 feet (on a 95 percent probability basis) of the indicated or calibrated datum of the altimeter normally used to maintain flight altitude, with that altimeter referenced to 29.92 inches of mercury for altitudes from sea level to the maximum operating altitude of the aircraft; or

(c) Unless the altimeters and digitizers in that equipment meet the standards of TSO-C10b and TSO-C88, respectively.

§ 91.219 Altitude alerting system or device: Turbojet-powered civil airplanes.

(a) Except as provided in paragraph (d) of this section, no person may operate a turbojet-powered U.S.-registered civil airplane unless that airplane is equipped with an approved altitude alerting system or device that is in operable condition and meets the requirements of paragraph (b) of this section.

(b) Each altitude alerting system or device required by paragraph (a) of this section must be able to—

(1) Alert the pilot—

(i) Upon approaching a preselected altitude in either ascent or descent, by a sequence of both aural and visual signals in sufficient time to establish level flight at that preselected altitude; or

(ii) Upon approaching a preselected altitude in either ascent or descent, by a sequence of visual signals in sufficient time to establish level flight at that preselected altitude, and when deviating above and below that preselected altitude, by an aural signal;

(2) Provide the required signals from sea level to the highest operating altitude approved for the airplane in which it is installed;

(3) Preselect altitudes in increments that are commensurate with the altitudes at which the aircraft is operated;

(4) Be tested without special equipment to determine proper operation of the alerting signals; and

(5) Accept necessary barometric pressure settings if the system or device operates on barometric pressure. However, for operation below 3,000 feet AGL, the system or device need only provide one signal, either visual or aural, to comply with this paragraph. A radio altimeter may be included to provide the signal if the operator has an approved procedure for its use to determine DH or MDA, as appropriate.

(c) Each operator to which this section applies must establish and assign procedures for the use of the altitude alerting system or device and each flight crewmember must comply with those procedures assigned to him.

(d) Paragraph (a) of this section does not apply to any operation of an airplane that has an experimental certificate or to the operation of any airplane for the following purposes:

(1) Ferrying a newly acquired airplane from the place where possession of it was taken to a place where the altitude alerting system or device is to be installed.

(2) Continuing a flight as originally planned, if the altitude alerting system or device becomes inoperative after the airplane has taken off; however, the flight may not depart from a place where repair or replacement can be made.

(3) Ferrying an airplane with any inoperative altitude alerting system or device from a place where repairs or replacements cannot be made to a place where it can be made.

(4) Conducting an airworthiness flight test of the airplane.

(5) Ferrying an airplane to a place outside the United States for the purpose of registering it in a foreign country.

(6) Conducting a sales demonstration of the operation of the airplane.

(7) Training foreign flight crews in the operation of the airplane before ferrying it to a place outside the United States for the purpose of registering it in a foreign country.

§ 91.221 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.* Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

§§ 91.223-91.299 [Reserved]

Subpart D—Special Flight Operations

§ 91.301 [Reserved]

§ 91.303 Aerobatic flight.

No person may operate an aircraft in aerobatic flight—

(a) Over any congested area of a city, town, or settlement;

(b) Over an open air assembly of persons;

(c) Within a control zone or Federal airway;

(d) Below an altitude of 1,500 feet above the surface; or

(e) When flight visibility is less than 3 statute miles.

For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

§ 91.305 Flight test areas.

No person may flight test an aircraft except over open water, or sparsely populated areas, having light air traffic.

§ 91.307 Parachutes and parachuting.

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and—

(1) If a chair type (canopy in back), it has been packed by a certificated and appropriately rated parachute rigger within the preceding 120 days; or

(2) If any other type, it has been packed by a certificated and appropriately rated parachute rigger—

(i) Within the preceding 120 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(ii) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber, or materials not specified in paragraph (a)(2)(i) of this section.

(b) Except in an emergency, no pilot in command may allow, and no person may make, a parachute jump from an aircraft within the United States except in accordance with Part 105.

(c) Unless each occupant of the aircraft is wearing an approved parachute, no pilot of a civil aircraft carrying any person (other than a crewmember) may execute any intentional maneuver that exceeds—

(1) A bank of 60 degrees relative to the horizon; or

(2) A nose-up or nose-down attitude of 30 degrees relative to the horizon.

(d) Paragraph (c) of this section does not apply to—

(1) Flight tests for pilot certification or rating; or

(2) Spins and other flight maneuvers required by the regulations for any certificate or rating when given by—

(i) A certificated flight instructor; or

(ii) An airline transport pilot instructing in accordance with § 61.169 of this chapter.

(e) For the purposes of this section, "approved parachute" means—

(1) A parachute manufactured under a type certificate or a technical standard order (C–23 series); or

(2) A personnel-carrying military parachute identified by an NAF, AAF, or AN drawing number, an AAF order number, or any other military designation or specification number.

§ 91.309 Towing: Gliders.

(a) No person may operate a civil aircraft towing a glider unless—

(1) The pilot in command of the towing aircraft is qualified under § 61.69 of this chapter;

(2) The towing aircraft is equipped with a tow-hitch of a kind, and installed in a manner, that is approved by the Administrator;

(3) The towline used has breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not more than twice this operating weight. However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider if—

(i) A safety link is installed at the point of attachment of the towline to the glider with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not greater than twice this operating weight.

(ii) A safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider end of the towline and not greater than twice the maximum certificated operating weight of the glider;

(4) Before conducting any towing operation within a control zone, or before making each towing flight within a control zone if required by ATC, the pilot in command notifies the control tower if one is in operation in that control zone. If such a control tower is not in operation, the pilot in command must notify the FAA Flight Service Station serving the control zone before conducting any towing operation in that control zone; and

(5) The pilots of the towing aircraft and the glider have agreed upon a general course of action, including takeoff and release signals, airspeeds, and emergency procedures for each pilot.

(b) No pilot of a civil aircraft may intentionally release a towline, after release of a glider, in a manner that endangers the life or property of another.

§ 91.311 Towing: Other than under § 91.309.

No pilot of a civil aircraft may tow anything with that aircraft (other than under § 91.309) except in accordance with the terms of a certificate of waiver issued by the Administrator.

§ 91.313 Restricted category civil aircraft: Operating limitations.

(a) No person may operate a restricted category civil aircraft—

(1) For other than the special purpose for which it is certificated; or

(2) In an operation other than one necessary to accomplish the work activity directly associated with that special purpose.

(b) For the purpose of paragraph (a) of this section, operating a restricted category civil aircraft to provide flight crewmember training in a special purpose operation for which the aircraft is certificated is considered to be an operation for that special purpose.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph, a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the carrying of required persons or material to the location of that operation), and operation for the purpose of providing flight crewmember training in a special purpose operation, are not considered to be the carriage of persons or property for compensation or hire.

(d) No person may be carried on a restricted category civil aircraft unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or

(4) Is necessary to accomplish the work activity directly associated with that special purpose.

(e) Except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States—

(1) Over a densely populated area;

(2) In a congested airway; or

(3) Near a busy airport where passenger transport operations are conducted.

(f) This section does not apply to nonpassenger-carrying civil rotorcraft external-load operations conducted under Part 133 of this chapter.

(g) No person may operate a small restricted-category civil airplane manufactured after July 18, 1978, unless an approved shoulder harness is installed for each front seat. The shoulder harness must be designed to protect each occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. The shoulder harness installation at each flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operation. For purposes of this paragraph—

(1) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(2) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

§ 91.315 Limited category civil aircraft: Operating limitations.

No person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

§ 91.317 Provisionally certificated civil aircraft: Operating limitations.

(a) No person may operate a provisionally certificated civil aircraft unless that person is eligible for a provisional airworthiness certificate under § 21.213 of this chapter.

(b) No person may operate a provisionally certificated civil aircraft outside the United States unless that person has specific authority to do so from the Administrator and each foreign country involved.

(c) Unless otherwise authorized by the Director of Airworthiness, no person may operate a provisionally certificated civil aircraft in air transportation.

(d) Unless otherwise authorized by the Administrator, no person may operate a provisionally certificated civil aircraft except—

(1) In direct conjunction with the type or supplemental type certification of that aircraft;

(2) For training flight crews, including simulated air carrier operations;

(3) Demonstration flight by the manufacturer for prospective purchasers;

(4) Market surveys by the manufacturer;

(5) Flight checking of instruments, accessories, and equipment that do not affect the basic airworthiness of the aircraft; or

(6) Service testing of the aircraft.

(e) Each person operating a provisionally certificated civil aircraft shall operate within the prescribed limitations displayed in the aircraft or set forth in the provisional aircraft flight manual or other appropriate document. However, when operating in direct conjunction with the type or supplemental type certification of the aircraft, that person shall operate under the experimental aircraft limitations of § 21.191 of this chapter and when flight testing, shall operate under the requirements of § 91.305 of this part.

(f) Each person operating a provisionally certificated civil aircraft shall establish approved procedures for—

(1) The use and guidance of flight and ground personnel in operating under this section; and

(2) Operating in and out of airports where takeoffs or approaches over populated areas are necessary. No person may operate that aircraft except in compliance with the approved procedures.

(g) Each person operating a provisionally certificated civil aircraft shall ensure that each flight crewmember is properly certificated and has adequate knowledge of, and familiarity with, the aircraft and procedures to be used by that crewmember.

(h) Each person operating a provisionally certificated civil aircraft shall maintain it as required by applicable regulations and as may be specially prescribed by the Administrator.

(i) Whenever the manufacturer, or the Administrator, determines that a change in design, construction, or operation is necessary to ensure safe operation, no person may operate a provisionally certificated civil aircraft until that change has been made and approved. Section 21.99 of this chapter applies to operations under this section.

(j) Each person operating a provisionally certificated civil aircraft—

(1) May carry in that aircraft only persons who have a proper interest in the operations allowed by this section or who are specifically authorized by both the manufacturer and the Administrator; and

(2) Shall advise each person carried that the aircraft is provisionally certificated.

(k) The Administrator may prescribe additional limitations or procedures that the Administrator considers necessary, including limitations on the number of persons who may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120–0005)

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) No person may operate an aircraft that has an experimental certificate—

(1) For other than the purpose for which the certificate was issued; or

(2) Carrying persons or property for compensation or hire.

(b) No person may operate an aircraft that has an experimental certificate outside of an area assigned by the Administrator until it is shown that—

(1) The aircraft is controllable throughout its normal range of speeds and throughout all the maneuvers to be executed; and

(2) The aircraft has no hazardous operating characteristics or design features.

(c) Unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

(d) Each person operating an aircraft that has an experimental certificate shall—

(1) Advise each person carried of the experimental nature of the aircraft;

(2) Operate under VFR, day only, unless otherwise specifically authorized by the Administrator; and

(3) Notify the control tower of the experimental nature of the aircraft when operating the aircraft into or out of airports with operating control towers.

(e) The Administrator may prescribe additional limitations that the Administrator considers necessary, including limitations on the persons that may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120–0005)

§ 91.321 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of part 121, 125, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commercial operator;

(2) The carriage is conducted under the rules of this part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR *et seq.*).

(b) For the purposes of this section, the terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

§ 91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.

(a) Notwithstanding any other provision of the Federal Aviation Regulations, the Administrator will approve, as provided in this section, an increase in the maximum certificated weight of an airplane type certificated under Aeronautics Bulletin No. 7–A of the U.S. Department of Commerce dated January 1, 1931, as amended, or under the normal category of part 4a of the former Civil Air Regulations (14 CFR Part 4a, 1964 ed.) if that airplane is operated in the State of Alaska by—

(1) An air taxi operator or other air carrier; or

(2) The U.S. Department of Interior in conducting its game and fish law enforcement activities or its management, fire 1 detection, and fire suppression activities concerning public lands.

(b) The maximum certificated weight approved under this section may not exceed—

(1) 12,500 pounds;

(2) 115 percent of the maximum weight listed in the FAA aircraft specifications;

(3) The weight at which the airplane meets the positive maneuvering load

factor requirement for the normal category specified in § 23.337 of this chapter; or

(4) The weight at which the airplane meets the climb performance requirements under which it was type certificated.

(c) In determining the maximum certificated weight, the Administrator considers the structural soundness of the airplane and the terrain to be traversed.

(d) The maximum certificated weight determined under this section is added to the airplane's operation limitations and is identified as the maximum weight authorized for operations within the State of Alaska.

§§ 91.325–91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.401 Applicability.

(a) This subpart prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-registered civil aircraft operating within or outside of the United States.

(b) Sections 91.405, 91.409, 91.411, 91.417, and 91.419 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, 127, 129, or § 135.411(a)(2) of this chapter.

(c) Sections 91.405 and 91.409 of this part do not apply to an airplane inspected in accordance with part 125 of this chapter.

§ 91.403 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with part 39 of this chapter.

(b) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including part 43 of this chapter.

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the mandatory replacement times, inspection intervals, and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under part 121, 127 or 135 of this chapter or in accordance with an inspection program approved under § 91.409(e) have been complied with.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service;

(c) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection; and

(d) When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11 of this chapter.

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

(b) No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

(c) The aircraft does not have to be flown as required by paragraph (b) of this section if, prior to flight, ground tests, inspection, or both show conclusively that the maintenance, preventive maintenance, rebuilding, or alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.

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§ 91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the preceding 12 calendar months, it has had—

(1) An annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter; or

(2) An inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter.

No inspection performed under paragraph (b) of this section may be substituted for any inspection required by this paragraph unless it is performed by a person authorized to perform annual inspections and is entered as an "annual" inspection in the required maintenance records.

(b) Except as provided in paragraph (c) of this section, no person may operate an aircraft carrying any person (other than a crewmember) for hire, and no person may give flight instruction for hire in an aircraft which that person provides, unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter. The 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(c) Paragraphs (a) and (b) of this section do not apply to—

(1) An aircraft that carries a special flight permit, a current experimental certificate, or a provisional airworthiness certificate;

(2) An aircraft inspected in accordance with an approved aircraft inspection program under part 125, 127, or 135 of this chapter and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program;

(3) An aircraft subject to the requirements of paragraph (d) or (e) of this section; or

(4) Turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e) of this section.

(d) *Progressive inspection.* Each registered owner or operator of an

aircraft desiring to use a progressive inspection program must submit a written request to the FAA Flight Standards district office having jurisdiction over the area in which the applicant is located, and shall provide—

(1) A certificated mechanic holding an inspection authorization, a certificated airframe repair station, or the manufacturer of the aircraft to supervise or conduct the progressive inspection;

(2) A current inspection procedures manual available and readily understandable to pilot and maintenance personnel containing, in detail—

(i) An explanation of the progressive inspection, including the continuity of inspection responsibility, the making of reports, and the keeping of records and technical reference material;

(ii) An inspection schedule, specifying the intervals in hours or days when routine instructions for exceeding an inspection interval by not more than 10 hours while en route and for changing an inspection interval because of service experience;

(iii) Sample routine and detailed inspection forms and instructions for their use; and

(iv) Sample reports and records and instructions for their use;

(3) Enough housing and equipment for necessary disassembly and proper inspection of the aircraft; and

(4) Appropriate current technical information for the aircraft.

The frequency and detail of the progressive inspection shall provide for the complete inspection of the aircraft within each 12 calendar months and be consistent with the manufacturer's recommendations, field service experience, and the kind of operation in which the aircraft is engaged. The progressive inspection schedule must ensure that the aircraft, at all times, will be airworthy and will conform to all applicable FAA aircraft specifications, type certificate data sheets, airworthiness directives, and other approved data. If the progressive inspection is discontinued, the owner or operator shall immediately notify the local FAA Flight Standards district office, in writing, of the discontinuance. After the discontinuance, the first annual inspection under § 91.409(a)(1) is due within 12 calendar months after the last complete inspection of the aircraft under the progressive inspection. The 100-hour inspection under § 91.409(b) is due within 100 hours after that complete inspection. A complete inspection of the aircraft, for the purpose of determining when the annual and 100-hour inspections are due, requires a detailed inspection of the aircraft and all its components in accordance with the progressive inspection. A routine inspection of the aircraft and a detailed inspection of several components is not considered to be a complete inspection.

(e) *Large airplanes (to which part 125 is not applicable), turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft.* No person may operate a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the airplane or turbine-powered rotorcraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with an inspection program selected under the provisions of paragraph (f) of this section, except that, the owner or operator of a turbine-powered rotorcraft may elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) in lieu of an inspection option of § 91.409(f).

(f) *Selection of inspection program under paragraph (e) of this section.* The registered owner or operator of each airplane or turbine-powered rotorcraft described in paragraph (e) of this section must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft:

(1) A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate or an operating certificate issued under part 121, 127, or 135 of this chapter and operating that make and model aircraft under part 121 of this chapter or operating that make and model under part 135 of this chapter and maintaining it under § 135.411(a)(2) of this chapter.

(2) An approved aircraft inspection program approved under § 135.419 of this chapter and currently in use by a person holding an operating certificate issued under part 135 of this chapter.

(3) A current inspection program recommended by the manufacturer.

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision of this inspection program in accordance with the provisions of § 91.415.

Each operator shall include in the selected program the name and address of the person responsible for scheduling the inspections required by the program and make a copy of that program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(g) *Inspection program approved under paragraph (e) of this section.* Each operator of an airplane or turbine-powered rotorcraft desiring to establish or change an approved inspection program under paragraph (f)(4) of this section must submit the program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model airplane or turbine-powered rotorcraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the program expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

(h) *Changes from one inspection program to another.* When an operator changes from one inspection program under paragraph (f) of this section to another, the time in service, calendar times, or cycles of operation accumulated under the previous program must be applied in determining inspection due times under the new program.

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§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) No person may operate an airplane, or helicopter, in controlled airspace under IFR unless—

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with appendix E of part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valves, following any opening and closing of the

static pressure system, that system has been tested and inspected and found to comply with paragraph (a), appendices E and F, of part 43 of this chapter; and

(3) Following installation or maintenance on the automatic pressure altitude reporting system of the ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(b) The tests required by paragraph (a) of this section must be conducted by—

(1) The manufacturer of the airplane, or helicopter, on which the tests and inspections are to be performed;

(2) A certificated repair station properly equipped to perform those functions and holding—

(i) An instrument rating, Class I;

(ii) A limited instrument rating appropriate to the make and model of appliance to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) An airframe rating appropriate to the airplane, or helicopter, to be tested; or

(v) A limited rating for a manufacturer issued for the appliance in accordance with § 145.101(b)(4) of this chapter; or

(3) A certificated mechanic with an airframe rating (static pressure system tests and inspections only).

(c) Altimeter and altitude reporting equipment approved under Technical Standard Orders are considered to be tested and inspected as of the date of their manufacture.

(d) No person may operate an airplane, or helicopter, in controlled airspace under IFR at an altitude above the maximum altitude at which all altimeters and the automatic altitude reporting system of that airplane, or helicopter, have been tested.

§ 91.413 ATC transponder tests and inspections.

(a) No persons may use an ATC transponder that is specified in 91.215(a), 121.345(c), 127.123(b), or § 135.143(c) of this chapter unless, within the preceding 24 calendar months, the ATC transponder has been tested and inspected and found to comply with appendix F of part 43 of this chapter; and

(b) Following any installation or maintenance on an ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(c) The tests and inspections specified in this section must be conducted by—

(1) A certificated repair station properly equipped to perform those functions and holding—

(i) A radio rating, Class III;

(ii) A limited radio rating appropriate to the make and model transponder to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) A limited rating for a manufacturer issued for the transponder in accordance with § 145.101(b)(4) of this chapter; or

(2) A holder of a continuous airworthiness maintenance program as provided in part 121, 127 or § 135.411(a)(2) of this chapter; or

(3) The manufacturer of the aircraft on which the transponder to be tested is installed, if the transponder was installed by that manufacturer.

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

(b) The owner or operator may petition the Administrator to reconsider the notice to make any changes in a program in accordance with paragraph (a) of this section.

(c) The petition must be filed with the FAA Flight Standards district office which requested the change to the program within 30 days after the certificate holder receives the notice.

(d) Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 91.417 Maintenance records.

(a) Except for work performed in accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(1) Records of the maintenance, preventive maintenance, and alteration and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include—

(i) A description (or reference to data acceptable to the Administrator) of the work performed; and

(ii) The date of completion of the work performed; and

(iii) The signature, and certificate number of the person approving the aircraft for return to service.

(2) Records containing the following information:

(i) The total time in service of the airframe, each engine, each propeller, and each rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The current inspection status of the aircraft, including the time since the last inspection required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number, and revision date. If the AD involves recurring action, the time and date when the next action is required.

(vi) Copies of the forms prescribed by § 43.9(a) of this chapter for each major alteration to the airframe and currently installed engines, rotors, propellers, and appliances.

(b) The owner or operator shall retain the following records for the periods prescribed:

(1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after the work is performed.

(2) The records specified in paragraph (a)(2) of this section shall be retained and transferred with the aircraft at the time the aircraft is sold.

(3) A list of defects furnished to a registered owner or operator under § 43.11 of this chapter shall be retained until the defects are repaired and the aircraft is approved for return to service.

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to part 43 of this chapter, a copy of FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

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§ 91.419 Transfer of maintenance records.

Any owner or operator who sells a U.S.-registered aircraft shall transfer to the purchaser, at the time of sale, the following records of that aircraft, in plain language form or in coded form at the election of the purchaser, if the coded form provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 91.417(a)(2).

(b) The records specified in § 91.417(a)(1) which are not included in the records covered by paragraph (a) of this section, except that the purchaser may permit the seller to keep physical custody of such records. However, custody of records by the seller does not relieve the purchaser of the responsibility under § 91.417(c) to make the records available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB).

§ 91.421 Rebuilt engine maintenance records.

(a) The owner or operator may use a new maintenance record, without previous operating history, for an aircraft engine rebuilt by the manufacturer or by an agency approved by the manufacturer.

(b) Each manufacturer or agency that grants zero time to an engine rebuilt by it shall enter in the new record—

(1) A signed statement of the date the engine was rebuilt;

(2) Each change made as required by airworthiness directives; and

(3) Each change made in compliance with manufacturer's service bulletins, if the entry is specifically requested in that bulletin.

(c) For the purposes of this section, a rebuilt engine is a used engine that has been completely disassembled, inspected, repaired as necessary, reassembled, tested, and approved in the same manner and to the same tolerances and limits as a new engine with either new or used parts. However, all parts used in it must conform to the production drawing tolerances and limits for new parts or be of approved oversized or undersized dimensions for a new engine.

§§ 91.423-91.499 [Reserved]

Subpart F—Large and Turbine-Powered Multiengine Airplanes

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large and of turbojet-powered multiengine civil airplanes of U.S. registry. The operating rules in this subpart do not apply to those airplanes when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

(1) Ferry or training flights;

(2) Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations;

(3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section;

(4) Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation;

(5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company;

(6) The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange, or joint ownership agreement as defined in paragraph (c) of this section;

(7) The carriage of property (other than mail) on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section;

(8) The carriage on an airplane of an athletic team, sports group, choral group, or similar group having a common purpose or objective when there is no charge, assessment, or fee of any kind made by any person for that carriage; and

(9) The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling them land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment, or fee is made for that carriage.

(c) As used in this section—

(1) A "time sharing agreement" means an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section;

(2) An "interchange agreement" means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A "joint ownership agreement" means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hangar and tie-down costs away from the aircraft's base of operation.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section.

§ 91.503 Flying equipment and operating information.

(a) The pilot in command of an airplane shall ensure that the following flying equipment and aeronautical charts and data, in current and appropriate form, are accessible for each flight at the pilot station of the airplane:

(1) A flashlight having at least two size "D" cells, or the equivalent, that is in good working order.

(2) A cockpit checklist containing the procedures required by paragraph (b) of this section.

(3) Pertinent aeronautical charts.

(4) For IFR, VFR over-the-top, or night operations, each pertinent navigational en route, terminal area, and approach and letdown chart.

(5) In the case of multiengine airplanes, one-engine inoperative climb performance data.

(b) Each cockpit checklist must contain the following procedures and shall be used by the flight crewmembers when operating the airplane:

(1) Before starting engines.

(2) Before takeoff.

(3) Cruise.

(4) Before landing.

(5) After landing.

(6) Stopping engines.

(7) Emergencies.

(c) Each emergency cockpit checklist procedure required by paragraph (b)(7) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other procedures necessary for safety.

(d) The equipment, charts, and data prescribed in this section shall be used by the pilot in command and other members of the flight crew, when pertinent.

§ 91.505 Familiarity with operating limitations and emergency equipment.

(a) Each pilot in command of an airplane shall, before beginning a flight, become familiar with the Airplane Flight Manual for that airplane, if one is required, and with any placards, listings, instrument markings, or any combination thereof, containing each operating limitation prescribed for that airplane by the Administrator, including those specified in § 91.9(b).

(b) Each required member of the crew shall, before beginning a flight, become familiar with the emergency equipment installed on the airplane to which that crewmember is assigned and with the procedures to be followed for the use of that equipment in an emergency situation.

§ 91.507 Equipment requirements: Over-the-top or night VFR operations.

No person may operate an airplane over-the-top or at night under VFR unless that airplane is equipped with the instruments and equipment required for IFR operations under § 91.205(d) and one electric landing light for night operations. Each required instrument and item of equipment must be in operable condition.

§ 91.509 Survival equipment for overwater operations.

(a) No person may take off an airplane for a flight over water more than 50 nautical miles from the nearest shore unless that airplane is equipped with a life preserver or an approved flotation means for each occupant of the airplane.

(b) No person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

(1) A life preserver, equipped with an approved survivor locator light, for each occupant of the airplane.

(2) Enough liferafts (each equipped with an approved survival locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) At least one pyrotechnic signaling device for each liferaft.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device that is capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(5) A lifeline stored in accordance with § 25.1411(g) of this chapter.

(c) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(d) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(e) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

§ 91.511 Radio equipment for overwater operations.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has at least the following operable equipment:

(1) Radio communication equipment appropriate to the facilities to be used and able to transmit to, and receive from, any place on the route, at least one surface facility:

(i) Two transmitters.

(ii) Two microphones.

(iii) Two headsets or one headset and one speaker.

(iv) Two independent receivers.

(2) Appropriate electronic navigational equipment consisting of at least two independent electronic navigation units capable of providing the pilot with the information necessary to navigate the airplane within the airspace assigned by air traffic control. However, a receiver that can receive both communications and required navigational signals may be used in place of a separate communications receiver and a separate navigational signal receiver or unit.

(b) For the purposes of paragraphs (a)(1)(iv) and (a)(2) of this section, a receiver or electronic navigation unit is independent if the function of any part of it does not depend on the functioning of any part of another receiver or electronic navigation unit.

(c) Notwithstanding the provisions of paragraph (a) of this section, a person may operate an airplane on which no passengers are carried from a place where repairs or replacement cannot be made to a place where they can be made, if not more than one of each of the dual items of radio communication and navigational equipment specified in paragraphs (a)(1) (i) through (iv) and (a)(2) of this section malfunctions or becomes inoperative.

(d) Notwithstanding the provisions of paragraph (a) of this section, when both VHF and HF communications equipment are required for the route and the airplane has two VHF transmitters and two VHF receivers for communications, only one HF transmitter and one HF receiver is required for communications.

(e) As used in this section, the term "shore" means that area of the land adjacent to the water which is above the high-water mark and excludes land areas which are intermittently under water.

§ 91.513 Emergency equipment.

(a) No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of equipment—

(1) Must be inspected in accordance with § 91.409 to ensure its continued serviceability and immediate readiness for its intended purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) Hand fire extinguishers must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and located on or near the flight deck in a place that is readily accessible to the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than six but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in the passenger compartment of each airplane accommodating more than 30 passengers.

(4) Hand fire extinguishers must be installed and secured in such a manner that they will not interfere with the safe operation of the airplane or adversely affect the safety of the crew and passengers. They must be readily accessible and, unless the locations of the fire extinguishers are obvious, their stowage provisions must be properly identified.

(d) First aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided.

(e) Each airplane accommodating more than 19 passengers must be equipped with a crash axe.

(f) Each passenger-carrying airplane must have a portable battery-powered megaphone or megaphones readily accessible to the crewmembers assigned to direct emergency evacuation, installed as follows:

(1) One megaphone on each airplane with a seating capacity of more than 60 but less than 100 passengers, at the most rearward location in the passenger cabin where it would be readily accessible to a normal flight attendant seat. However, the Administrator may grant a deviation from the requirements of this subparagraph if the Administrator finds that a different location would be more useful for evacuation of persons during an emergency.

(2) On each airplane with a seating capacity of 100 or more passengers, one megaphone installed at the forward end and one installed at the most rearward location where it would be readily accessible to a normal flight attendant seat.

§ 91.515 Flight altitude rules.

(a) Notwithstanding § 91.119, and except as provided in paragraph (b) of this section, no person may operate an airplane under VFR at less than—

(1) One thousand feet above the surface, or 1,000 feet from any mountain, hill, or other obstruction to flight, for day operations; and

(2) The altitudes prescribed in § 91.177, for night operations.

(b) This section does not apply—

(1) During takeoff or landing;

(2) When a different altitude is authorized by a waiver to this section under subpart J of this part; or

(3) When a flight is conducted under the special VFR weather minimums of § 91.157 with an appropriate clearance from ATC.

§ 91.517 Smoking and safety belt signs.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time that it is necessary to fasten their safety belts and when smoking is prohibited.

§ 91.519 Passenger briefing.

(a) Before each takeoff the pilot in command of an airplane carrying passengers shall ensure that all passengers have been orally briefed on—

(1) Smoking;

(2) Use of safety belts;

(3) Location and means for opening the passenger entry door and emergency exits;

(4) Location of survival equipment;

(5) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water; and

(6) The normal and emergency use of oxygen equipment installed on the airplane.

(b) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a member of the crew, but need not be given when the pilot in command determines that the passengers are familiar with the contents of the briefing. It may be supplemented by printed cards for the use of each passenger containing—

(1) A diagram of, and methods of operating, the emergency exits; and

(2) Other instructions necessary for use of emergency equipment.

(c) Each card used under paragraph (b) must be carried in convenient locations on the airplane for the use of each passenger and must contain information that is pertinent only to the type and model airplane on which it is used.

§ 91.521 Shoulder harness.

(a) No person may operate a transport category airplane that was type certificated after January 1, 1958, unless it is equipped at each seat at a flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

(b) No person may operate a transport category airplane unless it is equipped at each required flight attendant seat in the passenger compartment with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

§ 91.523 Carry-on baggage.

No pilot in command of an airplane having a seating capacity of more than 19 passengers may permit a passenger to stow baggage aboard that airplane except—

(a) In a suitable baggage or cargo storage compartment, or as provided in § 91.525; or

(b) Under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce the ultimate inertia forces specified in § 25.561(b)(3) of this chapter, or the requirements of the regulations under which the airplane was type certificated. Restraining devices must also limit sideward motion of under-seat baggage and be designed to withstand crash impacts severe enough to induce sideward forces specified in § 25.561(b)(3) of this chapter.

§ 91.525 Carriage of cargo.

(a) No pilot in command may permit cargo to be carried in any airplane unless—

(1) It is carried in an approved cargo rack, bin, or compartment installed in the airplane;

(2) It is secured by means approved by the Administrator; or

(3) It is carried in accordance with each of the following:

(i) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(ii) It is packaged or covered to avoid possible injury to passengers.

(iii) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components.

(iv) It is not located in a position that restricts the access to or use of any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment.

(v) It is not carried directly above seated passengers.

(b) When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

§ 91.527 Operating in icing conditions.

(a) No pilot may take off an airplane that has—

(1) Frost, snow, or ice adhering to any propeller, windshield, or powerplant installation or to an airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) Snow or ice adhering to the wings or stabilizing or control surfaces; or

(3) Any frost adhering to the wings or stabilizing or control surfaces, unless that frost has been polished to make it smooth.

(b) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly—

(1) Under IFR into known or forecast moderate icing conditions; or

(2) Under VFR into known light or moderate icing conditions unless the aircraft has functioning de-icing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system.

(c) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly an airplane into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing conditions that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (b) and (c) of this section based on forecast conditions do not apply.

§ 91.529 Flight engineer requirements.

(a) No person may operate the following airplanes without a flight crewmember holding a current flight engineer certificate:

(1) An airplane for which a type certificate was issued before January 2, 1964, having a maximum certificated takeoff weight of more than 80,000 pounds.

(2) An airplane type certificated after January 1, 1964, for which a flight engineer is required by the type certification requirements.

(b) No person may serve as a required flight engineer on an airplane unless, within the preceding 6 calendar months, that person has had at least 50 hours of flight time as a flight engineer on that type airplane or has been checked by the Administrator on that type airplane and is found to be familiar and competent with all essential current information and operating procedures.

§ 91.531 Second in command requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

(1) A large airplane, except that a person may operate an airplane certificated under SFAR 41 without a pilot who is designated as second in command if that airplane is certificated for operation with one pilot.

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certification requirements for that airplane.

(3) A commuter category airplane, except that a person may operate a commuter category airplane notwithstanding paragraph (a)(1) of this section, that has a passenger seating configuration, excluding pilot seats, of nine or less without a pilot who is designated as second in command if that airplane is type certificated for operations with one pilot.

(b) The Administrator may issue a letter of authorization for the operation of an airplane without compliance with the requirements of paragraph (a) of this section if that airplane is designed for and type certificated with only one pilot station. The authorization contains any conditions that the Administrator finds necessary for safe operation.

(c) No person may designate a pilot to serve as second in command, nor may any pilot serve as second in command, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for seoond in command prescribed in § 61.55 of this chapter.

§ 91.533 Flight attendant requirements.

(a) No person may operate an airplane unless at least the following number of flight attendants are on board the airplane:

(1) For airplanes having more than 19 but less than 51 passengers on board, one flight attendant.

(2) For airplanes having more than 50 but less than 101 passengers on board, two flight attendants.

(3) For airplanes having more than 100 passengers on board, two flight attendants plus one additional flight attendant for each unit (or part of a unit) of 50 passengers above 100.

(b) No person may serve as a flight attendant on an airplane when required by paragraph (a) of this section unless that person has demonstrated to the pilot in command familiarity with the necessary functions to be performed in an emergency or a situation requiring

emergency evacuation and is capable of using the emergency equipment installed on that airplane.

§§ 91.535-91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

§ 91.601 Applicability.

This subpart applies to operation of large and transport category U.S.-registered civil aircraft.

§ 91.603 Aural speed warning device.

No person may operate a transport category airplane in air commerce unless that airplane is equipped with an aural speed warning device that complies with § 25.1303(c)(1).

§ 91.605 Transport category civil airplane weight limitations.

(a) No person may take off any transport category airplane (other than a turbine-engine-powered airplane certificated after September 30, 1958) unless—

(1) The takeoff weight does not exceed the authorized maximum takeoff weight for the elevation of the airport of takeoff;

(2) The elevation of the airport of takeoff is within the altitude range for which maximum takeoff weights have been determined;

(3) Normal consumption of fuel and oil in flight to the airport of intended landing will leave a weight on arrival not in excess of the authorized maximum landing weight for the elevation of that airport; and

(4) The elevations of the airport of intended landing and of all specified alternate airports are within the altitude range for which the maximum landing weights have been determined.

(b) No person may operate a turbine-engine-powered transport category airplane certificated after September 30, 1958, contrary to the Airplane Flight Manual, or take off that airplane unless—

(1) The takeoff weight does not exceed the takeoff weight specified in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at the time of takeoff;

(2) Normal consumption of fuel and oil in flight to the airport of intended landing and to the alternate airports will leave a weight on arrival not in excess of the landing weight specified in the Airplane Flight Manual for the elevation of each of the airports involved and for the ambient temperatures expected at the time of landing;

(3) The takeoff weight does not exceed the weight shown in the Airplane Flight Manual to correspond with the minimum distances required for takeoff considering the elevation of the airport, the runway to be used, the effective runway gradient, and the ambient temperature and wind component existing at the time of takeoff; and

(4) Where the takeoff distance includes a clearway, the clearway distance is not greater than one-half of—

(i) The takeoff run, in the case of airplanes certificated after September 30, 1958, and before August 30, 1959; or

(ii) The runway length, in the case of airplanes certificated after August 29, 1959.

(c) No person may take off a turbine-engine-powered transport category airplane certificated after August 29, 1959, unless, in addition to the requirements of paragraph (b) of this section—

(1) The accelerate-stop distance is no greater than the length of the runway plus the length of the stopway (if present); and

(2) The takeoff distance is no greater than the length of the runway plus the length of the clearway (if present); and

(3) The takeoff run is no greater than the length of the runway.

§ 91.607 Emergency exits for airplanes carrying passengers for hire.

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations effective before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants—

(1) Allowed under Civil Air Regulations § 4b.362 (a), (b), and (c) as in effect on December 20, 1951; or

(2) Approved under Special Civil Air Regulations SR-387, SR-389, SR-389A, or SR-389B, or under this section as in effect.

However, an airplane type listed in the following table may be operated with up to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers or with an occupant-exit configuration approved under paragraph (b) or (c) of this section.

Airplane type	Maximum number of occupants including all crewmembers	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	67	4
CV-240	53	6
CV-340 and CV-440	53	6
DC-3	35	4
DC-3 (Super)	39	5
DC-4	86	5
DC-6	87	7
DC-6B	112	11
L-18	17	3
L-049, L-649, L-749	87	7
L-1049 series	96	9
M-202	53	6
M-404	53	7
Viscount 700 series	53	7

(b) Occupants in addition to those authorized under paragraph (a) of this section may be carried as follows:

(1) For each additional floor-level exit at least 24 inches wide by 48 inches high, with an unobstructed 20-inch-wide access aisleway between the exit and the main passenger aisle, 12 additional occupants.

(2) For each additional window exit located over a wing that meets the requirements of the airworthiness standards under which the airplane was type certificated or that is large enough to inscribe an ellipse 19×26 inches, eight additional occupants.

(3) For each additional window exit that is not located over a wing but that otherwise complies with paragraph (b)(2) of this section, five additional occupants.

(4) For each airplane having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for each airplane that does not have at least one full-size, door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit that complies with paragraph (b)(1) of this section and must be located in the rear part of the cabin on the opposite side of the fuselage from the main entrance door. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage in the rear part of the cabin.

(c) No person may eliminate any approved exit except in accordance with the following:

(1) The previously authorized maximum number of occupants must be reduced by the same number of

additional occupants authorized for that exit under this section.

(2) Exits must be eliminated in accordance with the following priority schedule: First, non-over-wing window exits; second, over-wing window exits; third, floor-level exits located in the forward part of the cabin; and fourth, floor-level exits located in the rear of the cabin.

(3) At least one exit must be retained on each side of the fuselage regardless of the number of occupants.

(4) No person may remove any exit that would result in a ratio of maximum number of occupants to approved exits greater than 1:1.

(d) This section does not relieve any person operating under part 121 of this chapter from complying with § 121.291.

§ 91.609 Flight recorders and cockpit voice recorders.

(a) No holder of an air carrier operating certificate or an operating certificate may conduct any operation under this part with an aircraft listed in the holder's operations specifications or current list of aircraft used in air transportation unless that aircraft complies with any applicable flight recorder and cockpit voice recorder requirements of the part under which its certificate is issued except that the operator may—

(1) Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made;

(2) Continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off;

(3) Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communications or electrical equipment installed in the aircraft; or

(4) Ferry a newly acquired aircraft from the place where possession of it is taken to a place where the flight recorder or cockpit voice recorder is to be installed.

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats of 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in appendix E to this part, for an airplane, or appendix F to this part, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

(f) In the event of an accident or occurrence requiring immediate notification to the National Transportation Safety Board under part 830 of its regulations that results in the termination of the flight, any operator who has installed approved flight recorders and approved cockpit voice recorders shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with the investigation under part 830. The Administrator does not use the cockpit voice recorder record in any civil penalty or certificate action.

§ 91.611 Authorization for ferry flight with one engine inoperative.

(a) *General.* The holder of an air carrier operating certificate or an operating certificate issued under Part 125 may conduct a ferry flight of a four-engine airplane or a turbine-engine-powered airplane equipped with three engines, with one engine inoperative, to a base for the purpose of repairing that engine subject to the following:

(1) The airplane model has been test flown and found satisfactory for safe flight in accordance with paragraph (b) or (c) of this section, as appropriate. However, each operator who before November 19, 1966, has shown that a model of airplane with an engine inoperative is satisfactory for safe flight by a test flight conducted in accordance with performance data contained in the applicable Airplane Flight Manual under paragraph (a)(2) of this section need not repeat the test flight for that model.

(2) The approved Airplane Flight Manual contains the following performance data and the flight is conducted in accordance with that data:

(i) Maximum weight.

(ii) Center of gravity limits.

(iii) Configuration of the inoperative propeller (if applicable).

(iv) Runway length for takeoff (including temperature accountability).

(v) Altitude range.

(vi) Certificate limitations.

(vii) Ranges of operational limits.

(viii) Performance information.

(ix) Operating procedures.

(3) The operator has FAA approved procedures for the safe operation of the airplane, including specific requirements for—

(i) Limiting the operating weight on any ferry flight to the minimum necessary for the flight plus the necessary reserve fuel load;

(ii) A limitation that takeoffs must be made from dry runways unless, based on a showing of actual operating takeoff techniques on wet runways with one engine inoperative, takeoffs with full controllability from wet runways have been approved for the specific model aircraft and included in the Airplane Flight Manual;

(iii) Operations from airports where the runways may require a takeoff or approach over populated areas; and

(iv) Inspection procedures for determining the operating condition of the operative engines.

(4) No person may take off an airplane under this section if—

(i) The initial climb is over thickly populated areas; or

(ii) Weather conditions at the takeoff or destination airport are less than those required for VFR flight.

(5) Persons other than required flight crewmembers shall not be carried during the flight.

(6) No person may use a flight crewmember for flight under this section

unless that crewmember is thoroughly familiar with the operating procedures for one-engine inoperative ferry flight contained in the certificate holder's manual and the limitations and performance information in the Airplane Flight Manual.

(b) *Flight tests: reciprocating-engine-powered airplanes.* The airplane performance of a reciprocating-engine-powered airplane with one engine inoperative must be determined by flight test as follows:

(1) A speed not less than 1.3 V_{S1} must be chosen at which the airplane may be controlled satisfactorily in a climb with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator and with all other engines operating at the maximum power determined in paragraph (b)(3) of this section.

(2) The distance required to accelerate to the speed listed in paragraph (b)(1) of this section and to climb to 50 feet must be determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator; and

(iii) The other engines operating at not more than maximum power established under paragraph (b)(3) of this section.

(3) The takeoff, flight and landing procedures, such as the approximate trim settings, method of power application, maximum power, and speed must be established.

(4) The performance must be determined at a maximum weight not greater than the weight that allows a rate of climb of at least 400 feet per minute in the en route configuration set forth in § 25.67(d) of this chapter in effect on January 31, 1977, at an altitude of 5,000 feet.

(5) The performance must be determined using temperature accountability for the takeoff field length, computed in accordance with § 25.61 of this chapter in effect on January 31, 1977.

(c) *Flight tests: Turbine-engine-powered airplanes.* The airplane performance of a turbine-engine-powered airplane with one engine inoperative must be determined by flight tests, including at least three takeoff tests, in accordance with the following:

(1) Takeoff speeds V_R and V_2, not less than the corresponding speeds under which the airplane was type certificated under § 25.107 of this chapter, must be chosen at which the airplane may be controlled satisfactorily with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator, if applicable) and with all other engines operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(2) The minimum takeoff field length must be the horizontal distance required to accelerate and climb to the 35-foot height at V_2 speed (including any additional speed increment obtained in the tests) multiplied by 115 percent and determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator (if applicable); and

(iii) The other engine operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(3) The takeoff, flight, and landing procedures such as the approximate trim setting, method of power application, maximum power, and speed must be established. The airplane must be satisfactorily controllable during the entire takeoff run when operated according to these procedures.

(4) The performance must be determined at a maximum weight not greater than the weight determined under § 25.121(c) of this chapter but with—

(i) The actual steady gradient of the final takeoff climb requirement not less than 1.2 percent at the end of the takeoff path with two critical engines inoperative; and

(ii) The climb speed not less than the two-engine inoperative trim speed for the actual steady gradient of the final takeoff climb prescribed by paragraph (c)(4)(i) of this section.

(5) The airplane must be satisfactorily controllable in a climb with two critical engines inoperative. Climb performance may be shown by calculations based on, and equal in accuracy to, the results of testing.

(6) The performance must be determined using temperature accountability for takeoff distance and final takeoff climb computed in accordance with § 25.101 of this chapter. For the purpose of paragraphs (c)(4) and (5) of this section, "two critical engines" means two adjacent engines on one side of an airplane with four engines, and the center engine and one outboard engine on an airplane with three engines.

§ 91.613 Materials for compartment interiors.

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds unless within 1 year after issuance of the initial airworthiness certificate under that SFAR the airplane meets the compartment interior requirements set forth in § 25.853 (a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978.

§§ 91.615–91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft Outside of the United States

§ 91.701 Applicability.

This subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c), 91.130, and 91.131;

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force;

(3) Except for §§ 91.307(b), 91.309, 91.323, and 91.711, comply with this part so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation; and

(4) When over the North Atlantic within airspace designated as Minimum Navigation Performance Specifications airspace, comply with § 91.705.

(b) Annex 2 to the Convention on International Civil Aviation, Eighth Edition—July 1986, with amendments through Amendment 28 effective November 1987, to which reference is made in this part, is incorporated into this part and made a part hereof as provided in 5 U.S.C. 552 and pursuant to 1 CFR part 51. annex 2 (including a complete historic file of changes thereto) is available for public inspection at the Rules Docket, AGC–10, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. In addition, Annex 2 may be purchased from the International Civil Aviation Organization (Attention: Distribution Officer), P.O. Box 400, Succursale, Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2.

§ 91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.

No person may operate a civil aircraft of U.S. registry in North Atlantic (NAT) airspace designated as Minimum Navigation Performance Specifications (MNPS) airspace unless—

(a) The aircraft has approved navigation performance capability which complies with the requirements of Appendix C of this part; and

(b) The operator is authorized by the Administrator to perform such operations.

(c) The Administrator authorizes deviations from the requirements of this section in accordance with section 3 of appendix C to this part.

§ 91.707 Flights between Mexico or Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

§ 91.709 Operations to Cuba.

No person may operate a civil aircraft from the United States to Cuba unless—

(a) Departure is from an international airport of entry designated in § 6.13 of the Air Commerce Regulations of the Bureau of Customs (19 CFR 6.13); and

(b) In the case of departure from any of the 48 contiguous States or the District of Columbia, the pilot in command of the aircraft has filed—

(1) A DVFR or IFR flight plan as prescribed in § 99.11 or § 99.13 of this chapter; and

(2) A written statement, within 1 hour before departure, with the Office of Immigration and Naturalization Service at the airport of departure, containing—

(i) All information in the flight plan;

(ii) The name of each occupant of the aircraft;

(iii) The number of occupants of the aircraft; and

(iv) A description of the cargo, if any. This section does not apply to the operation of aircraft by a scheduled air carrier over routes authorized in operations specifications issued by the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.711 Special rules for foreign civil aircraft.

(a) *General.* In addition to the other applicable regulations of this part, each person operating a foreign civil aircraft within the United States shall comply with this section.

(b) *VFR.* No person may conduct VFR operations which require two-way radio communications under this part unless at least one crewmember of that aircraft is able to conduct two-way radio communications in the English language and is on duty during that operation.

(c) *IFR.* No person may operate a foreign civil aircraft under IFR unless—

(1) That aircraft is equipped with—

(i) Radio equipment allowing two-way radio communications with ATC when it is operated in control zone or control area; and

(ii) Radio navigational equipment appropriate to the navigational facilities to be used;

(2) Each person piloting the aircraft—

(i) Holds a current United States instrument rating or is authorized by his foreign airman certificate to pilot under IFR; and

(ii) Is thoroughly familiar with the United States en route, holding, and letdown procedures; and

(3) At least one crewmember of that aircraft is able to conduct two-way radiotelephone communications in the English language and that crewmember is on duty while the aircraft is approaching, operating within, or leaving the United States.

(d) *Over water.* Each person operating a foreign civil aircraft over water off the shores of the United States shall give flight notification or file a flight plan in accordance with the Supplementary Procedures for the ICAO region concerned.

(e) *Flight at and above FL 240.* If VOR navigational equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 240, unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately and may then continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made. However, paragraph (e) of this section does not apply to foreign civil aircraft that are not equipped with DME when operated for the following purposes and if ATC is notified prior to each takeoff:

(1) Ferry flights to and from a place in the United States where repairs or alterations are to be made.

(2) Ferry flights to a new country of registry.

(3) Flight of a new aircraft of U.S. manufacture for the purpose of—

(i) Flight testing the aircraft;

(ii) Training foreign flight crews in the operation of the aircraft; or

(iii) Ferrying the aircraft for export delivery outside the United States.

(4) Ferry, demonstration, and test flight of an aircraft brought to the United States for the purpose of demonstration or testing the whole or any part thereof.

§ 91.713 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry except in controlled airspace and in accordance with air traffic clearance or air traffic control instructions that may require use of specific airways or routes and landings at specific airports.

§ 91.715 Special flight authorizations for foreign civil aircraft.

(a) Foreign civil aircraft may be operated without airworthiness certificates required under § 91.203 if a special flight authorization for that operation is issued under this section. Application for a special flight authorization must be made to the Regional Director of the FAA region in which the applicant is located or to the region within which the U.S. point of entry is located. However, in the case of an aircraft to be operated in the U.S. for the purpose of demonstration at an airshow, the application may be made to the Regional Director of the FAA region in which the airshow is located.

(b) The Administrator may issue a special flight authorization for a foreign civil aircraft subject to any conditions and limitations that the Administrator considers necessary for safe operation in the U.S. airspace.

(c) No person may operate a foreign civil aircraft under a special flight authorization unless that operation also complies with part 375 of the Special Regulations of the Department of Transportation (14 CFR part 375).

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§§ 91.717-91.799 [Reserved]

Subpart I—Operating Noise Limits

§ 91.801 Applicability; Relation to Part 36.

(a) This subpart prescribes operating noise limits and related requirements that apply, as follows, to the operation of civil aircraft in the United States.

(1) Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to civil subsonic turbojet airplanes with maximum weights of more than 75,000 pounds and—

(i) If U.S. registered, that have standard airworthiness certificates; or

(ii) If foreign registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, and 135 of this chapter.

(2) Section 91.813 applies to U.S. operators of civil subsonic turbojet airplanes covered by this subpart. This section applies to operators operating to or from airports in the United States under this part and parts 121, 125, and 135, but not to those operating under part 129 of this chapter.

(3) Sections 91.803, 91.819, and 91.821 apply to U.S.-registered civil supersonic airplanes having standard airworthiness certificates and to foreign-registered civil supersonic airplanes that, if registered in the United States, would be required by this chapter to have U.S. standard airworthiness certificates in order to conduct the operations intended for the airplane. Those sections apply to operations under this part and under parts 121, 125, 129, and 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart "part 36" refers to 14 CFR part 36, including the noise levels under appendix C of that part, notwithstanding the provisions of that part excepting certain airplanes from the specified noise requirements. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meanings specified under part 36 of this chapter. For purposes of this subpart, for subsonic airplanes operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under part 36 for that airplane. Determinations made under these provisions are subject to the limitations of § 36.5 of this chapter as if those noise levels were part 36 noise levels.

§ 91.803 Part 125 operators: Designation of applicable regulations.

For airplanes covered by this subpart and operated under part 125 of this chapter, the following regulations apply as specified:

(a) For each airplane operation to which requirements prescribed under this subpart applied before November 29, 1980, those requirements of this subpart continue to apply.

(b) For each subsonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements prescribed under §§ 91.805, 91.809, 91.811, and 91.813 of this subpart apply.

(c) For each supersonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements of §§ 91.819 and 91.821 of this subpart apply.

(d) For each airplane required to operate under part 125 for which a deviation under that part is approved to operate, in whole or in part, under this part or part 121, 129, or 135 of this chapter, notwithstanding the approval, the requirements prescribed under paragraphs (a), (b), and (c) of this section continue to apply.

§ 91.805 Final compliance: Subsonic airplanes.

Except as provided in §§ 91.809 and 91.811, on and after January 1, 1985, no person may operate to or from an airport in the United States any subsonic airplane covered by this subpart unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter.

§ 91.807 Phased compliance under Parts 121, 125, and 135: Subsonic airplanes.

(a) *General.* Each person operating airplanes under part 121, 125, or 135 of this chapter, as prescribed under § 91.803 of this subpart, regardless of the state of registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) *Compliance schedules.* Except for airplanes shown to be operated in foreign air commerce under paragraph (c) of this section or covered by an exemption (including those issued under § 91.811), airplanes operated by U.S. operators in air commerce in the United States must be shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter, in accordance with the following schedule, or they may not be operated to or from airports in the United States:

(1) By January 1, 1981—

(i) At least one quarter of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) At least half of the airplanes powered by engines with any other bypass ratio or by another number of engines.

(2) By January 1, 1983—

(i) At least one-half of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) All airplanes powered by engines with any other bypass ratio or by another number of engines.

(c) *Apportionment of airplanes.* For purposes of paragraph (b) of this section, a person operating airplanes engaged in domestic and foreign air commerce in the United States may elect not to comply with the phased schedule with respect to that portion of the airplanes operated by that person shown, under an approved method of apportionment, to be engaged in foreign air commerce in the United States.

§ 91.809 Replacement airplanes.

A Stage 1 airplane may be operated after the otherwise applicable compliance dates prescribed under §§ 91.805 and 91.807 if, under an approved plan, a replacement airplane has been ordered by the operator under a binding contract as follows:

(a) For replacement of an airplane powered by two engines, until January 1, 1986, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1986, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(b) For replacement of an airplane powered by three engines, until January 1, 1985, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1985, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(c) For replacement of any other airplane, until January 1, 1985, but not after the date specified in the plan, if the contract specifies delivery before January 1, 1985, of a replacement airplane which—

(1) Has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter prior to issuance of an original standard airworthiness certificate; or

(2) Has been shown to comply with Stage 3 noise levels under part 36 of this chapter prior to issuance of a standard airworthiness certificate other than original issue.

(d) Each operator of a Stage 1 airplane for which approval of a replacement plan is requested under this section shall submit to the Director, Office of Environment and Energy, an application constituting the proposed replacement plan (or revised plan) that contains the information specified under this paragraph and which is certified (under penalty of 18 U.S.C. 1001) as true and correct. Each application for approval must provide information corresponding to that specified in the contract, upon which the FAA may rely in considering its approval, as follows:

(1) Name and address of the applicant. .

(2) Aircraft type and model and registration number for each airplane to be replaced under the plan.

(3) Aircraft type and model of each replacement airplane.

(4) Scheduled dates of delivery and introduction into service of each replacement airplane.

(5) Names and addresses of the parties to the contract and any other persons who may effectively cancel the contract or otherwise control the performance of any party.

(6) Information specifying the anticipated disposition of the airplanes to be replaced.

(7) A statement that the contract represents a legally enforceable, mutual agreement for delivery of an eligible replacement airplane.

(8) Any other information or documentation requested by the Director, Office of Environment and Energy, reasonably necessary to determine whether the plan should be approved.

§ 91.811 Service to small communities exemption: Two-engine, subsonic airplanes.

(a) A Stage l airplane powered by two engines may be operated after the compliance dates prescribed under §§ 91.805, 91.807, and 91.809 when, with respect to that airplane, the Administrator issues an exemption to the operator from the noise level requirements under this subpart. Each exemption issued under this section terminates on the earliest of the following dates:

(1) For an exempted airplane sold, or otherwise disposed of, to another person on or after January 1, 1983, on the date of delivery to that person.

(2) For an exempted airplane with a seating configuration of 100 passenger seats or less, on January 1, 1988.

(3) For an exempted airplane with a seating configuration of more than 100 passenger seats, on January 1, 1985.

(b) For the purpose of this section, the seating configuration of an airplane is governed by that shown to exist on December 1, 1979, or an earlier date established for that airplane by the Administrator.

§ 91.813 Compliance plans and status: U.S. operations of subsonic airplanes.

(a) Each U.S. operator of a civil subsonic airplane covered by this subpart (regardless of the state of registry) shall submit to the Director, Office of Environment and Energy, in accordance with this section, the operator's current compliance status and plan for achieving and maintaining compliance with the applicable noise level requirements of this subpart. If appropriate, an operator may substitute for the required plan a notice, certified as true (under penalty of 18 U.S.C. 1001) by that operator, that no change in the plan or status of any airplane affected by the plan has occurred since the date of the plan most recently submitted under this section.

(b) Each compliance plan, including each revised plan, must contain the information specified under paragraph (c) of this section for each airplane covered by this section that is operated by the operator. Unless otherwise approved by the Administrator, compliance plans must provide the required plan and status information as it exists on the date 30 days before the date specified for submission of the plan. Plans must be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001) and be submitted for each airplane covered by this section on or before 90 days after initially commencing operation of airplanes covered by this section, whichever is later, and thereafter—

(1) Thirty days after any change in the operator's fleet or compliance planning decisions that has a separate or cumulative effect on 10 percent or more of the airplanes in either class of airplanes covered by § 91.807(b); and

(2) Thirty days after each compliance date applicable to that airplane under this subpart, and annually thereafter through 1985, or until any later date for that airplane prescribed under this subpart, on the anniversary of that submission date, to show continuous compliance with this subpart.

(c) Each compliance plan submitted under this section must identify the operator and include information regarding the compliance plan and status for each airplane covered by the plan as follows:

(1) Name and address of the airplane operator.

(2) Name and telephone number of the person designated by the operator to be responsible for the preparation of the compliance plan and its submission.

(3) The total number of airplanes covered by this section and in each of the following classes and subclasses:

(i) For airplanes engaged in domestic air commerce—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(ii) For airplanes engaged in foreign air commerce under an approved apportionment plan—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(4) For each airplane covered by this section—

(i) Aircraft type and model;

(ii) Aircraft registration number;

(iii) Aircraft manufacturer serial number;

(iv) Aircraft powerplant make and model;

(v) Aircraft year of manufacture;

(vi) Whether part 36 noise level compliance has been shown, "Yes/No";

(vii) The appropriate code prescribed under paragraph (c)(5) of this section which indicates the acoustical technology installed, or to be installed, on the airplane;

(viii) For airplanes on which acoustical technology has been or will be applied, following the appropriate code entry, the actual or scheduled month and year of installation on the airplane;

(ix) For DC–8 and B–707 airplanes operated in domestic U.S. air commerce which have been or will be retired from service in the United States without replacement between January 24, 1977, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of retirement of the airplane from service;

(x) For DC–8 and B–707 airplanes operated in foreign air commerce in the United States which have been or will be retired from service in the United States without replacement between April 14, 1980, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed

by the actual or scheduled month and year of retirement of the airplane from service;

(xi) For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the scheduled month and year for replacement of the airplane;

(xii) For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section;

(xiii) For airplanes covered by an exemption issued to the operator granting relief from noise level requirements of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of expiration of the exemption and the appropriate code and applicable dates which indicate the compliance strategy planned or implemented for the airplane;

(xiv) For all airplanes covered by this section, the number of spare shipsets of acoustical components needed for continuous compliance and the number available on demand to the operator in support of those airplanes; and

(xv) For airplanes for which none of the other codes prescribed under paragraph (c)(5) of this section describes either the technology applied or to be applied to the airplane in accordance with the certification requirements under Parts 21 and 36 of this chapter, or the compliance strategy or methodology following the code "OTH," enter the date of any certificate action and attach an addendum to the plan explaining the nature and the extent of the certificated technology, strategy, or methodology employed, with reference to the type certificate documentation.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/STRATEGY CODES

Code	Airplane type/model	Certificate technology
A	B-707-120B; B-707-320B/C; B-720B.	Quiet nacelles + 1-ring.
B	B-727-100	Double wall fan duct treatment.
C	B-727-200	Double wall fan duct treatment (pre-January 1977 installations and amended type certificate).
D	B-727-200; B-737-100; B-737-200.	Quiet nacelles + double wall fan duct treatment.
E	B-747-100 (pre-December 1971); B-747-200 (pre-December 1971).	Fixed lip inlets + sound absorbing material treatment.
F	DC-8	New extended inlet and bullet with treatment + fan duct treatment areas.
G	DC-9	P-36 sound absorbing material treatment kit.
H	BAC-111-200	Silencer kit (BAC Acoustic Report 522).
I	BAC-111-400	Silencer kit (BAC Acoustic Report 598).
J	B-707; DC-8	Reengined with high bypass ratio turbojet engines + quiet nacelles (if certificated under stage 3 noise level requirements).

REP—For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart.

EFC—For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.811 of this subpart.

RET—For DC-8 and B-707 airplanes operated in domestic U.S. air commerce and retired from service in the United States without replacement between January 24, 1977, and January 1, 1985. RFC—For DC-8 and B-707 airplanes operated by U.S. operators in foreign air commerce in the United States and retired from service in the United States without replacement between April 14, 1980, and January 1, 1985.

EXD—For airplanes exempted from showing compliance with the noise level requirements of this subpart.

OTH—For airplanes for which no other prescribed code describes either the certificated technology applied or to be applied to the airplane, or the compliance strategy or methodology. (An addendum must explain the nature and extent of technology, strategy, or methodology and reference the type certificate documentation.)

§ 91.815 Agricultural and fire fighting airplanes: Noise operating limitations.

(a) This section applies to propeller-driven, small airplanes having standard airworthiness certificates that are designed for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966) or for dispensing fire fighting materials.

(b) If the Airplane Flight Manual, or other approved manual material information, markings, or placards for the airplane indicate that the airplane has not been shown to comply with the noise limits under part 36 of this chapter, no person may operate that airplane, except—

(1) To the extent necessary to accomplish the work activity directly associated with the purpose for which it is designed;

(2) To provide flight crewmember training in the special purpose operation for which the airplane is designed; and

(3) To conduct "nondispensing aerial work operations" in accordance with the requirements under § 137.29(c) of this chapter.

§ 91.817 Civil aircraft sonic boom.

(a) No person may operate a civil aircraft in the United States at a true flight Mach number greater than 1 except in compliance with conditions and limitations in an authorization to exceed Mach 1 issued to the operator under appendix B of this part.

(b) In addition, no person may operate a civil aircraft for which the maximum operating limit speed M_{MO} exceeds a Mach number of 1, to or from an airport in the United States, unless—

(1) Information available to the flight crew includes flight limitations that ensure that flights entering or leaving the United States will not cause a sonic boom to reach the surface within the United States; and

(2) The operator complies with the flight limitations prescribed in paragraph (b)(1) of this section or complies with conditions and limitations in an authorization to exceed Mach 1 issued under appendix B of this part.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.819 Civil supersonic airplanes that do not comply with Part 36.

(a) *Applicability.* This section applies to civil supersonic airplanes that have not been shown to comply with the Stage 2 noise limits of Part 36 in effect on October 13, 1977, using applicable trade-off provisions, and that are operated in the United States, after July 31, 1978.

(b) *Airport use.* Except in an emergency, the following apply to each person who operates a civil supersonic airplane to or from an airport in the United States:

(1) Regardless of whether a type design change approval is applied for under part 21 of this chapter, no person may land or take off an airplane covered by this section for which the type design is changed, after July 31, 1978, in a manner constituting an "acoustical change" under § 21.93 unless the

acoustical change requirements of part 36 are complied with.

(2) No flight may be scheduled, or otherwise planned, for takeoff or landing after 10 p.m. and before 7 a.m. local time.

§ 91.821 Civil supersonic airplanes: Noise limits.

Except for Concorde airplanes having flight time before January 1, 1980, no person may operate in the United States, a civil supersonic airplane that does not comply with Stage 2 noise limits of part 36 in effect on October 13, 1977, using applicable trade-off provisions.

§§ 91.823–91.899 [Reserved]

Subpart J—Waivers

§ 91.901 [Reserved]

§ 91.903 Policy and procedures.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation from any rule listed in this subpart if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this part is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate of waiver.

§ 91.905 List of rules subject to waivers.

Sec.
91.107 Use of safety belts.
91.111 Operating near other aircraft.
91.113 Right-of-way rules: Except water operations.
91.115 Right-of-way rules: Water operations.
91.117 Aircraft speed.
91.119 Minimum safe altitudes: General.
91.121 Altimeter settings.
91.123 Compliance with ATC clearances and instructions.
91.125 ATC light signals.
91.127 Operating on or in the vicinity of an airport: General rules.
91.129 Operating at airports with operating control towers.
91.131 Terminal control areas.
91.133 Restricted and prohibited areas.
91.135 Positive control areas and route segments.
91.137 Temporary flight restrictions.
91.141 Flight restrictions in the proximity of the Presidential and other parties.
91.143 Flight limitation in the proximity of space flight operations.
91.153 VFR flight plan: Information required.
91.155 Basic VFR weather minimums
91.157 Special VFR weather minimums.
91.159 VFR cruising altitude or flight level.
91.169 IFR flight plan: Information required.
91.173 ATC clearance and flight plan required.
Sec.
91.175 Takeoff and landing under IFR.
91.177 Minimum altitudes for IFR operations.
91.179 IFR cruising altitude or flight level.
91.181 Course to be flown.
91.183 IFR radio communications.
91.185 IFR operations: Two-way radio communications failure.
91.187 Operation under IFR in controlled airspace: Malfunction reports.
91.209 Aircraft lights.
91.303 Aerobatic flights.
91.305 Flight test areas.
91.311 Towing: Other than under § 91.309.
91.313(e) Restricted category civil aircraft: Operating limitations.
91.515 Flight altitude rules.
91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
91.707 Flights between Mexico or Canada and the United States.
91.713 Operation of civil aircraft of Cuban registry.

§§ 91.907–91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance

1. Category II Manual

(a) *Application for approval.* An applicant for approval of a Category II manual or an amendment to an approved Category II manual must submit the proposed manual or amendment to the Flight Standards District Office having jurisdiction of the area in which the applicant is located. If the application requests an evaluation program, it must include the following:

(1) The location of the aircraft and the place where the demonstrations are to be conducted; and

(2) The date the demonstrations are to commence (at least 10 days after filing the application).

(b) *Contents.* Each Category II manual must contain:

(1) The registration number, make, and model of the aircraft to which it applies;

(2) A maintenance program as specified in section 4 of this appendix; and

(3) The procedures and instructions related to recognition of decision height, use of runway visual range information, approach monitoring, the decision region (the region between the middle marker and the decision height), the maximum permissible deviations of the basic ILS indicator within the decision region, a missed approach, use of airborne low approach equipment, minimum altitude for the use of the autopilot, instrument and equipment failure warning systems, instrument failure, and other procedures, instructions, and limitations that may be found necessary by the Administrator.

2. Required Instruments and Equipment

The instruments and equipment listed in this section must be installed in each aircraft operated in a Category II operation. This section does not require duplication of instruments and equipment required by § 91.205 or any other provisions of this chapter.

(a) *Group I.* (1) Two localizer and glide slope receiving systems. Each system must provide a basic ILS display and each side of the instrument panel must have a basic ILS display. However, a single localizer antenna and a single glide slope antenna may be used.

(2) A communications system that does not affect the operation of at least one of the ILS systems.

(3) A marker beacon receiver that provides distinctive aural and visual indications of the outer and the middle markers.

(4) Two gyroscopic pitch and bank indicating systems.

(5) Two gyroscopic direction indicating systems.

(6) Two airspeed indicators.

(7) Two sensitive altimeters adjustable for barometric pressure, each having a placarded correction for altimeter scale error and for the wheel height of the aircraft. After June 26, 1979, two sensitive altimeters adjustable for barometric pressure, having markings at 20-foot intervals and each having a placarded correction for altimeter scale error and for the wheel height of the aircraft.

(8) Two vertical speed indicators.

(9) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering command in relation to an ILS localizer and, on the same instrument, either computed information as pitch command in relation to an ILS glide slope or basic ILS glide slope information. An automatic approach coupler must provide at least automatic steering in relation to an ILS localizer. The flight control guidance system may be operated from one of the receiving systems required by subparagraph (1) of this paragraph.

(10) For Category II operations with decision heights below 150 feet either a marker beacon receiver providing aural and visual indications of the inner marker or a radio altimeter.

(b) *Group II.* (1) Warning systems for immediate detection by the pilot of system faults in items (1), (4), (5), and (9) of Group I and, if installed for use in Category III operations, the radio altimeter and autothrottle system.

(2) Dual controls.

(3) An externally vented static pressure system with an alternate static pressure source.

(4) A windshield wiper or equivalent means of providing adequate cockpit visibility for a safe visual transition by either pilot to touchdown and rollout.

(5) A heat source for each airspeed system pitot tube installed or an equivalent means of preventing malfunctioning due to icing of the pitot system.

3. Instruments and Equipment Approval

(a) *General.* The instruments and equipment required by section 2 of this appendix must be approved as provided in this section before being used in Category II operations. Before presenting an aircraft for approval of the instruments and equipment, it must be shown that since the beginning of the

12th calendar month before the date of submission—

(1) The ILS localizer and glide slope equipment were bench checked according to the manufacturer's instructions and found to meet those standards specified in RTCA Paper 23–83/DO–117 dated March 14, 1983, "Standard Adjustment Criteria for Airborne Localizer and Glide Slope Receivers," which may be obtained from the RTCA Secretariat, 1425 K St., NW., Washington, DC 20005.

(2) The altimeters and the static pressure systems were tested and inspected in accordance with Appendix E to Part 43 of this chapter; and

(3) All other instruments and items of equipment specified in section 2(a) of this appendix that are listed in the proposed maintenance program were bench checked and found to meet the manufacturer's specifications.

(b) *Flight control guidance system.* All components of the flight control guidance system must be approved as installed by the evaluation program specified in paragraph (c) of this section if they have not been approved for Category III operations under applicable type or supplemental type certification procedures. In addition, subsequent changes to make, model, or design of the components must be approved under this paragraph. Related systems or devices, such as the autothrottle and computed missed approach guidance system, must be approved in the same manner if they are to be used for Category II operations.

(c) *Radio altimeter.* A radio altimeter must meet the performance criteria of this paragraph for original approval and after each subsequent alteration.

(1) It must display to the flight crew clearly and positively the wheel height of the main landing gear above the terrain.

(2) It must display wheel height above the terrain to an accuracy of plus or minus 5 feet or 5 percent, whichever is greater, under the following conditions:

(i) Pitch angles of zero to plus or minus 5 degrees about the mean approach attitude.

(ii) Roll angles of zero to 20 degrees in either direction.

(iii) Forward velocities from minimum approach speed up to 200 knots.

(iv) Sink rates from zero to 15 feet per second at altitudes from 100 to 200 feet.

(3) Over level ground, it must track the actual altitude of the aircraft without significant lag or oscillation.

(4) With the aircraft at an altitude of 200 feet or less, any abrupt change in terrain representing no more than 10 percent of the aircraft's altitude must not cause the altimeter to unlock, and indicator response to such changes must not exceed 0.1 seconds and, in addition, if the system unlocks for greater changes, it must reacquire the signal in less than 1 second.

(5) Systems that contain a push-to-test feature must test the entire system (with or without an antenna) at a simulated altitude of less than 500 feet.

(6) The system must provide to the flight crew a positive failure warning display any time there is a loss of power or an absence of ground return signals within the designed range of operating altitudes.

(d) *Other instruments and equipment.* All other instruments and items of equipment required by § 2 of this appendix must be capable of performing as necessary for Category II operations. Approval is also required after each subsequent alteration to these instruments and items of equipment.

(e) *Evaluation program—(1) Application.* Approval by evaluation is requested as a part of the application for approval of the Category II manual.

(2) *Demonstrations.* Unless otherwise authorized by the Administrator, the evaluation program for each aircraft requires the demonstrations specified in this paragraph. At least 50 ILS approaches must be flown with at least five approaches on each of three different ILS facilities and no more than one half of the total approaches on any one ILS facility. All approaches shall be flown under simulated instrument conditions to a 100-foot decision height and 90 percent of the total approaches made must be successful. A successful approach is one in which—

(i) At the 100-foot decision height, the indicated airspeed and heading are satisfactory for a normal flare and landing (speed must be plus or minus 5 knots of programmed airspeed, but may not be less than computed threshold speed if autothrottles are used);

(ii) The aircraft at the 100-foot decision height, is positioned so that the cockpit is within, and tracking so as to remain within, the lateral confines of the runway extended;

(iii) Deviation from glide slope after leaving the outer marker does not exceed 50 percent of full-scale deflection as displayed on the ILS indicator;

(iv) No unusual roughness or excessive attitude changes occur after leaving the middle marker; and

(v) In the case of an aircraft equipped with an approach coupler, the aircraft is sufficiently in trim when the approach coupler is disconnected at the decision height to allow for the continuation of a normal approach and landing.

(3) *Records.* During the evaluation program the following information must be maintained by the applicant for the aircraft with respect to each approach and made available to the Administrator upon request:

(i) Each deficiency in airborne instruments and equipment that prevented the initiation of an approach.

(ii) The reasons for discontinuing an approach, including the altitude above the runway at which it was discontinued.

(iii) Speed control at the 100-foot decision height if auto throttles are used.

(iv) Trim condition of the aircraft upon disconnecting the auto coupler with respect to continuation to flare and landing.

(v) Position of the aircraft at the middle marker and at the decision height indicated both on a diagram of the basic ILS display and a diagram of the runway extended to the middle marker. Estimated touchdown point must be indicated on the runway diagram.

(vi) Compatibility of flight director with the auto coupler, if applicable.

(vii) Quality of overall system performance.

(4) *Evaluation.* A final evaluation of the flight control guidance system is made upon successful completion of the demonstrations. If no hazardous tendencies have been displayed or are otherwise known to exist, the system is approved as installed.

4. Maintenance program

(a) Each maintenance program must contain the following:

(1) A list of each instrument and item of equipment specified in § 2 of this appendix that is installed in the aircraft and approved for Category II operations, including the make and model of those specified in § 2(a).

(2) A schedule that provides for the performance of inspections under subparagraph (5) of this paragraph within 3 calendar months after the date of the previous inspection. The inspection must be performed by a person authorized by part 43 of this chapter, except that each alternate inspection may be replaced by a functional flight check. This functional flight check must be performed by a pilot holding a Category II pilot authorization for the type aircraft checked.

(3) A schedule that provides for the performance of bench checks for each listed instrument and item of equipment that is specified in section 2(a) within 12 calendar months after the date of the previous bench check.

(4) A schedule that provides for the performance of a test and inspection of each static pressure system in accordance with appendix E to part 43 of this chapter within 12 calendar months after the date of the previous test and inspection.

(5) The procedures for the performance of the periodic inspections and functional flight checks to determine the ability of each listed instrument and item of equipment specified in section 2(a) of this appendix to perform as approved for Category II operations including a procedure for recording functional flight checks.

(6) A procedure for assuring that the pilot is informed of all defects in listed instruments and items of equipment.

(7) A procedure for assuring that the condition of each listed instrument and item of equipment upon which maintenance is performed is at least equal to its Category II approval condition before it is returned to service for Category II operations.

(8) A procedure for an entry in the maintenance records required by § 43.9 of this chapter that shows the date, airport, and reasons for each discontinued Category II operation because of a malfunction of a listed instrument or item of equipment.

(b) *Bench check.* A bench check required by this section must comply with this paragraph.

(1) It must be performed by a certificated repair station holding one of the following ratings as appropriate to the equipment checked:

(i) An instrument rating.

(ii) A radio rating.

(iii) A rating issued under subpart D of part 145 of this chapter.

(2) It must consist of removal of an instrument or item of equipment and performance of the following:

(i) A visual inspection for cleanliness, impending failure, and the need for lubrication, repair, or replacement of parts;

(ii) Correction of items found by that visual inspection; and

(iii) Calibration to at least the manufacturer's specifications unless otherwise specified in the approved Category II manual for the aircraft in which the instrument or item of equipment is installed.

(c) *Extensions.* After the completion of one maintenance cycle of 12 calendar months, a request to extend the period for checks, tests, and inspections is approved if it is shown that the performance of particular equipment justifies the requested extension.

Appendix B—Authorizations to Exceed Mach 1 (section 91.817)

Section 1. Application

(a) An applicant for an authorization to exceed Mach 1 must apply in a form and manner prescribed by the Administrator and must comply with this appendix.

(b) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain all information requested by the Administrator necessary to assist him in determining whether the designation of a particular test area or issuance of a particular authorization is a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and to assist him in complying with that act and with related Executive Orders, guidelines, and orders prior to such action.

(c) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain—

(1) Information showing that operation at a speed greater than Mach 1 is necessary to accomplish one or more of the purposes specified in section 2(a) of this appendix, including a showing that the purpose of the test cannot be safely or properly accomplished by overocean testing;

(2) A description of the test area proposed by the applicant, including an environmental analysis of that area meeting the requirements of paragraph (b) of this section; and

(3) Conditions and limitations that will ensure that no measurable sonic boom overpressure will reach the surface outside of the designated test area.

(d) An application is denied if the Administrator finds that such action is necessary to protect or enhance the environment.

Section 2. Issuance

(a) For a flight in a designated test area, an authorization to exceed Mach 1 may be issued when the Administrator has taken the environmental protective actions specified in section 1(b) of this appendix and the applicant shows one or more of the following:

(1) The flight is necessary to show compliance with airworthiness requirements.

(2) The flight is necessary to determine the sonic boom characteristics of the airplane or to establish means of reducing or eliminating the effects of sonic boom.

(3) The flight is necessary to demonstrate the conditions and limitations under which speeds greater than a true flight Mach number of 1 will not cause a measurable sonic boom overpressure to reach the surface.

(b) For a flight outside of a designated test area, an authorization to exceed Mach 1 may be issued if the applicant shows conservatively under paragraph (a)(3) of this section that—

(1) The flight will not cause a measurable sonic boom overpressure to reach the surface when the aircraft is operated under conditions and limitations demonstrated under paragraph (a)(3) of this section; and

(2) Those conditions and limitations represent all foreseeable operating conditions.

Section 3. Duration

(a) An authorization to exceed Mach 1 is effective until it expires or is surrendered, or until it is suspended or terminated by the Administrator. Such an authorization may be amended or suspended by the Administrator at any time if the Administrator finds that such action is necessary to protect the environment. Within 30 days of notification of amendment, the holder of the authorization must request reconsideration or the amendment becomes final. Within 30 days of notification of suspension, the holder of the authorization must request reconsideration or the authorization is automatically terminated. If reconsideration is requested within the 30-day period, the amendment or suspension continues until the holder shows why the authorization should not be amended or terminated. Upon such showing, the Administrator may terminate or amend the authorization if the Administrator finds that such action is necessary to protect the environment, or he may reinstate the authorization without amendment if he finds that termination or amendment is not necessary to protect the environment.

(b) Findings and actions by the Administrator under this section do not affect any certificate issued under Title VI of the Federal Aviation Act of 1958.

Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) Airspace

Section 1

NAT MNPS airspace is that volume of airspace between FL 275 and FL 400 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundary of Reykjavik Oceanic Control Area, the western boundary of Gander Oceanic Control Area, and the western boundary of New York Oceanic Control Area, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

Section 2

The navigation performance capability required for aircraft to be operated in the airspace defined in section 1 of this appendix is as follows:

(a) The standard deviation of lateral track errors shall be less than 6.3 NM (11.7 Km). Standard deviation is a statistical measure of data about a mean value. The mean is zero nautical miles. The overall form of data is such that the plus and minus 1 standard deviation about the mean encompasses approximately 68 percent of the data and plus or minus 2 deviations encompasses approximately 95 percent.

(b) The proportion of the total flight time spent by aircraft 30 NM (55.6 Km) or more off the cleared track shall be less than 5.3×10^{-4} (less than 1 hour in 1,887 flight hours).

(c) The proportion of the total flight time spent by aircraft between 50 NM and 70 NM (92.6 Km and 129.6 Km) off the cleared track shall be less than 13×10^{-5} (less than 1 hour in 7,693 flight hours.)

Section 3

Air traffic control (ATC) may authorize an aircraft operator to deviate from the requirements of § 91.705 for a specific flight if, at the time of flight plan filing for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden upon, the operations of other aircraft which meet the requirements of § 91.705.

Appendix D—Airports/Locations Where the Transponder Requirements of Section 91.215(b)(5)(ii) Apply

Section 1

The requirements of § 91.215(b)(5)(ii) apply to operations in the vicinity of each of the following airports: Logan International Airport, Billings MT. Hector International Airport, Fargo, ND.

Appendix E—Airplane Flight Recorder Specifications

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Indicated Airspeed	Vso to VD (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%3
Altitude	−1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51-a).	11	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Attitude	100% of usable	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer Trim Position, or	Full Range	±3% unless higher uniquely required.	1	1%3
Pitch Control Position				
Engine Power, Each Engine:	Full Range	±3% unless higher uniquely required.	1	1%3
Fan or N1 Speed or EPR or Cockpit indications Used for Aircraft Certification OR.	Maximum Range	±5%	1	1%3
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed) 1 (torque)	1%3 1%3
Altitude Rate2 (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. below 12,000
Angle of Attack2 (need depends on altitude resolution).	−20° to 40° or 100% of usable range.	±2°	1	0.8%3
Radio Transmitter Keying (Discrete).	On/Off		1	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR.		1	
LE Flaps (Discrete or Analog)	Analog 0–100% range	±3%	1	1%3
	Each discrete position (U, D, T/O, AAP) OR.		1	
Thrust Reverser, Each Engine (Discrete).	Analog 0–100% range	±3°	1	1%3
	Stowed or full reverse			
Spoiler/Speedbrake (Discrete).	Stowed or out		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	

1 When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

2 If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

3 Per cent of full range.

4 This column applies to aircraft manufactured after October 11, 1991.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	VM in to VD (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude.	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of 5%.	2	0.03g.
Pitch Attitude	100% of usable range	±2°	1	0.8°
Roll Attitude	±60 or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main Rotor Speed	Maximum Range	±5%	1	1%2.
Free or Power Turbine	Maximum Range	±5%	1	1%2.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Engine Torque	Maximum Range	±5%	1	1%2.
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary—if applicable (Discrete).	High/Low		1	
Radio Transmitter Keying (Discrete).	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status-Engaged (Discrete).	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1%2.
Pedal Position	Full range	±3%	2	1%2.
Lat. Cyclic	Full range	±3%	2	1%2.
Long. Cyclic	Full range	±3%	2	1%2.
Controllable Stabilator Position.	Full range	±3%	2	1%2.

1 When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
2 Per cent of full range.
3 This column applies to aircraft manufactured after October 11, 1991.

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 1.1 [Amended]

3. By amending § 1.1 by changing the cross reference "§ 91.10" found in the definition of "Operate" to "§ 91.13."

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

4. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR NO. 29-4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR No. 29-4 [Amended]

5. By amending SFAR 29-4 located in part 21, paragraph 4, by changing the cross reference "§ 91.23(a)(3)" to "§ 91.167(a)(3)."

§ 21.81 [Amended]

6. By amending § 21.81(a) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.83 [Amended]

7. By amending § 21.83(a) and (b) by changing the cross reference "§ 91.41" to "§ 91.317" in each paragraph.

§ 21.85 [Amended]

8. By amending § 21.85(f) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.221 [Amended]

9. By amending § 21.221(a)(2) and (e) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.223 [Amended]

10. By amending § 21.223(a)(2) and (f) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.225 [Amended]

11. By amending § 21.225(a)(2) and (e) by changing the cross reference "§ 91.41" to "§ 91.317."

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

12. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix G, Part 23 [Amended]

13. By amending § G23.4 in appendix G in part 23 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

14. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix H, Part 25 [Amended]

15. By amending § H25.4 in appendix H in part 25 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

16. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 27 [Amended]

17. By amending § A27.4 in appendix A in part 27 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

18. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 29 [Amended]

19. By amending § A29.4 in appendix A in part 29 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

20. The authority citation for part 31 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix A, Part 31 [Amended]

21. By amending § A31.4 in appendix A in part 31 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

22. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix A, Part 33 [Amended]

23. By amending § A33.4 in appendix A in part 33 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

24. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix A, Part 35 [Amended]

25. By amending § A35.4 in appendix A in part 35 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

26. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 08–473, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 36.1583 [Amended]

27. By amending § 36.1583(b) by changing the cross reference "§ 91.56" to "§ 91.815."

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

28. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 43.5 [Amended]

29. By amending § 43.5(c) by changing the cross reference "§ 91.31" to "§ 91.9."

§ 43.15 [Amended]

30. By amending § 43.15(a)(2) by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.16 [Amended]

31. By amending § 43.16 by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.17 [Amended]

32. By amending § 43.17(a)(2) by changing the cross reference "§ 91.169" to "§ 91.409."

Appendix B, Part 43 [Amended]

33. By amending appendix B in part 43 by changing the cross reference "§ 91.173" to "§ 91.417" in paragraph (d).

Appendix E, Part 43 [Amended]

34. By amending appendix E in part 43 by changing the cross reference "§ 91.171" to "§ 91.411" in the introductory paragraph.

Appendix F, Part 43 [Amended]

35. By amending appendix F in part 43 by changing the cross reference "§ 91.172" to "§ 91.413 in the introductory paragraph."

PART 45—IDENTIFICATION AND REGISTRATION MARKING

36. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 45.22 [Amended]

37. By amending § 45.22(a)(3)(ii) by changing the cross reference "§ 91.83" to read "either § 91.153 or § 91.169.

PART 47—AIRCRAFT REGISTRATION

38. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1403, 1405, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 4 U.S.T. 1830.

§ 47.9 [Amended]

39. By amending § 47.9(f)(1)(i) by changing the cross reference "§ 91.173(a)(2)(i)" to "§ 91.417(a)(2)(i)."

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

40. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 61.15 [Amended]

41. By amending § 61.15(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 61.16 [Amended]

42. By amending § 61.16, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

§ 61.118 [Amended]

43. By amending § 61.118(d)(5) by changing the cross reference "§ 91.169" to "§ 91.409."

§ 61.153 [Amended]

44. By amending § 61.153(a) by changing the cross reference "§§ 91.1 through 91.9 and subpart B of part 91" to "§§ 91.1, 91.3, 91.5, 91.11, 91.13, 91.103, 91.105, 91.189, 91.193, 91.703, and subpart B of part 91."

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

45. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 63.12 [Amended]

46. By amending § 63.12(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 63.12a [Amended]

47. By amending § 63.12a, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

48. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 65.12 [Amended]

49. By amending § 65.12(b) by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

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

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

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

SFAR No. 45-1

SFAR 45-1 [Amended]

51. By amending SFAR 45-1, paragraph 4, in part 71 by changing the cross reference "§ 91.5" to "§ 91.103."

§ 71.17 [Amended]

52. By amending § 71.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

PART 91—GENERAL OPERATING AND FLIGHT RULES

53. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 29-4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR 29-4 [Amended]

54. By amending paragraph 4 in SFAR 29-4 in part 91 by changing the cross reference "§ 91.23(a)(3)" to "§ 91.167(a)(3)."

SFAR No. 44-5—AIR TRAFFIC CONTROL SYSTEM INTERIM OPERATIONS PLAN

SFAR 44-5 [Amended]

55. By amending paragraphs 1, 2(a), and 7 in SFAR 44-5 in part 91 by changing the cross reference "§ 91.100" to "§ 91.139."

SFAR No. 50-2—SPECIAL FLIGHT RULES IN THE VICINITY OF THE GRAND CANYON NATIONAL PARK

56. By amending the Note following section 3(a) in SFAR 50-2 in part 91 by changing the cross reference "§ 91.79" to "§ 91.119."

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

57. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 93.111 [Amended]

58. By amending § 93.111 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.113 [Amended]

59. By amending § 93.113 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.183 [Amended]

60. By amending § 93.183(b)(3) by changing the cross reference "§ 91.24" to "§ 91.215."

§ 93.199 [Amended]

61. By amending § 93.199(c) by changing the cross reference "§ 91.127" to "§ 91.185."

PART 99—SECURITY CONTROL OF AIR TRAFFIC

62. The authority citation for part 99 continues to read as follows:

Authority: 49 U.S.C 1348, 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 99.11 [Amended]

63. By amending § 99.11(b)(1) by changing the cross reference "§ 91.83" to "91.169," and by amending § 99.11(b)(2) by changing the cross reference "§§ 91.83(a) (1) through (7)" to "§§ 91.153(a) (1) through (6)."

§ 99.17 [Amended]

64-65. By amending § 99.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

§ 99.27 [Amended]

66-67. By amending § 99.27(a) by changing the cross reference "§ 91.75" to "§ 91.123."

§ 99.31 [Amended]

68. By amending § 99.31 by changing the cross reference to "§ 91.127" to "§ 91.185."

PART 103—ULTRALIGHT VEHICLES

69. The authority citation for part 103 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421(a), 1422, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 103.20 [Amended]

70. By amending § 103.20 by changing the cross reference "§ 91.102 or § 91.104" to "§ 91.143 or § 91.141."

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

71. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 121.1 [Amended]

72. By amending § 121.1(f) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 121.15 [Amended]

73. By amending § 121.15 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 121.207 [Amended]

74. By amending § 121.207, introductory text, by changing the cross reference "§ 91.41" to "§ 91.317."

§ 121.579 [Amended]

75. By amending § 121.579(b)(1) and (2) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.649 [Amended]

76. By amending § 121.649(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.657 [Amended]

77. By amending § 121.657(a) by changing the cross reference "§ 91.79" to "§ 91.119."

§ 121.667 [Amended]

78. By amending § 121.667(b) by changing the cross reference "§ 91.83" to "§§ 91.153 and 91.169."

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

79. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 125.23 [Amended]

80. By amending § 125.23(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 125.39 [Amended]

81. By amending § 125.39 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 125.329 [Amended]

82. By amending § 125.329(c) by changing the cross reference "§ 91.105" to "§ 91.155."

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

83. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 127.1 [Amended]

84. By amending § 127.1(b) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 127.22 [Amended]

85. By amending § 127.22 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 127.85 [Amended]

86. By amending § 127.85 by changing the cross reference "§ 91.41" in the introductory paragraph to "§ 91.317."

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

87. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 133.14 [Amended]

88. By amending § 133.14 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

89. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 135.1 [Amended]

90. By amending § 135.1(b)(10) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 135.3 [Amended]

91. By amending § 135.3(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 135.41 [Amended]

92. By amending § 135.41 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 135.71 [Amended]

93. By amending § 135.71 by changing the cross reference "§ 91.169" to "§ 91.409."

§ 135.93 [Amended]

94. By amending § 135.93(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 135.211 [Amended]

95. By amending § 135.211(a)(2) by changing the cross reference "§ 91.116(f)" to "§ 91.175(f)."

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

96. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 1348(c), 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 137.23 [Amended]

97. By amending § 137.23 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 137.43 [Amended]

98. By amending § 137.43(c) by changing the cross reference "§ 91.107(e)" to "§ 91.157(e)."

§ 137.53 [Amended]

99. By amending § 137.53(c)(1)(ii) by changing the cross reference "§ 91.217" to "§ 91.409."

PART 141—PILOT SCHOOLS

100. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 141.18 [Amended]

101. By amending § 141.18 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 141.41 [Amended]

102. By amending § 141.41(a) (1)(iii) and (2)(iii) by changing the cross reference "§ 91.33" to "§ 91.205."

Issued in Washington, DC, on August 7, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-18775 Filed 8-17-89; 8:45 am]

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Friday
August 18, 1989

Part III

Department of Veterans Affairs

38 CFR Parts 14, 19, and 20
Appeals Regulations; Rules of Practice; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14, 19, and 20

RIN 2900-AE02

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Judicial Review Act establishes judicial review of Board of Veterans' Appeals decisions, facilitates greater involvement of private attorneys-at-law in the appeals process at the Department level, and makes other changes affecting appeals. The Board of Veterans' Appeals has completely revised its Appeals Regulations and Rules of Practice to accommodate these changes and to generally update these regulatory provisions. Conforming revisions have also been made to part 14.

DATES: Comments must be submitted on or before September 18, 1989. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the address below, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Comments will be available for public inspection until September 27, 1989. It is proposed to make these changes effective the date of their final publication in the Federal Register.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jan Donsbach, Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-2978).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act: Sections 20.202 and 20.602 of this regulation contain information collection requirements. The public reporting burden for these collections of information are: § 20.202 is one hour per response and § 20.602 is 10 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve these information collection requirements. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Joseph F. Lackey.

In the comments which follow, the Veterans' Judicial Review Act is cited as Public Law 100-687. In addition to substantive changes, the Appeals Regulations and Rules of Practice have been reorganized for greater usefulness. The Appeals Regulations are now the primary source of regulatory provisions concerning the internal operations of Department of Veterans Affairs field facilities and the Board of Veterans' Appeals with respect to appeals processing while the Rules of Practice are the primary source of information of interest to appellants and their representatives concerning their rights and responsibilities in the appeals process. The Appeals Regulations remain in part 19, while the Rules of Practice have been placed in new part 20. Both the Rules of Practice and the Appeals Regulations have been renumbered, reserving numbers between major subdivisions so that they may be expanded logically in the future when the need arises. The material has been reorganized so that related material appears together. More detailed information has been provided in anticipation of involvement of private attorneys who may not be familiar with the Department of Veterans Affairs adjudication process. Title changes related to the conversion of the Veterans' Administration to the Department of Veterans Affairs have been made throughout. (See Public Law 100-527.) Numerous editorial revisions have been made. Citations to authority have been revised and updated. The cross-references which previously appeared at the end of sections have been consolidated into appendices.

The following changes have been made in part 14:

§ 14.634: Removed.

§ 14.635: Removed.

§ 14.636: Redesignated as § 14.634. Citation to authority and cross-references added.

§ 14.637: Redesignated as § 14.635. Cross-references added.

The following changes have been made in part 19:

§ 19.1: Revised. Based on old Rule of Practice 8 (38 CFR 19.108).

§ 19.2: Revised. Based on old Rule of Practice 9 (38 CFR 19.109).

§ 19.3: Revised. Based on old Rule of Practice 10 (38 CFR 19.110). Changes to paragraph (a) based on section 201(a) of Public Law 100-687. Material added to paragraph (b) provides for designation and redesignation of Chief Members.

§ 19.4: Revised. Based on old Rule of Practice 11 (38 CFR 19.111).

§ 19.5: Revised. Based on old Rule of Practice 3 (38 CFR 19.103).

§ 19.6: Revised. Based on old Rule of Practice 61 (38 CFR 19.161). Material removed from first sentence. The Board Members serving on the hearing panel are not always the Members who make the appellate decision (e.g., Travel Board hearing in a radiation case).

§ 19.7: Added. Based on old Rule of Practice 80 (38 CFR 19.180). Revisions based on sections 203, 205, and 206 of Public Law 100-687.

§ 19.8: Added. Based on old Rule of Practice 16 (38 CFR 19.116). Changes based on section 205 of Public Law 100-687.

§ 19.9: Added. Based on old Rule of Practice 82, paragraph (a) (38 CFR 19.182(a)).

§ 19.10: Added. Based on old Rule of Practice 88 (38 CFR 19.188). Revised to reflect the development by remand in reconsideration cases which is appropriate to reconsideration of a prior Board of Veterans Appeals decision.

§ 19.11: Added. Based on old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)), and on old Rule of Practice 90 (38 CFR 19.190). Completely rewritten. Changes in provisions for determining the number of Board Members on reconsideration panels have been made to give more flexibility in view of the requirement of a majority opinion. Because a majority opinion, as opposed to an unanimous decision, can now constitute a final decision, a nine Member panel may be necessary in order to break tie votes. Material added to explain that Members who conduct Travel Board reconsideration hearings will be included in the reconsideration panel.

§ 19.12: Added. Based on old Rule of Practice 83 (38 CFR 19.183). Paragraph (c), which permits the Chairman to disqualify a Member of the Board from acting in an appeal under certain circumstances, added.

§ 19.13: Added. Based on old 38 CFR 19.5.

§ 19.14: Added. Describes matters to be addressed in appeals which involve

prior final determination by the agency of original jurisdiction.

§ 19.15: Added. Delegates authority to take various actions.

§ 19.25: Added. Based on old Rule of Practice 14 (38 CFR 19.114). Revised to include a requirement of notification of the appellate rights which were added by section 301 of Public Law 100-687.

§ 19.26: Added. Based on old Rule of Practice 19 (38 CFR 19.119).

§ 19.27: Added. Based on old Rule of Practice 34 (38 CFR 19.134).

§ 19.28: Added. Based on old Rule of Practice 36 (38 CFR 19.136). Material added to make it clear that whether a Notice of Disagreement is adequate is an appealable issue, as was implicit in the old rule.

§ 19.29: Added. Based on old Rule of Practice 20 (38 CFR 19.120). Changes to item (b) in the list of information which must be included in the Statement of the Case based on section 206 of Public Law 100-687.

§ 19.30: Added. Based on old Rule of Practice 21 (38 CFR 19.121). Changes based on section 206 of Public Law 100-687. Paragraph (b) previously described in detail information provided to appellants and their representatives concerning the completion of the VA Form 1-9. Inasmuch as the information is furnished with the form, repeating it in the rule is redundant.

§ 19.31: Added. Primarily based on old Rule of Practice 22 (38 CFR 19.122). On occasion, the Board will determine that a Supplemental Statement of the Case is not necessary following a remand. (An example of such a remand might be a request for an X-ray film which the Board desires to send to an independent medical expert as part of a request for an advisory medical opinion pursuant to Rule 901, paragraph (d) (§ 20.901(d)).) The second sentence of this rule has been modified to allow for this contingency. Some of the concepts concerning post-remand Supplemental Statements of the Case previously found in old Rule 82, paragraph (b) (§ 19.182(b)), have also been incorporated into this rule. The rule has been revised to require that a Supplemental Statement of the Case be provided following a hearing on appeal conducted by field personnel if documentary evidence or evidence in the form of testimony concerning relevant facts or expert opinion is presented at the hearing.

§ 19.32: Added. Based on old Rule of Practice 24 (38 CFR 19.124).

§ 19.33: Added. Based on old Rule of Practice 33 (38 CFR 19.133).

§ 19.34: Added. Based on old Rule of Practice 35 (38 CFR 19.135). Material added to make it clear that whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue, as was implicit in the old rule.

§ 19.35: Added. Based on old Rule of Practice 23, paragraph (b) (38 CFR 19.123(b)).

§ 19.36: Added. Based on old Rule of Practice 74, paragraph (a) (38 CFR 19.174(a)).

§ 19.37: Added. Based on old Rule of Practice 73 (38 CFR 19.173). Additional information added to paragraph (a) concerning when a Supplemental Statement of the Case is required.

§ 19.38: Added. Based on old Rule of Practice 82, paragraphs (b) and (c) (38 CFR 19.182 (b) and (c)). Extensively revised to describe the action taken by the agency of original jurisdiction when a case is remanded by the Board of Veterans Appeals. (Not all of the material in old paragraph (b) is included in this new section. Some of the material previously in paragraph (b) overlapped material found in old Rule of Practice 22 (§ 19.122) and has been incorporated into the revisions to § 19.31, which is based on old Rule of Practice 22.)

§ 19.50: Added. Based on old Rule of Practice 38 (38 CFR 19.138).

§ 19.51: Added. Based on old Rule of Practice 39 (38 CFR 19.139).

§ 19.52: Added. Based on old Rule of Practice 40 (38 CFR 19.140). (Some of the concepts previously found in old Rule of Practice 40 are also found in new Rule of Practice 400 (§ 20.400).)

§ 19.53: Added. Based on old 38 CFR 19.4.

§ 19.75: Added. Establishes requirement that Department of Veterans Affairs facilities generating appeals activity maintain a Travel Board hearing docket. Such dockets are necessary in view of the requirement of new 38 U.S.C. 4010, added by section 207 of Public Law 100-687, that Travel Board hearings be scheduled in the order in which the requests for such hearings are received.

§ 19.76: Added. Establishes procedures for notifying appellants and their representatives of the time and place of Travel Board hearings.

§ 19.77: Added. Provides that a Statement of the Case is to be provided to an appellant and his or her representative not later than the date that notification of the time and place of a Travel Board hearing is provided.

§ 19.100: Added. Based on old Rule of Practice 43 (38 CFR 19.143). The first sentence of this rule has been deleted. Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule of Practice 3 (§ 20.3).

§ 19.101: Revised. Based on old Rule of Practice 46 (38 CFR 19.146).

§ 19.102: Revised. This regulation and Rule of Practice 502 (§ 20.502) are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. This Appeal Regulation addresses the former while Rule 502 addresses the latter. This regulation provides that a copy of the actual Substantive Appeal will be furnished to the other contesting parties.

§§ 19.103–19.201 Removed.

Appendix A to Part 19: Added. Consolidates cross-references which previously appeared at the end of individual sections.

The following sections have been added to new Part 20:

§ 20.1: Rule 1. Based on old Rule of Practice 1 (38 CFR 19.101). Old paragraph (a) removed. The authorities for the provisions of this rule are cited at the end of each paragraph of the rule in compliance with 38 U.S.C. 210(c)(1). (Where the same authorities apply to all paragraphs, the authorities are found at the end of the rule.) Subsequent paragraphs appropriately redesignated. The second sentence of old paragraph (b) has been removed. The removed material is the basis for new Rule 2 (§ 20.2).

§ 20.2: Rule 2. Based on material previously found in old Rule of Practice 1, paragraph (b) (38 CFR 19.101(b)).

§ 20.3: Rule 3. Gives definitions of various terms used throughout the Rules of Practice.

§ 20.100: Rule 100. Based on old Rule of Practice 7 (38 CFR 19.107). Some items which are mailed to the Board (e.g., certain motions) are addressed to an office other than that of the Chairman. Paragraph (c) has been revised to allow for these exceptions.

§ 20.101: Rule 101. The material which was previously in old Rule of Practice 12 (38 CFR 19.112), which concerned the Board's jurisdiction, has been removed. Former paragraph (a) repeated information which was already contained in § 19.1. Former paragraph (b) was more in the nature of a cross reference than a substantive rule. This revised rule, concerning the same subject, is based on material previously found in 38 CFR 19.1 through 19.3. The first portion of paragraph (a) is based on paragraph (a) of old § 19.1. Revisions to the first sentence of paragraph (a) are

based on section 101 of Public Law 100–687. The reference to Administrator's Instructions has been removed from paragraph (a) due to regulatory changes. Examples of jurisdiction previously found in 38 CFR 19.2 have been updated and incorporated into paragraph (a). Paragraph (b) is based on material previously found in 38 CFR 19.3. Paragraph (c) is based on material previously found in paragraph (b) of 38 CFR § 19.1.

§ 20.102: Rule 102. Delegates authority to rule on various motions, etc.

§ 20.200: Rule 200. Based on old Rule of Practice 17 (38 CFR 19.117).

§ 20.201: Rule 201. Based on old Rule of Practice 18 (38 CFR 19.118). The definition of "agency of original jurisdiction" previously included in the first sentence has been removed. Definitions are now in new Rule 3 (§ 20.3). Agencies of original jurisdiction often make determinations on several issues at the same time. Frequently, the claimant will agree with adjudicative action taken on some issues and disagree with action taken with respect to others. Material has been added to point out that when notice is received concerning the disposition of several issues, the claimant or representative should identify which determinations he or she disagrees with in the Notice of Disagreement.

§ 20.202: Rule 202. Based on old Rules of Practice 23, paragraph (a), and 26 (38 CFR 19.123(a) and 19.126). Revisions have been made to note that a Substantive Appeal should make it clear which issues are being appealed when the Statement of the Case and any prior Supplemental Statements of the Case have addressed multiple issues. Amended to note that the Board may dismiss an appeal which fails to allege specific error of fact or law, as provided by 38 U.S.C. 4005(d)(5) and as previously noted in old Rule 26 (§ 19.126), and to incorporate the change to 38 U.S.C. 4005(d)(4) made by Section 206(b) of Public Law 100–687.

§ 20.203: Rule 203. Based on old Rule of Practice 37 (38 CFR 19.137).

§ 20.204: Rule 204. Based on old Rule of Practice 25 (38 CFR 19.125). The vague exception previously found in paragraph (b) has been removed. An appellant has an absolute right to withdraw his or her appeal prior to the promulgation of an appellate decision. Paragraph (c) has been amended to show that a representative may withdraw a Notice of Disagreement or Substantive Appeal personally filed by the appellant if the representative has the written permission of the appellant to do so.

§ 20.300: Rule 300. Based on old Rule of Practice 27 (38 CFR 19.127). On occasion, because a claimant has moved to another area or for some other reason, applicable files will be transferred from one Department of Veterans Affairs office to another after an action is taken which a claimant wishes to appeal, but before a Notice of Disagreement and/or Substantive Appeal is filed. This rule has been amended to allow for this contingency.

§ 20.301: Rule 301. Based on old Rule of Practice 28 (38 CFR 19.128).

§ 20.302: Rule 302. Based on old Rule of Practice 29 (38 CFR 19.129). Amended to make it clear that this rule does not apply to cases involving simultaneously contested claims. (Time limits for filing in simultaneously contested claims are set out in Rule 501 (§ 20.501).) Paragraph (c) previously pointed out that there must be a response to a Supplemental Statement of the Case which includes new issues which were not included in the Statement of the Case, but it did not indicate the nature of the required response. When new issues are included in a Supplemental Statement of the Case it becomes, in effect, the Statement of the Case with respect to the new issues and the response required is therefore a Substantive Appeal. New material has been added to make this clear. Particularly in view of this situation, the time for responding to a Supplemental Statement of the Case has been lengthened to 60 days. Material has also been added to paragraph (c) to make it clear that the 60-day period allowed for response to a Supplemental Statement of the Case begins with the mailing of the Supplemental Statement of the Case.

§ 20.303: Rule 303. Based on old Rule of Practice 30, paragraph (a) (38 CFR 19.130(a)). Material has been added to allow for filing requests for an extension of time with the office which has assumed jurisdiction over the applicable Department of Veterans Affairs records in cases where the records have been transferred after the action being appealed was taken.

§ 20.304: Rule 304. Based on old Rule of Practice 30, paragraph (b) (38 CFR 19.130(b)).

§ 20.305: Rule 305. Based on old Rule of Practice 31 (38 CFR 19.131). Revised to show that this rule applies to the computation of the time limit for filing any written document, not just to the time limit for filing a Notice of Disagreement or Substantive Appeal. A presumption has been added that the postmark date is five days prior to the receipt of the document in those cases where the postmark is not of record due to the loss of the mailing envelope, etc.

§ 20.306: Rule 306. Based on old Rule of Practice 32 (38 CFR 19.132).

§ 20.400: Rule 400. Based on old Rules of Practice 40 and 41 (38 CFR 19.140 and 19.141). (Some of the concepts previously found in old Rule of Practice 40 are also found in new 38 CFR 19.52.) The last sentence of this rule has been revised. While a representative may act upon behalf of a claimant with his or her authorization, only the claimant may authorize a merged appeal.

§ 20.401: Rule 401. Based on old Rule of Practice 42 (38 CFR 19.142).

§ 20.500: Rule 500. Based on old Rule of Practice 44 (38 CFR 19.144).

§ 20.501: Rule 501. Based on old Rule of Practice 45 (38 CFR 19.145). The definition has been removed from the first sentence of paragraph (a). Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule 3 (§ 20.3). New paragraph (c) added to provide information concerning action to be taken by claimants/appellants and their representatives when a Supplemental Statement of the Case is received in a simultaneously contested claim.

§ 20.502: Rule 502. This rule and new 38 CFR 19.102 are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. The rewritten rule focuses on the latter. A new Appeal Regulation (§ 19.102) addresses the former. The revised rule provides that a copy of the actual Substantive Appeal will be furnished to all other contesting parties. It also clarifies when the 30-day period allowed for a response commences.

§ 20.503: Rule 503. Based on old Rule of Practice 48 (38 CFR 19.148).

§ 20.504: Rule 504. Based on old Rule of Practice 49 (38 CFR 19.149).

§ 20.600: Rule 600. Based on old Rule of Practice 50 (38 CFR 19.150). Rule revised to make it clear that there is a full right to representation in appellate proceedings before the Board of Veterans Appeals, as well as before the agency of original jurisdiction.

§ 20.601: Rule 601. Based on old Rule of Practice 55, paragraph (a) (38 CFR 19.155(a)).

§ 20.602: Rule 602. Based on old Rule of Practice 51, paragraph (a) (38 CFR 19.151(a)). Material added to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated

prior to initiation of an appeal, provided that the designation has not been revoked.

§ 20.603: Rule 603. Based on old Rule of Practice 52, paragraphs (a) and (b) (38 CFR 19.152 (a) and (b)). Material added to paragraph (a) to point out that an attorney-at-law may be designated through the use of a VA Form 2-22a, as well as through the alternative procedure outlined in the rule; that all designations of attorneys-at-law must be to individuals rather than partnerships or firms; that an attorney's authority to act as a representative may be limited as noted in 38 CFR 14.631(d); that a designation of a representative is not effective until it is received by the Department of Veterans Affairs; and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal if the designation has not been revoked. Reference to appellant's guardian removed from the third sentence as unnecessary. (If an individual has a legal guardian, the guardian is the appellant.) The material previously contained in the last sentence of paragraph (a) has been moved to Rule 606 (§ 20.606). Cross-reference material removed from body of paragraph (b). Last sentence of paragraph (b) removed as inappropriate for inclusion in the text of this rule. This material is covered in Rule 606. The new material in paragraph (c) permits an attorney who is associated or affiliated with the attorney of record to assist in appellate representation as provided in 38 CFR 14.629(c).

§ 20.604: Rule 604. Based on old Rule of Practice 53, paragraphs (a) and (b) (38 CFR 19.153 (a) and (b)). Material added to paragraph (a) to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal, provided that the designation has not been revoked.

§ 20.605: Rule 605. Based on old Rule of Practice 54, paragraphs (a) and (b) (38 CFR 19.154 (a) and (b)). New paragraph (a) added to clarify the scope of this rule. Old paragraph (a) broken up into paragraphs (b) and (c) for clarity. Material added to new paragraph (c) to recognize the alternative designation procedure described in 38 CFR 14.630, to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs, and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal, provided that the designation has not been revoked. Old paragraph (b), which has been revised to conform to 38 CFR 14.630, is now paragraph (d).

§ 20.606: Rule 606. Based primarily on old Rule of Practice 56 (38 CFR 19.156). Completely rewritten to give additional information on the use of the services of legal interns, law students, and paralegals in accordance with existing practices. First sentence of paragraph (b) based on material previously found in old Rule 52, paragraph (a) (38 CFR 19.152(a)). Last sentence of paragraph (b) added to make the rule consistent with the provisions of 38 CFR 14.629(c)(4). New paragraph (e) added concerning the withdrawal of permission for legal interns, law students and paralegals to assist in the presentation of appeals.

§ 20.607: Rule 607. Based on old Rule of Practice 51, paragraph (b) (38 CFR 19.151(b)); old Rule of Practice 52, paragraph (c) (38 CFR 19.152(c)); old Rule of Practice 53, paragraph (c) (38 CFR 19.153(c)); and old Rule of Practice 54, paragraph (c) (38 CFR 19.154(c)). Material added to provide additional information on how a designation of representation is revoked and to make it clear that designating a new representative will automatically revoke any prior designation of representation, except for cases in which the designation of a new representative is limited to a specific claim. (With respect to the latter, see 38 CFR 14.631(d).)

§ 20.608: Rule 608. Explains how, and under what circumstances, a representative may withdraw from an appeal.

§ 20.609: Rule 609. Implements Section 104 of Public Law. 100-687. Replaces portions of 38 CFR 14.634 which dealt with representative's fees.

§ 20.610: Rule 610. Part of the implementation of Section 104 of Public Law 100-687. Replaces portions of 38 CFR 14.634 which dealt with representative's expenses and all of 38 CFR 14.635.

§ 20.611: Rule 611. Based on old Rule of Practice 55, paragraphs (b) through (d) (38 CFR 19.155 (b)-(d)). Scope of rule extended to any claimant or appellant, not just veterans. Distinction between surviving spouse and other survivors eliminated as unnecessary and inconsistent with 38 CFR 14.631(e). The old "reasonable time" standard has been replaced by a definite period during which a veteran's representative may continue to represent his or her survivors following his or her death without action on the part of the survivors.

§ 20.700: Rule 700. Based on old Rule of Practice 57 (38 CFR 19.157). Changes have been made throughout to explain that the primary purpose of a personal hearing is to receive testimony from an appellant and witnesses and that, in the absence of such testimony, arguments by representatives should normally be submitted to the Board in the form of a written brief or by submitting an audio cassette for transcription as an informal hearing presentation. Provision is made for allowing a representative to appear in person without the claimant or witnesses in unusual circumstances when good cause is shown. The closing sentence of paragraph (c) has been added. It describes the authority of the presiding Member to curtail the presentation of evidence, testimony, and/or argument which is not relevant or material or which is unduly repetitious.

§ 20.701: Rule 701. Based on old Rule of Practice 58 (38 CFR 19.158). Rule revised to focus on who may present argument. (Testimony is covered elsewhere in a rule pertaining to witnesses. See Rule 710 (§ 20.710).) It is more appropriate to classify Members of Congress and their staffs as witnesses when they appear and present testimony in support of the appeal without being formally designated as representatives by power of attorney.

§ 20.702: Rule 702. Based on old Rule of Practice 59 (38 CFR 19.159). Extensive material added to explain how, and when, changes in hearing dates may be obtained; what action is taken when an appellant fails to appear for a scheduled hearing; and that an appellant may withdraw a hearing request.

§ 20.703: Rule 703. Explains when the right to a hearing before a traveling Section of the Board of Veterans Appeals arises.

§ 20.704: Rule 704. Provides detailed information concerning the scheduling of hearings conducted by traveling Sections of the Board of Veterans Appeals.

§ 20.705: Rule 705. Based on old Rule of Practice 60 (38 CFR 19.160). Language added to clarify that hearings are only conducted at Department of Veterans Affairs facilities which have appropriate support available. (Material in the closing paragraph of old Rule of Practice 60 has been moved to new Rule 707 (§ 20.707).)

§ 20.706: Rule 706. Based on old Rule of Practice 62 (38 CFR 19.162).

§ 20.707: Rule 707. Based on the last paragraph of old Rule 60 (38 CFR 19.160). Revised to provide more detailed information.

§ 20.708: Rule 708. Based on old Rule of Practice 63 (38 CFR 19.163). Revised for clarity and to add information on how prehearing conferences are requested.

§ 20.709: Rule 709. Based on old Rule of Practice 64 (38 CFR 19.164).

§ 20.710: Rule 710. Based on old Rule of Practice 65 (38 CFR 19.165). Material added to paragraph (a) to note that testimony by witnesses extends to presentations by Members of Congress and their staffs. Material concerning attendance of witnesses removed from paragraph (a), inasmuch as a new rule concerning subpoenas has been added.

§ 20.711: Rule 711. Provides information on how and when subpoenas are issued and related matters.

§ 20.712: Rule 712. Based on old Rule of Practice 66 (38 CFR 19.166).

§ 20.713: Rule 713. Based on old Rule of Practice 67 (38 CFR 19.167). Completely rewritten. Allows a single hearing, at which all contesting parties may be present and may present argument and testimony, in simultaneously contested claims. (Previously, separate hearings were conducted for each party.) Provides information on requests for changes in hearing dates in such cases.

§ 20.714: Rule 714. Based on old Rule of Practice 68 (38 CFR 19.168). Paragraphs (a) and (b) amended to show that the applicable case record may be something other than the claims folder. Paragraph (a) amended to provide that requests for hearing transcripts may be made orally at the time of the hearing, as well as in writing at a later time, and that transcripts of Travel Board hearings will be prepared automatically in various types of cases. Paragraph (b) amended to make it clear that the transcript of field hearings prepared by the agency of original jurisdiction is the official record of that hearing.

§ 20.715: Rule 715. Based on old Rule of Practice 69 (38 CFR 19.169). Additional information given on how to make arrangements for private recording of hearings.

§ 20.716: Rule 716. Based on old Rules of Practice 70 and 71 (38 CFR 19.170 and 19.171). Completely rewritten. Specifies that alternate hearing transcripts will not be accepted and explains how corrections in hearing transcripts are obtained.

§ 20.717: Rule 717. Explains actions to be taken when a hearing transcript or tape is lost or damaged.

§ 20.800: Rule 800. Based on old Rule of Practice 72 (38 CFR 19.172). Amended to include a reference to the limitations imposed on the submission of additional evidence after a case has been certified to the Board of Veterans Appeals.

§ 20.900: Rule 900. Paragraph (a) is based on old Rule of Practice 5 (§ 19.105). Paragraph (b) is based on old Rule of Practice 75 (38 CFR 19.175). Paragraph (c) is based on old Rule of Practice 6 (§ 19.106). Additional information has been provided on motions for advancement on the docket.

§ 20.901: Rule 901. Paragraphs (a) through (c) are based on old Rule of Practice 76 (38 CFR 19.176). New paragraph (d) is based on old Rule of Practice 77 (38 CFR 19.177). New paragraph (e) clarifies who may request an opinion.

§ 20.902: Rule 902. Based on old Rule of Practice 78 (38 CFR. 19.178).

§ 20.903: Rule 903. Based on old Rule of Practice 79 (38 CFR 19.179). Amended to conform to 38 U.S.C. 4009(c), added by Section 103 of Public Law 100–687. Material added to clarify when the 60-day period allowed for a response to an opinion commences.

§ 20.904: Rule 904. Based on old Rule of Practice 84 (38 CFR 19.184).

§ 20.905: Rule 905. Based on old Rule of Practice 101 (38 CFR 19.201).

§ 20.1000: Rule 1000. Based on old Rule of Practice 85 (38 CFR 19.185). New paragraph (d) based on Section 202 of Public Law 100–687.

§ 20.1001: Rule 1001. Based on old Rule of Practice 86 (38 CFR 19.186). More detailed information provided on how to file a motion for reconsideration.

§ 20.1002: Rule 1002. Based on old Rule of Practice 87 (38 CFR 19.187). Old paragraph (a) has been broken up into paragraphs (a) and (b). More detailed information concerning the evidence considered on reconsideration of a prior Board of Veterans Appeals decision based upon an allegation of obvious error has been added to paragraph (a). Old paragraph (b) is the basis for new paragraph (c).

§ 20.1003: Rule 1003. Based on old Rule of Practice 89, paragraph (a) (38 CFR 19.189(a)). Reference to personal appearance by representative alone removed, inasmuch as the purpose of a personal hearing is to receive testimony. (Old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)) is part of the basis for new § 19.11.)

§ 20.1100: Rule 1100. Based on old Rule of Practice 4 (38 CFR 19.104). Revised to conform to 38 U.S.C. 211(a), as amended by Section 101 of Public Law 100–687. Old paragraph (b) has been removed. The material in that paragraph was in the nature of a cross-reference and it has been incorporated into a new cross-reference.

§ 20.1101: Rule 1101. Based on old Rule of Practice 81 (38 CFR 19.181). Revisions based on sections 202, 203, and 205 of Public Law 100–687. Material added to make it clear when the Board's decisions are final.

§ 20.1102: Rule 1102. Based on old Rule of Practice 91 (38 CFR 19.191).

§ 20.1103: Rule 1103. Based on old Rule of Practice 92 (38 CFR 19.192).

§ 20.1104: Rule 1104. Based on old Rule of Practice 93 (38 CFR 19.193).

§ 20.1105: Rule 1105. Based on old Rule of Practice 94 (38 CFR 19.194).

§ 20.1106: Rule 1106. Based on old Rule of Practice 96 (38 CFR 19.196). The old rule was inconsistent with 38 CFR 3.22(a)(2) which, in effect, requires that it be shown that there was clear and unmistakable error in prior rating decisions which failed to give a veteran a total rating for the required period of time in order to qualify for "410(b)" benefits. (Former 38 U.S.C. 410(b) is now 38 U.S.C. 418, see Section 1403 of Public Law 100–687.) 38 U.S.C. 3504(c) forbids the payment of benefits to any person after September 1, 1959, based on the service of an individual before the date of a treasonous act if that individual's Department of Veterans Affairs benefits have been forfeited for treason. There is a similar prohibition in 38 U.S.C. 3505(a) pertaining to cases involving forfeiture for subversive activities. These provisions are now recognized.

§ 20.1200: Rule 1200. Based on old Rule of Practice 98 (38 CFR 19.198).

§ 20.1201: Rule 1201. Based on old Rule of Practice 99 (38 CFR 19.199).

§ 20.1300: Rule 1300. Based on old Rule of Practice 13 (38 CFR 19.113).

§ 20.1301: Rule 1301. Paragraph (a) based on old 38 CFR 19.6. Supplemental Statements of the Case added to the list of items normally disclosed to appellants. Paragraph (b) based on old Rule of Practice 100 (38 CFR 19.200).

§ 20.1302: Rule 1302. Based on old Rule of Practice 95 (38 CFR 19.195).

§ 20.1303: Rule 1303. Based on old Rule of Practice 97 (38 CFR 19.197).

§ 20.1304: Rule 1304. Based on old Rule of Practice 74, paragraphs (b) through (e) (38 CFR 19.174(b)–(e)).

§ 20.1305: Rule 1305. Based on old Rule of Practice 2 (38 CFR 19.102). Updated.

Appendix A to Part 20: Consolidates cross-references which previously appeared at the end of individual sections.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices

for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the proposed regulations would have only a limited, beneficial effect on claimants/appellants and their representatives. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: July 17, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 14, Legal Services, General Counsel, and Part 19, Board of Veterans Appeals, are proposed to be amended, and 38 CFR Part 20, Board of Veterans Appeals: Rules of Practice, is proposed to be added, as follows:

PART 14—[AMENDED]

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

1. In 38 CFR Part 14, Legal Services, General Counsel, remove §§ 14.634 and 14.635 and redesignate §§ 14.636 and 14.637 as new §§ 14.634 and 14.635 respectively.

2. In newly designated § 14.634, remove the last sentence and add an authority citation and cross-references to read as follows:

§ 14.634 Banks or trust companies acting as guardians.

* * * * *

(Authority: 38 U.S.C. 3403, 3404)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.610 of this chapter.

§ 14.635 [Amended]

3. In newly designated § 14.635, remove the word "Administrator" where it appears and add, in its place, the word "Secretary".

4. In § 14.635, cross-references are added to read as follows:

§ 14.635 Space and office facilities.

* * * * *

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

5. 38 CFR part 19, Board of Veterans' Appeals, is revised to read as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A—Operation of the Board of Veterans' Appeals

Subpart B—Appeals Processing by Agency of Original Jurisdiction

Subpart C—Administrative Appeals

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

Subpart E—Simultaneously Contested Claims

Appendix A—Cross-References

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—Operation of the Board of Veterans Appeals

§ 19.1 Establishment of the Board.

The Board of Veterans Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members, and professional, administrative, clerical and stenographic personnel.

(Authority: 38 U.S.C. 210, 212, 4001(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are appointed by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 210, 212, 4001(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 4002)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 4002)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or other good cause, a Member of a Section of the Board is unable to participate effectively in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 4002)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 4002, 4004)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 4004(c))

§ 19.6 Composition of Board of Veterans Appeals hearing panels.

A Board of Veterans Appeals hearing panel consists of a presiding Member, and, except as provided in §§ 19.3(d) and 19.11 or this part, two other Board Members. When, after a hearing, a Board Member assigned to a panel is unable to participate in the final decision, the Chairman may assign a substitute.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 4004(a), 4005(d)(4))

(b) *Disposition of issues.* The Board will dispose of each issue on appeal:

(1) By an order granting, denying, or dismissing the appeal in whole or in part with respect to that issue;

(2) By remanding the issue to the agency of original jurisdiction for further development; or

(3) By vacating a prior decision of the Board with respect to that issue.

(Authority: 38 U.S.C. 4004)

(c) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(Authority: 38 U.S.C. 4004(d))

§ 19.8 Decision notification.

After a decision has been rendered by the Board, all parties to the appeal and the representatives, if any, will be notified of the results by the mailing of a copy of the written decision to the parties and their representatives at their last known addresses.

(Authority: 38 U.S.C. 4004(e))

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Section of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.10 Remands in reconsideration cases.

In connection with reconsideration of a prior Board of Veterans Appeals decision, the Board may remand for the purpose of obtaining additional service department records, evidence deemed necessary as a prerequisite for a request for an outside opinion to be obtained pursuant to Rule of Practice 901 (§ 20.901 of this chapter), evidence to be considered in determining whether the Board decision being considered involved the allowance of benefits which was materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, or evidence which was before the Board at the time that the decision being reconsidered was entered which is no longer a part of the appellate record. The Board may also remand the case in order to afford the appellant a hearing on reconsideration, if a request has been received that such a hearing be conducted at a location other than Washington, DC.

(Authority: 38 U.S.C. 4003, 4004(b))

§ 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel to conduct the reconsideration.

(Authority: 38 U.S.C. 4002, 4003)

(b) *Number of members constituting a panel.* When none of the Board Members who participated in the decision being reconsidered is available, the Chairman may assign a panel consisting of three Board Members to conduct the reconsideration. Otherwise, the number of Board Members assigned

to the reviewing panel will be determined by increasing the number of Members who participated in the original decision by not less than three additional Members, in increments of three Members. Except when necessary to obtain a majority opinion, a reconsideration panel will not exceed nine members.

(Authority: 38 U.S.C. 4002, 4003)

(c) *Members included in the reconsideration panel.* The reconsideration panel will include those Members who participated in the original decision who are available, additional Members assigned by the Chairman to substitute for Members who participated in the decision being reconsidered who are no longer available, and additional Members assigned in accordance with paragraph (b) of this section. In the case of Travel Board hearings involving reconsideration of a prior Board decision, the Members of the traveling Section of the Board will be included in the expanded Section established pursuant to paragraph (b) of this section, or will constitute the three-Member reconsideration panel established in accordance with paragraph (b) of this section. If the prior Board decision being reconsidered involves questions concerning radiation, Agent Orange, or asbestos exposure, the traveling Section will be included in an expanded Section which also includes Board Members specializing in those issues.

(Authority: 38 U.S.C. 4002, 4003, 4010)

§ 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 4002)

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board who made the decision on an administrative appeal will disqualify themselves from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 4002, 4006)

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 4002, 4006)

§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit.

(b) Approve an administrative allowance on an adjudicative determination which has become final by appellate decision or failure to timely appeal.

(c) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 19.14 Decisions involving final determinations by the agency of original jurisdiction.

(a) *Scope of regulation.* This section applies to appeals in cases in which one or more prior determinations by the agency of original jurisdiction with respect to an issue, or issues, currently being appealed have become final because those prior determinations were not appealed within the time allowed by law. It is not applicable to those cases in which any such prior unappealed determination has been superseded by a subsequent Board of Veterans' Appeals or court decision on the same issue, or issues.

(b) *Decisions involving prior final agency of original jurisdiction determinations.* Prior relevant determinations by the agency of original jurisdiction which have become final because they were not appealed in the time allowed by law will be identified in Board of Veterans' Appeals decisions. Such identification will include the date of each such determination, the date that the claimant was notified of the determination, and an indication that the relevant determination was not appealed. If error in a prior unappealed determination is alleged by either an appellant or his or her representative, the decision will include a sufficient description of the evidence which was of record prior to each such determination to support an informed discussion of whether each such determination was or was not clearly and unmistakably erroneous and, if such error is not found, a sufficient description of the evidence which has been added to the record since the last such prior final determination to support an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. If error is not alleged, the evidence which was of record prior to the unappealed determinations and the evidence which has been added to the record since the last such prior final determination will be identified in such a manner as to show whether it was received before or after the last such prior final determination and will be described in sufficient detail to support an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. The decision will also include references to relevant laws and regulations, findings of fact, and conclusions of law pertaining to the finality of prior unappealed determinations by the agency of original jurisdiction. If the benefit sought on appeal cannot be otherwise granted, consideration shall be given to a recommendation for an administrative allowance.

(Authority: 38 U.S.C. 4005)

§ 19.15 Delegation of authority—appeals regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(d), 19.6, 19.11(a), and 19.11(b) of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 19.16–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 4005(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 1–9, Appeal to Board of Veterans' Appeals.

(Authority: 38 U.S.C. 4005)

§ 19.31 Supplemental Statement of the Case.

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise. A Supplemental Statement of the Case is required following a hearing on appeal before field personnel when new documentary evidence or evidence in the form of testimony concerning the relevant facts or expert opinion is presented, but is not required if only argument is presented.

(Authority: 38 U.S.C. 4005(d))

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a response is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 4005(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.35 Certification of appeals.

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans Appeals. Certification is accomplished by the execution of VA Form 1–8, Certification of Appeal. Its purpose is to identify the issues for appellate consideration and to serve as a check list for the originating agency to ensure that the appeals development procedures have been adequate, particularly as they affect the appellant's due process rights.

(Authority: 38 U.S.C. 4005)

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the claimant and his or her representative, if any, will be notified in writing.

(Authority: 38 U.S.C. 4005)

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) *Evidence received prior to transfer of records to Board of Veterans Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans Appeals after an appeal has

been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 30-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 19.39–19.49 [Reserved]

Subpart C—Administrative Appeals

§ 19.50 Nature and form of administrative appeal.

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 4006)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office—*(1) *Officials.* The Chief Benefits Director or a Service Director of the Veterans Benefits Administration, the Chief Medical Director or a service director of the Veterans Health Services and Research Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction—*(1) *Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The Date of Mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 4006)

§ 19.52 Notification to claimant of filing of administrative appeal.

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 4006)

§§ 19.54–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

(1) The date that each request for a Travel Board hearing was received,

(2) The name of the appellant,

(3) The name of the representative,

(4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 4010)

§ 19.76 Notice of time and place of Travel Board hearing.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a Travel Board hearing not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled Travel Board hearing with good cause. The requirement will also be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled Travel Board hearing.

(Authority: 38 U.S.C. 4010)

§ 19.77 Providing Statement of the Case when Travel Board hearing has been requested.

If not previously furnished, the appellant and his or her representative will be provided with a Statement of the Case not later than the date on which the agency of original jurisdiction furnishes them with notification of the place and time of the Travel Board hearing. A Statement of the Case is not required when the only issue to be considered by the traveling Section of the Board is the reconsideration of a prior Board of Veterans Appeals decision.

(Authority: 38 U.S.C. 4005(d)(1), 4010)

§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 4005A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 1–9, Appeal to Board of Veterans Appeals.

(Authority: 38 U.S.C. 4005A(b))

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, a copy of the Substantive Appeal will be furnished to the other contesting parties.

(Authority: 38 U.S.C. 4005A(b))

Appendix A to Part 19—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303	*Rule 1303. Nonprecedential nature of Board decisions.*
19.7	38 CFR 20.905	*Rule 905. Vacating a decision.*
19.13	38 CFR 2.66	Contains similar provisions.
19.14	38 CFR 19.13(b)	See re administrative allowances.
	38 CFR 20.1103	*Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.*
	38 CFR 20.1104	*Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.*
19.25	38 CFR 19.52	*Notification to claimant of filing of administrative appeal.*
	38 CFR 19.100	*Notification of right to appeal in simultaneously contested claims.*
19.26	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
19.27	38 CFR 19.50–19.53	See re administrative appeals.
19.30	38 CFR 20.202	*Rule 202. Substantive Appeal.*
19.32	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
19.33	38 CFR 19.50–19.53	See re administrative appeals.
19.50	38 CFR 19.53	*Restriction as to change in payments pending determination of administrative appeals.*
19.100	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
19.101	38 CFR 19.30	*Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.*

6. New Part 20, Board of Veterans Appeals: Rules of Practice, is added to 38 CFR Chapter I to read as follows:

PART 20—BOARD OF VETERANS APPEALS: RULES OF PRACTICE

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 210(c)(1), 4002, 4004)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 210, 3007, 4004)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 210(c)(1), 212, 4002, 4004)

§ 20.3 Rule 3. Definitions.

As used in these rules:

(a) "Agency of original jurisdiction" means the Department of Veterans Affairs regional office, medical center, clinic, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) "Agent" means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or 20.605 of this part).

(c) "Appellant" means a claimant who has initiated an appeal to the Board of Veterans Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 4005.

(d) "Attorney-at-law" means a member in good standing of a State bar.

(e) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) "Claim" means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) "Claimant" means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) "Hearing on appeal" means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) "Law student" means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.

(j) "Legal intern" means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(k) "Motion" means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 60 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (g), and Rule 1304, paragraph (b) (§§ 20.609(g) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(l) "Paralegal" means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(m) "Simultaneously contested claim" refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(n) "State" includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

§§ 20.4–20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8:00 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 4001(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to and benefits resulting from service-connected . disability or death (38 U.S.C. Chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 412) and certification and entitlement to death gratuity (38 U.S.C. 423).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 418).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. Chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. Chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. Chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. Chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. Chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. Chapter 35).

(10) Veterans' Job Training (Pub. L. 98–77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 628).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 351).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 3102).

(19) Waiver of recovery of overpayments (38 U.S.C. 3102).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 3502–3505).

(21) Character of discharge (38 U.S.C. 3103).

(22) Determinations as to duty status (38 U.S.C. 101 (21)–(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101 (4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 3107).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 3203).

(28) Benefits for surviving spouses and children of deceased veterans under Pub. L. 97–377, § 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Services and Research Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Services and Research Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 211(a), 4004)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 900(c) and 1101(c) (§§ 20.900(c) and 20.1101(c) of this part) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 608(b), 717(d), and 1001(c) (§§ 20.608(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2 of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, by Members of the Board who have been designated as the Chief Member of a Section of the Board or as the Acting Chief Member of a Section of the Board, and by a Member of the Board who is acting as the presiding Member of a hearing panel.

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 609(i), 610(d), 711(e), 711(f), and 1304(b) (§§ 20.606(e), 20.609(g), 20.610(d), 20.711(e), 20.711(f), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, and by any Member of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 4005)

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(Authority: 38 U.S.C. 4005)

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 1–9, Appeal to Board of Veterans Appeals, or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal must set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 4005(d) (3)–(5))

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 4005(d)(3), 4008)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

(Authority: 38 U.S.C. 4005(d)(1))

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans Appeals promulgates a decision.

(Authority: (38 U.S.C. 4005(d)(3))

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 4005(b)(2))

§§ 20.205-20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 4005 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: (38 U.S.C. 4005(b)(1)).

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005(b)(1); (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 4005)

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this five-day period, Saturdays, Sundays, and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 4005)

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Martin Luther King, Jr.'s Birthday—Third Monday in January; Washington's Birthday—Third Monday in February;

Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans' Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and a decision in a separate appeal perfected by the claimant will be entered by a Section of the Board which does not include Members who made the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

(Authority: 38 U.S.C. 4006)

§§ 20.402–20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 4005(b)(2), 4005A)

§ 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 4005A(a))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005A(b))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3), 4005A(b))

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

(Authority: 38 U.S.C. 4005A(b))

§ 20.503 Rule 503. Extension of time for filing Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 4005A(b))

§ 20.504 Rule 504. Notices to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 4005A(b))

§§ 20.505–20.599 [Reserved]

Subpart G—Representation

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 3401–3405, 4005(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21–22, Appointment of Veterans Service Organization as Claimant's Representative. This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 2–22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the attorney power of attorney to represent the appellant. In lieu thereof, a signed consent by the appellant permitting access to all information in the individual's records and a signed statement by the attorney that he or she is authorized to represent the appellant, prepared on the attorney's letterhead, will be accepted as an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(Authority: 38 U.S.C. 3401, 3404)

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 2–22a, Appointment of Attorney or Agent as Claimant's Representative, or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 3404 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 3404)

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has

been barred from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 2-22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(Authority: 38 U.S.C. 3403)

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *When services of legal interns, law students and paralegals may be used.* Not more than two legal interns, law students or paralegals may assist an attorney-at-law in the presentation of evidence and argument in appeals before the Board of Veterans Appeals in Washington, DC, or before traveling Sections of the Board at Department of Veterans Affairs field facilities.

(b) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of appeals before traveling Sections of the Board, the consent must be presented to the presiding Member of the traveling Section as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(c) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans Appeals.

(d) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Chief of the Hearing Section and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of proceedings before traveling Sections of the Board in the field, the attorney-at-law must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time not more than 10 days prior to the scheduled hearing date that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the traveling Section must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (b) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(e) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

(Authority: 38 U.S.C. 3404, 4005(b)(2))

§ 20.607 Rule 607. Revocation of a representative's authority to act.

An appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions

of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 3401–3404)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impractical or impossible. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be made by the Chairman.

(Authority: 38 U.S.C. 3401–3404)

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations, their accredited representatives, and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the applicable Board of Veterans Appeals decision was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the applicable decision by the Board of Veterans Appeals was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(d) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted under paragraph (c) for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained; and

(7) Rates charged by other representatives for similar services.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(2) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. (Also see paragraph (h)(3) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to attorney or agent from past due benefits.* (1) Subject

to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and the attorney-at-law or agent may enter into a fee agreement providing that payment for the services of the attorney-at-law or agent will be made directly to the attorney-at-law or agent by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 3104(a) and § 3.750 *et seq.* of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law or agent represents the claimant or appellant in that phase of the claim, the attorney-at-law or agent will be paid a supplemental payment at the time that the appellant is paid retroactive benefits based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law or agent, the attorney-at law's or agent's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney or agent must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past-due and provide that agency with a copy of the fee agreement. Payment of the attorney's or agent's share of any past-due benefits will be made at the same time that any such benefits are paid to the claimant or appellant.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why the amount of the fee is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The moving party must mail a copy of the motion to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Such ruling will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans Appeals and/or prosecution under the provisions of 38 U.S.C. 3405.

(Authority: 38 U.S.C. 3402, 3404(c), 3405)

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits

pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The appellant or claimant, as applicable, must mail a copy of the motion to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc.

(Authority: 38 U.S.C. 3404)

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. A representative may also continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans Appeals. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 3402–3404)

§§ 20.612–20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(c) *Nonadversarial proceedings.* Hearings conducted by and for the Board are *ex parte* in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before a Board of Veterans Appeals hearing panel. These arguments will be transcribed by Board personnel for subsequent review by the panel members. This procedure will not be construed to satisfy an appellant's request to appear in person.

(Authority: See 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before

the Board of Veterans Appeals or before Department of Veterans Affairs field personnel acting for the Board.

(Authority: 38 U.S.C. 4002, 4004(a), 4005)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.

(a) *General.* To the extent that officials scheduling hearings for or on behalf of the Board of Veterans Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, such requests for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the requests must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for postponement has been shown is an appealable issue. In the case of a hearing conducted by the Board of Veterans Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion for a new hearing date must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. An adverse determination by the agency of original jurisdiction as to whether good cause for failure to appear has been shown is an appealable issue. In the case of hearings before the Board of Veterans Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the notice of withdrawal must be sent to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the notice must be sent to the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.703 Rule 703. When right to Travel Board hearing arises.

A Travel Board hearing is a "hearing on appeal". Accordingly, there is no right to a hearing before a traveling Section of the Board until such time as a Notice of Disagreement has been filed. Any request for such a hearing filed

with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed (with the exception of requests for such hearings in conjunction with requests for reconsideration of a prior Board decision) will be rejected.

(Authority: 38 U.S.C. 4005(a), 4010)

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Travel Board hearings are conducted during prescheduled visits to Department of Veterans Affairs facilities by traveling Sections of the Board of Veterans' Appeals. The hearings will be scheduled during such visits in the order in which requests for such hearings were received by the agency of original jurisdiction. Requests for Travel Board hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a Travel Board hearing date may be made at any time prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a Travel Board hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted to the presiding Member of the traveling Section for review when the traveling Section of the Board arrives at the agency of original jurisdiction to conduct Travel Board hearings. If the presiding Member does not concur with the determination that good cause has not been shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled Travel Board hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled Travel Board hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the failure to appear has been removed. Whether good cause for such failure to appear has been established will be determined by the presiding Member of the traveling Section of the Board. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of Travel Board hearing requests.* A request for a Travel Board hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a Travel Board hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be forwarded to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(Authority: 38 U.S.C. 4004(a), 4010)

§ 20.705 Rule 705. Where hearings on appeal are conducted.

A hearing on appeal may be held in one of the following places at the option of the appellant:

(a) Before a Section of the Board of Veterans Appeals in Washington, DC, or

(b) Before a traveling Section of the Board of Veterans' Appeals. Such hearings are held during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings.

(c) Before appropriate personnel in the Department of Veterans Affairs facility having original jurisdiction over the claim at issue, acting as a hearing agency for the Board of Veterans' Appeals. If the appellant resides within the jurisdiction of, or in closer proximity to, a Department of Veterans Affairs facility other than the one that rendered the determination at issue, the appellant may request that the hearing be conducted at the more convenient facility. That request will be granted upon the certification of the director of the second facility that that facility has appropriate physical and personnel resources, including personnel with expertise in the issues involved, available to conduct such a hearing within a reasonable period of time. Personnel conducting such hearings as agents for the Board of Veterans' Appeals will allow the appellant and/or representative to present any argument and testimony, as well as any witnesses before the panel, subject to the exclusion of testimony, documentary evidence, and/or argument which is not relevant or material to the issues being considered or which is unduly repetitious. Rule 706 (§ 20.706 of this part) and Rules 709 through 713 (§§ 20.709 through 20.713 of this part) are applicable to this paragraph.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the

issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.707 Rule 707. When a hearing panel makes the final appellate decision.

(a) *Hearings in Washington, DC.* Hearings held before a Section of the Board of Veterans' Appeals in Washington, DC, are normally held before Members who will make the final decision on the appeal.

(b) *Hearings held before traveling Sections of the Board.* Hearings held before traveling Board Sections are normally held before Members who will make the final decision on the appeal unless an issue on appeal involves radiation, Agent Orange, or asbestos exposure; the case involves the reconsideration of a prior Board of Veterans' Appeals decision; or the hearing panel consists of fewer than three Members of the Board. Appeals involving radiation, Agent Orange, or asbestos exposure issues will be decided by Board Members specializing in those issues. Decisions in appeals involving reconsideration of a prior Board of Veterans Appeals decision on the same issue, or issues, may involve Board Members in addition to those Members making up the traveling Section. An expanded reconsideration panel considering issues involving radiation, Agent Orange, or asbestos exposure will include both the traveling Section and Board Members specializing in those issues. If a Travel Board panel is comprised of fewer than three Board Members, the Chairman may assign an additional Member, or Members, to constitute a three-Member panel which will make the final decision in Washington, DC.

(Authority: 38 U.S.C. 4002, 4004(a), 4010)

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before Members of the Board at Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board and hearings to be held before Department of Veterans Affairs personnel acting as agents for the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.710 Rule 710. Witnesses at hearings.

(a) *General.* The testimony of witnesses, including appellants, will be heard. Testimony may include presentations by Members of the Congress or Congressional staff members appearing on an appellant's behalf.

(b) *Testimony under oath.* All testimony must be given under oath unless excused because of religious principles or other good cause. If the witness declines to take an oath, he or she must be informed that testimony will be permitted on affirmation. The witness must then be requested to make a solemn declaration as to the truth of the testimony about to be given. The witness may use such words as he or she considers binding on his or her conscience. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence can not be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In those cases where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, the ruling on the motion will be made by the Chairman. In those cases where the appellate record has not been transferred to the Board, the ruling on the motion will be made by the Director of the Department of Veterans Affairs facility where the appellate record is located. In cases where the production of documents or other tangible evidence is sought, the granting of the motion may be conditioned upon the advancement by the appellant of the reasonable cost of producing the books, papers, documents, or other tangible evidence requested. Denial of a motion for a subpoena by a Director of a Department

of Veterans Affairs facility may be appealed to the Chairman of the Board of Veterans Appeals.

(f) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the office of the official who issued the subpoena not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the official who issued the subpoena, who will inform all interested parties of the ruling in writing. Such rulings are final and are not subject to appeal.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(Authority: 38 U.S.C. 3311, 4002(c), 4004(e))

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the Board will accord the other contesting claimants and their representatives, if any, the opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(i), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(ii) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 4005A)

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before Members of the Board, whether held in Washington, DC, or before a traveling Section, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member of the hearing panel will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why a transcription is necessary. They must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a traveling Section of the Board:

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans Appeals decision on the same issue; or

(iii) The traveling Section consists of fewer than three Members of the Board.

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a Notice of Disagreement will be recorded and a copy of the complete written transcript incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder as the official record of the hearing.

(c) *Copy of hearing tape recording or written transcript.* A copy of the tape recording of hearing proceedings before the Board of Veterans Appeals, or the written transcript of such proceeding when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings may be furnished without cost to the appellant or representative if a request is made at the time of or prior to the hearing; otherwise a charge may be made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may be authorized provided a consent is obtained from the appellant and made a matter of record. In no event will such additional equipment be used if it interferes with

the conduct of the hearing or the official recording apparatus. In all such situations advance arrangements must be made. In the case of hearings held before Members of the Board of Veterans Appeals in Washington, DC, arrangements must be made with the Chief of the Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before traveling Sections of the Board or before Department of Veterans Affairs personnel acting as agents for the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans Appeals or a transcript prepared by the Board of Veterans Appeals or by Department of Veterans Affairs personnel acting as agents for the Board is the only official record of a hearing on appeal. Alternate transcript versions prepared by the appellant and representative will not be accepted. An appellant or his or her representative may move for the correction of a hearing transcript, provided that the motion is filed within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing unless the appellant has received notice that the case has been transferred to the Board of Veterans Appeals for appellate review or unless a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question. In such cases, the motion must be filed with the Board at the address specified herein.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a hearing was held before Department of Veterans Affairs personnel acting as agents for the Board and the appellate record has been transferred to the Board of Veterans Appeals for appellate review, or in which a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§§ 20.718–20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 20.801–20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause include terminal illness, extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, etc. Advancement on the docket is requested by motion. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. They must also include the name of the veteran, the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor), and the applicable Department of Veterans Affairs file number. The motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. If a motion to advance a case on the docket is denied, the appellant and his

or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(Authority: 38 U.S.C. 4007)

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Services and Research Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 3007(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 4009(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 4004(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 4009)

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of a Section of the Board before whom a case is pending.

(Authority: 38 U.S.C. 3007(a), 4004(c), 4009)

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 3007(a), 4002(c), 4004(c), 4009)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 3301(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 4009(c))

§ 20.904 Rule 904. Administrative allowance.

The Chairman or Vice Chairman, under authority delegated in §§ 2.66 and 19.13(b) of this chapter, may authorize an Administrative Allowance, following review and recommendation by a Member or Members of the Board, in adjudicative actions which are otherwise final.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 20.905 Rule 905. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 4004(a))

§§ 20.906–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned;

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant; or

(d) In accordance with Rule 1101, paragraph (c) (§ 20.1101(c) of this part), when there has been a dissenting opinion.

(Authority: 38 U.S.C. 4003, 4004)

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans Appeals decision, or decisions, involved more than one issue

on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans Appeals decision may be filed at any time. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 4003, 4008)

§ 20.1002 Rule 1002. Evidence considered on reconsideration.

(a) *Reconsideration based upon an allegation of obvious error of fact or law.* Reconsideration of an appellate decision for error is limited to review of the evidence of record at the time the decision was entered, but the Board may secure medical or legal opinions as provided by Rule 901 (§ 20.901 of this part). Apart from service department records, additional evidence submitted following the decision being reconsidered will be considered only in conjunction with a reopened claim. If the reopened claim has not been developed and certified for appellate consideration, the additional evidence will be referred to the agency of original jurisdiction unless the Board assumes jurisdiction of the reopened claim on its own motion in order to grant the benefits sought on the basis of new and material evidence.

(Authority: 38 U.S.C. 3008, 4003, 4009)

(b) *Reconsideration based upon service department records.* Additional evidence in the form of relevant service department records may be reviewed on reconsideration, inasmuch as such records are deemed to have been constructively of record at the time of the decision, or decisions, being reconsidered. If such additional evidence furnishes a basis for the grant of one or more benefits sought on appeal, error in the prior Board decision being reconsidered need not be shown with respect to such benefits.

(Authority: 38 U.S.C. 4003)

(c) *Reconsideration based upon an allegation of false or fraudulent evidence.* Reconsideration of an appellate decision based upon an allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant will be limited to a review of the evidence of record at the time the decision was entered and only such additional evidence as is required, in the Board's judgment, to establish the veracity of the evidence of record at the time the decision was entered. The reconsideration panel will not readjudicate the underlying issue, or issues.

(Authority: 38 U.S.C. 4004(a))

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant desires to appear in person.

(Authority: 38 U.S.C. 4002, 4003, 4004(a), 4005(a))

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

A decision of the Board of Veterans Appeals is final, with the exception of matters subject to 38 U.S.C. 223, matters covered by 38 U.S.C. 775 and 784, matters arising under 38 U.S.C. chapter 37, and matters covered by 38 U.S.C. chapter 72.

(Authority: 38 U.S.C. 211(a), 4004(a))

§ 20.1101 Rule 1101. When decisions of the Board become final.

(a) *Unanimous decisions.* Subject to a motion for reconsideration in accordance with Rule 1001 (§ 20.1001 of this part), a decision unanimously concurred in by the Members of a Section of the Board and duly promulgated is final.

(b) *Majority decisions.* Unless the Chairman of the Board orders reconsideration of the case in accordance with the provisions of paragraph (c) of this section, a decision by a majority of the Members of a Section of the Board, when duly promulgated, is final.

(c) *Dissent.* Except for cases involving reconsideration of a prior final Board of Veterans Appeals decision, any decision involving a dissenting opinion will be referred to the Chairman of the Board prior to its promulgation. If the Chairman determines that reconsideration is not warranted, the decision will be promulgated and will become final in accordance with paragraph (b) of this section. If the Chairman determines that there is a question as to whether the majority opinion may involve an obvious error of fact or law, he or she may order that the decision be reconsidered by an expanded Section of the Board in accordance with the provisions of Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part). The appellant and his or her representative, if any, will be notified that reconsideration has been ordered and provided with a copy of the decision. At the time of notification the appellant and the representative will be given a period of 60 days to present additional argument or to request a hearing on reconsideration in accordance with Rule 1003 (§ 20.1003 of this part). The decision of the majority of the Members of the expanded Section of the Board, duly promulgated, is the final decision of the Board. If the Members of the expanded Section are equally divided, the Chairman will further expand the Section until a majority opinion is obtained.

(d) *Promulgation.* Except as noted in this paragraph, a decision of the Board will be considered to have been duly promulgated as of the date shown on the face of the decision. A decision involving a dissent will not be considered to be a promulgated decision when reconsideration has been ordered by the Chairman in accordance with paragraph (c) of this section. Both the decision with the dissenting opinion and the decision on reconsideration will be considered to be promulgated as of the date shown on the face of the reconsideration decision. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(e) *Presumption of date of mailing of notice of decision.* The date of mailing of notice of the decision will be presumed to be the same as the date of promulgation for purposes of 38 U.S.C.

4066 pertaining to appeals to the Court of Veterans Appeals.

(Authority: 38 U.S.C. 4002, 4003, 4004)

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 4003)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

(Authority: 38 U.S.C. 4005)

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.C. § 4004(a))

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a new factual basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 3008, 4004)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 418 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 3504 and 3505, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 4004(b))

§§ 20.1107-20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 4007)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 4003, 4008)

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.1300 Rule 1300. Access to Board records.

(a) *Removal of records.* No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 3301)

(b) *Release of information.* Information requested from records, including copies of such records in the custody of the Board of Veterans' Appeals, will be furnished to the extent permitted by law and Department of Veterans Affairs regulations.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 3301)

(c) *Fees.* The fees to be charged and collected for the release of information and for any copies will be in accordance with §§ 1.526, 1.555, and 1.577 of this chapter.

(Authority: 38 U.S.C. 3302(b))

(d) *Waiver of fees.* When information is requested from records certified to and in the custody of the Board, the required fee may be waived if such information is requested in connection with the requestor's pending appeal.

(Authority: 38 U.S.C. 3302(b))

(e) *Review of records.* Information in the records may be reviewed by Board of Veterans Appeals employees who have a need to do so in the performance of their duties.

(Authority: 5 U.S.C. 552a(b)(1))

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 3301, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 4005(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I–01–1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each

indexed decision has a locator number assigned to it (e.g., 82–07–0001). This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01CI), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I–01 1 can be obtained from Promisel and Korn, Inc., 4720 Montgomery Lane, Suite 900, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

When an appeal is pending before the Board of Veterans' Appeals at the time of the appellant's death, the Board may complete its action on the issues properly before it without application from the survivors.

(Authority: 38 U.S.C. 4004(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Previously issued Board decisions will be considered binding only with regard to the specific case decided. While prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 4004(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 60 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 60 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board during which period they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested not more than 60 days after certification and transfer of the appellate record to the Board will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence more than 60 days following notification of certification and transfer of records.* Following the expiration of the 60-day period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the 60-day period and the discovery of evidence that was not available prior to the expiration of the 60-day period. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this rule, as well as any such evidence referred to the Board by the originating agency under § 19.112(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for

response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

§ 20.1305 Rule 1305. Effective date.

These revised rules are effective as of the date of their final publication in the Federal Register. In some cases, revisions to these rules are based, in whole or in part, on provisions of Public Law 100-687 which become effective on September 1, 1989. In the event that such final publication occurs prior to September 1, 1989, existing laws and regulations (including the Rules of Practice of the Board of Veterans' Appeals in effect prior to these revisions) will govern until the effective date of the applicable provisions of Public Law 100-687 to the extent that these revisions may be determined to be in conflict with such existing laws and regulations.

(Authority: 5 U.S.C. 552(a)(1))

Appendix A to Part 20—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
20.100	38 CFR 20.306	*Rule 306. Legal holidays.*
20.200	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
	38 CFR 20.202	*Rule 202. Substantive Appeal.*
	38 CFR 20.300-20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	*Statement of the Case.*
	38 CFR 19.31	*Supplemental Statement of the Case.*
20.204	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.301	38 CFR 20.500	*Rule 500. Who can file an appeal in simultaneously contested claims.*
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.302	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
20.303	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.503	*Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.*
20.305	38 CFR 20.306	*Rule 306. Legal holidays.*
20.400	38 CFR 19.50-19.53	See also re administrative appeals.
20.401	38 CFR 19.50-19.53	See also re administrative appeals.
	38 CFR 20.302 20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.501	38 CFR 20.305	*Rule 305. Computation of time limit for filing*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.502	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.503	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.504	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.600	38 CFR 14.626 *et seq.*	See also re representation.
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.602	38 CFR 14.628	*Recognition of organizations.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.603	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.604	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.605	38 CFR 14.630	*Authorization for a particular claim.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*

Section	Cross-reference	Title of cross-referenced material or comment
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.606	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.610	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.611	38 CFR 1.525(d), 14.631(e).	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.701	38 CFR 20.710	*Rule 710. Witnesses at hearings.*
20.702	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.703	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
20.704	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.*
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708	*Rule 708. Prehearing conference.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
20.707	38 CFR 19.11	*Reconsideration panel.*
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37	*Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.*
20.710	38 CFR 20.711	*Rule 711. Subpoenas.*
20.711	38 CFR 2.1	See for further information on subpoenas, including allowable fees and mileage and action to be taken in the event of noncompliance.
20.713	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.*
	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.*
20.715	38 CFR 20.706	*Rule 706. Functions of the presiding Member.*
20.717	38 CFR 20.1101(d)	*Promulgation.*
20.800	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.*
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
20.1002	38 CFR 20.1000	*Rule 1000. When reconsideration is accorded.*
	38 CFR 19.7(b), 20.905(b).	See re disposition of issues when it is determined on reconsideration that an allowance of benefits was influenced by false or fraudulent evidence.
	38 CFR 20.1105	*Rule 1105. New claim after appellate decision.*
20.1003	38 CFR 20.700(b)	See re submission of written briefs and of oral argument on audio cassette.
20.1100	38 CFR 20.1000–20.1003.	See re reconsideration of Board of Veterans Appeals decisions.
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.1101	38 CFR 19.3	*Appointment, assignment, and rotation of Members.*
	38 CFR 19.6	*Composition of Board of Veterans Appeals hearing panels.*
	38 CFR 20.705	*Rule 705. Where hearings on appeal are conducted.*
20.1105	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 60 days after a case has been certified to the Board of Veterans Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 418.
20.1300	38 CFR 1.500–1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550–1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575–1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	*Rule 1301. Disclosure of information.*
20.1301	38 CFR 1.577	*Access to records.*
20.1302	38 CFR 20.611	*Rule 611. Continuation of representation following death of a claimant or appellant.*
20.1304	38 CFR 3.103(c)	See also re hearings.
20.700–20.717	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

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Friday
August 18, 1989

Part IV

Department of Agriculture

Forest Service

36 CFR Part 254
Land Exchanges; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596-AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These regulations would establish standards for implementing the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716), which seeks to streamline and facilitate land exchange procedures and expedite land exchanges. In addition, these proposed regulations would correct errors, delete obsolete portions, and update the Forest Service land exchange regulations to reflect other current authorities. Public comment is invited.

DATE: Comments must be received in writing by October 2, 1989.

ADDRESS: Send comments to F. Dale Robertson, Chief, (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Assistant Director of Lands, (703) 235-8212, or James M. Dear, Lands Specialist, (703) 235-2493.

SUPPLEMENTARY INFORMATION:

Forest Service Land Exchange Program

Over the past 80 years, the Forest Service has completed approximately 8,000 land exchange cases, acquiring almost 9.5 million acres of non-Federal land in exchange for about 3.5 million acres of Federal land. The western national forests, which were largely reserved from the public domain for national forest purposes, have a consolidated landownership pattern with few small tracts of non-Federal ownership. As a result, most Forest Service land exchanges in the West involve large acreages and blocks of land owned by State and local governments, railroads, timber and mining companies, and ranchers. Such exchanges often involve the alternate section "checkerboard" landownership patterns which resulted from land grants to railroads 100 years ago. The eastern national forests were largely acquired tract-by-tract from non-Federal sources, resulting in a broken, unconsolidated landownership pattern. Most exchanges in the East involve individual landowners with small tracts.

Land exchanges involving National Forest System lands were first authorized in 1908. Since then, over 100 exchange laws affecting the national forests have been passed. However, the two primary exchange authorities are the Weeks Act and the General Exchange Act. The Weeks Act of March 1, 1911 (16 U.S.C. 516) is the principal authority for acquiring lands for national forest purposes in the East. The Act provides for the conveyance of national forest land or timber with Weeks Act status in exchange for non-Federal lands which are chiefly valuable for regulation of the flow of navigable streams or for timber production. The General Exchange Act of March 20, 1922 (16 U.S.C. 485, 486), provides for the conveyance of National Forest lands or timber reserved from the public domain, in exchange for non-Federal lands suitable for national forest purposes. The primary objective of the General Exchange Act is the consolidation of national forest lands. These two Acts are supplemented by the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1715, 1716), which provides for the exchange of land or interests in land, requires that the lands being exchanged be located in the same State, requires that State and local needs be considered, requires that property values exchanged be of equal value or equalized by the payment of cash, requires that exchanges be in the public interest, and limits exchanges to United States citizens or corporations subject to the laws of a State or the United States.

Within the boundaries of the National Forest System, only 83 percent (191 million acres) of the total land area (230 million acres) is under Forest Service jurisdiction. Most of the remaining 17 percent (39 million acres) is in non-Federal ownership. Much of that non-Federal land is scattered throughout the national forests in small parcels. Such mixed ownership is beneficial in many instances where non-Federal and national forest management practices compliment one another. However, in some areas, acquisition of specific non-Federal tracts of land is desirable to protect or improve the management of the adjacent national Forest System land. For example, land exchanges are frequently used to acquire desirable lands in congressionally designated areas such as Wilderness Areas, National Recreation Areas, Wild and Scenic Rivers, and National Trails. Exchange has been the primary method of land acquisition in the Mount St. Helens National Volcanic Monument, the Alpine Lakes Wilderness Area, and the Rattlesnake and Lee Metcalf Wilderness Areas.

The primary reason for the exchange of lands or interests in lands is to provide for more efficient management of the National Forest System through consolidation of Federal landownership. Exchanges result in cost savings through improved resource administration, reduced access needs, reduced property boundary survey needs, reduced or eliminated special-use administration, and resolution of title claims and encroachments. Cost savings in property boundary surveys along often exceed the cost to complete an exchange. Many exchanges also assist local communities by exchanging isolated tracts of non-Federal lands for Federal lands adjacent to expanding communities, where the land is needed to facilitate development.

Land exchange is the primary means of landownership adjustment for the Forest Service. As the preferred alternative to direct purchase of needed non-Federal lands, land exchange provides a method of improving landownership patterns with minimal impact on the Federal and local budgets. In an average year, the Forest Service completes 147 exchange cases, acquiring from willing landowners 135,000 acres of non-Federal land in exchange for 92,000 acres of Federal land, with exchanged values of $102 million. Land exchange is expected to continue to be an effective alternative to direct purchase of needed and desirable non-Federal land for the National Forest System.

Need for Rules

The Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716), has as its purpose to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior by streamlining and improving the procedures for such exchanges and by authorizing additional funding. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use; and to fulfill other public needs. A significant feature of the Act is the authority for non-Federal parties to seek arbitration of values of lands when they object to the valuation determined by the Forest Service. The Act requires each Secretary to promulgate separate rules for exchanges of land, in recognition of the differing statutory authorities governing exchanges of the Federal lands under their respective jurisdictions. However, the Forest Service has coordinated the development of these rules with the

Bureau of Land Management in an attempt to attain similar procedures where possible.

Features of the Proposed Rule

The existing rules for conducting land exchanges, codified at Subpart A of Part 254—Landownership Adjustments, would be revised to incorporate the provisions of the Federal Land Exchange Facilitation Act of 1988, and otherwise rewritten to update obsolete portions with current provisions and clarify obscure portions. The organization of the subpart would be substantially revised. The principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 254.1—Scope and applicability. This section, which is not significantly different from the existing requirements, would establish land exchanges as strictly voluntary transactions between the Forest Service and willing non-Federal parties. Because of differing authorities governing national forest exchanges in Alaska, the rules would not fully apply to certain land exchanges in the State of Alaska. This section provides an exemption clause for those exchanges formally initiated prior to promulgation of these rules. This section also makes clear that the authority utilized in an exchange is dependent upon the status of the Federal land and the purpose of the exchange, and provides a cross reference to further policy and guidelines for exchanges set forth in Forest Service Manual Chapter 5400 and Forest Service Handbook 5409.13.

Section 254.2—Definitions. The Federal Land Exchange Facilitation Act of 1988 embraced new terms which require definition and explanation to ensure uniformity in the application of the provisions of this Act. Accordingly, this section has been expanded significantly over the corresponding section of the current regulations. The new terms come from several sources. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715 *et seq.*) provides the definition of *acquisition.* The Federal Land Exchange Facilitation Act of 1988 is the source of the terms *approximately equal values, arbitration, bargaining, determination of approximately equal values, relative values,* and *statement of value. Authorized forest officer* was derived from the Forest Service Appeal Regulations at 36 CFR parts 217 and 251, as was *formal proposal. Brokered exchange* was developed from requirements of GAO Report RCED–87–9 of February 5, 1987, entitled "Federal Land Acquisitions." *Fair market value* and *highest and best use* are as defined in the "Uniform Appraisal Standards for Federal Land Acquisitions," May 1973. GPO Stock Number 052–059–00002–0. The definition of *hazardous substances* is as defined in Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*). *Qualified appraiser* was developed from the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally Assisted Programs at 49 CFR part 24. The definition of *segregation* was derived from the term as described in the Bureau of Land Management land exchange regulations at 43 CFR Part 2200. In addition, a definition of *Secretary* would be added for clarification.

Section 254.3—Requirements. This section sets forth the minimum requirements applicable to all exchanges. All Forest Service exchanges must be subjected to certain tests of need, meet certain criteria, and be governed by certain limitations. Generally, the proposed rule provides that exchanges must be with United States citizens or coorporations, must be in the public interest, must not result in a decrease of public values, must involve lands within the same State, must be equal value, and must be consistent with the planning direction and objectives for a particular national forest. This is consistent with the present rule, but adds emphasis to landownership adjustment planning in Forest Land Management Plans. This proposed rule would allow the payment of cash to equalize the values of lands to be exchanged and would allow the waiver of cash equalization payment by the Forest Service, if the payment does not exceed the lesser of 3 percent of the value of the Federal land or $15,000. Cash equalization payment, a provision of the current rule, permits the use of cash to balance land exchange values after all reasonable and logical adjustments of involved land values have been made. Waiver of cash equalization payments by the Forest Service amounts to relatively small donations of land values by the non-Federal party, when that party agrees to forgo collection of such values in the interest of timely completion of an exchange.

The Forest Service must reserve or retain such rights or interests as are necessary to protect the public interest on the lands or partial interests conveyed out of public ownership. Similarly, the lands acquired by the Forest Service must not be prohibitively encumbered by reservations or outstanding rights. The exercise of reserved rights on lands or interests conveyed to the United States are subject to the Secretary's rules and regulations unless waived by the Forest Service. These requirements are a continuation of those in the current rule and are necessary to ensure that such conveyances and reservations do not interfere with the use and management of the lands and interests retained for national forest purposes.

The future use of land conveyed out of Federal ownership will be determined by State and local zoning authorities. Such future use will not necessarily be addressed in the land appraisal, which is based solely on the highest and best use of the property, since most Federal controls over use of the land cease upon conveyenace to non-Federal parties. Exceptions to such loss of Federal control are reserved rights, deed restrictions, and certain Federal laws such as the wetlands dredge and fill permit requirements of Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251), as amended by the Clean Water Act of 1977 (33 U.S.C. 1344).

The Environmental Protection Agency is in the process of promulgating final rules on hazardous substances. Accordingly, this section of the proposed rule recognizes that the Forest Service should determine if hazardous materials are present on the involved non-Federal lands and negotiate the responsibility for control action with the non-Federal party prior to completing an exchange.

A new provision of the Exchange Facilitation Act states that lands recently acquired by the Forest Service which become subject to entry under the mining and mineral leasing laws automatically will be segregated from such entry for 90 days upon acceptance of title by the Forest Service. That segregation will terminate automatically at the end of the 90-day period, unless the Forest Service requests the Secretary of the Interior to withdraw the lands from entry. This provision is incorporated in the proposed rule.

At 7 CFR 2.42, the Secretary has delegated authority to the Chief of the Forest Service to extend Weeks Act national forest boundaries in order to acquire up to 3,000 acres of land in each case under the Weeks Act authority. This rule would provide that when a land acquisition case requires a national forest boundary extension, such extension will be automatic upon approval of a Weeks Act acquisition by an authorized forest officer.

The proposed rule would update existing regulations to make clear certain specific requirements that apply to acquisitions over a certain value. Weeks Act acquisitions of $150,000 or more in value, including both exchanges and purchases of land, are subject to a 30-day oversight review by the House and Senate Committees on Agriculture. The proposed rule would provide certain exceptions to the requirement that the Secretary of Agriculture must approve such acquisitions over $250,000 in value. Insignificant changes that occur after completion of oversight or Secretarial approval would be exempt from any required resubmission for such oversight or approval. Acquisitions, including exchanges, which are specifically required by enacted legislation, generally would be exempted from congressional oversight or Secretarial approval.

Section 254.4—Initiating an exchange. This section would revise existing procedures by which a non-Federal party can initiate an exchange. Under the proposed rule, a non-Federal landowner interested in an exchange with the Forest Service could make a proposal for an exchange to the appropriate Forest Service officer. The rule would make clear that either party may reject a proposal or withdraw from an exchange at any time prior to entering a binding exchange agreement.

The rule would provide that the parties will document their preliminary agreement to initiate an exchange in a signed Statement of Intent. The Exchange Facilitation Act requires that exchange parties comply with specific time frames for the appraisal process. The Act establishes the preliminary agreement to exchange as the starting point for those appraisal time frames. The Forest Service proposes to adopt the Statement of Intent, an optional document under current rules, as a mandatory document for every land exchange proposal to clearly and firmly establish the starting point for the appraisal time frames. As a minimum, the Statement of Intent would include certification of citizenship, statement of ownership, notice of hazardous substances, responsibilities of each party, identification of the Federal and non-Federal properties, and permission to enter and examine the lands of each party. The parties may also arrange for an appraisal in the Statement of Intent. Otherwise, within 90 days of signing the Statement of Intent, the parties must negotiate and agree upon the terms of the appraisal and the expected appraisal completion date.

Section 254.5—Responsibilities. Land exchanges are complex undertakings involving a series of costs, responsibilities, and requirements which must be met or accomplished in order to successfully complete an exchange. Particular responsibilities typically rest with either the Federal or non-Federal parties, or both, varying according to local custom. Although a common practice in past exchanges, the new rule specifies for the first time that some responsibilities may be negotiated in each case. Under the proposed rule, it would be the general practice that each party will pay their own normal expenses in a land exchange, but, subject to the needs of the Forest Service in processing an exchange, either party may assume the costs normally borne by the other party. The parties may agree that such assumption of costs will be without compensation. In special and exceptional circumstances, the Forest Service may determine that it is in the public interest to compensate a non-Federal party for assuming costs normally borne by the Forest Service. The new rule specifies that such compensation will be on an exceptional basis only, will be limited to 25 percent of the value of the Federal lands, and must meet certain criteria. The intent of these limitations and criteria is to avoid routine adjustments of relative exchanged values, which amounts to the use of National Forest System land values to pay for the cost of processing land exchanges. Such activity could seldom be determined to be in the public interest.

Section 254.6—Legal description of properties. This section is essentially the same as the existing rule and describes the requirements for describing or locating the lands involved in an exchange.

Section 254.7—Appraisals. As does the current rule, this section would establish the "Uniform Appraisal Standards for Federal Land Acquisitions" as the Forest Service national standard for appraising both the Federal and non-Federal lands in an exchange. However, the new rule would supplement those standards with portions of the "Uniform Standards of Professional Appraisal Practice," to the extent that they do not conflict with the former standards.

For purposes of the appraisal, Federal lands will be considered as though they are already in non-Federal ownership, zoned for their highest and best use. Appraisals are required to be no more than one year old at the time a binding exchange agreement is entered, which "locks in" the values.

Appraisals are to be made by qualified staff or private-sector appraisers, in accordance with Forest Service criteria for qualification.

There are individuals and organizations that sometimes act as brokers to assemble multiple parcels of land for exchange in furtherance of National Forest System management objectives at the request or with the cooperation of the Forest Service. Previous rules and authorities operated to penalize such brokers by requiring that such parcels be considered as a single ownership for appraisal purposes. This typically resulted in a reduced valuation of the involved properties. The proposed rule would treat brokered exchanges involving assembled multiple parcels as individual tracts in the appraisal of such exchange properties rather than impose a penalty on the broker for assembling the properties at the request or with the cooperation of the Forest Service. In most cases, such treatment as individual tracts would result in higher appraised values. It is in the public interest to utilize brokered exchanges, due to the efficiency and economy of replacing a number of small exchanges with a single large exchange. This special treatment will not apply when an individual owning multiple parcels proposes to exchange those parcels in a single exchange. When a non-Federal party assembles a number of scattered non-Federal parcels for a brokered exchange and the non-Federal parcels are considered as individual parcels in an exchange appraisal, the same individual-tract treatment will be used in the appraisal of any multiple-parcel Federal lands involved in the exchange.

Section 254.8—Approximately equal value exchanges. In the interest of accelerating the processing of relatively small exchanges and reducing costs, the Forest Service may proceed with certain exchanges of similar tracts of land under $150,000 in value on the basis of a determination that the values are approximately equal when it is in the public interest to expedite an exchange. This new authority is provided by the Exchange Facilitation Act. Such simplified valuation does not require formal appraisal reports, but is based on Statements of Value which summarize the conclusions reached by a qualified staff appraiser in estimating the values. The preparation of Statements of Value would be limited to Forest Service staff appraisers, due to the need to maintain control over the appraisal evidence supporting a Statement of Value. Statements of Value would have the same one-year maximum life span as do

formal appraisal reports and values would be "locked in" upon entering into a binding exchange agreement.

Section 254.9—Arbitration of valuation. A major provision of the new Exchange Facilitation Act authorizes arbitration of disagreements over appraised values. The Act provides that if, within 180 days after appraisals are submitted to the authorized forest officer for review and approval, the parties cannot agree on the valuation, the issue may be settled through arbitration. The Act also provides that, in lieu of arbitration of values, the parties may agree to bargain. The Forest Service proposes that such bargaining may include various alternative uses of appraisers, appraisals, or appraisal reviews, or it may involve negotiation outside of the appraisal process.

Arbitration would be conducted according to the Real Estate Valuation Arbitration Rules of the American Arbitration Association, in accordance with the Act, with the following special considerations and treatments:

(a) When an exchange party files a notice of intent to arbitrate, the Forest Service would appoint an arbitrator from a list of qualified arbitrators furnished by the American Arbitration Association.

(b) Forest Service interpretation of the Act finds that arbitration is limited to resolution of a disputed valuation for a proposed land exchange and an arbitrator's award decision must not have application beyond the value estimate(s) of the questioned appraisal(s). An award decision cannot include recommendations affecting any aspects of an exchange proposal other than valuation. An award decision cannot recommend changes in an exchange proposal which affect management decisions in order to achieve a desired change in valuation.

(c) Award decisions may be effective for a maximum of two years if the parties agree in writing within 30 days after completion of arbitration to consummate an exchange. However, the Forest Service proposes that any subsequent adjustments in the elements of a proposed exchange which result in changes in valuation will render an arbitrator's award decision moot.

As provided in the Exchange Facilitation Act, the parties may agree, in recognition of scheduling problems, processing obstacles, and special requirements which may be unique to any particular land exchange proposal, that the following time frames and deadlines may be changed or eliminated:

(a) The requirement to arrange for an appraisal, set its completion date, and negotiate terms of an appraisal within 90 days of entering into a Statement of Intent.

(b) The requirement to submit an exchange to arbitration if agreement on valuation has not been reached within 180 days after submission of the appraisal(s) to the authorized forest officer for approval.

(c) The requirement for all parties to decide to proceed with an exchange and accept the arbitrator's award decision or withdraw from an exchange proposal within 30 days after delivery of the decision on the arbitration.

Although arbitration is set forth in the Exchange Facilitation Act as a mandatory consequence of non-negotiable disagreement over valuation, the Act also confirms that either party may withdraw from an exchange *at any time* before entering into a binding exchange agreement. Therefore, it would be the policy and practice of the Forest Service to proceed with the additional expense and delay associated with the arbitration process only in exceptional cases, if justified by compelling public interest.

Section 254.10—Publication of proposed exchange. In managing the National Forest System, the Forest Service has an obligation to keep the public fully informed of all activities including landownership adjustments through exchange. As in the existing rule, the public notice requirements in this section of the proposed rule would serve to inform the general public of the exchange proposal, to provide an opportunity for those with claims to come forward, and to offer a comment period for those who wish to express their views about a proposed exchange. However, a new provision of the rule would establish that minor corrections and insignificant changes (additions or deletions) would not require the republishing of a notice as long as the general concept and basis of an exchange remain the same. The proposed rule would continue to provide 15 days from the date of final publication for submission of written comments on an exchange proposal. This time period is necessary to allow sufficient time to analyze and consider those comments in the environmental analysis without delaying the exchange process. However, if the environmental analysis is at a stage where late comments can be accommodated, they will be considered.

Section 254.11—Approval of exchange. The proposed new rule would clarify that approval of an exchange proposal occurs when an authorized forest officer signs a decision document to proceed with an exchange. The decision may be documented in a Decision Notice for an Environmental Assessment with a Finding of No Significant Impact; a Record of Decision for an Environmental Impact Statement; or a Decision Memo where the action is found to be categorically excluded from documentation in an Environmental Assessment or an Environmental Impact Statement. Notice of a decision is to be provided to all interested parties. The proposed rule notes that conditional decisions may be made subject to certain actions that must be completed prior to completion of an exchange, such as congressional oversight or Secretarial approval. An exchange agreement may be entered into by the parties after final or conditional approval of an exchange proposal by the Forest Service.

Section 254.12—Appeal of exchanges. The proposed rule provides that a written decision to proceed or not to proceed with a land exchange proposal, made upon completion of an environmental analysis in compliance with the National Environmental Policy Act (NEPA), is the only appealable point in the exchange process. The provision is basically a restatement of what is appealable under the agency's new appeal procedures at 36 CFR part 217. Previously, appeals of such decisions were entered under 36 CFR 211.18. With adoption of final revisions to administrative appeals (54 FR 3342, January 23, 1989), these decisions would now be appealable under the procedures at 36 CFR part 217. Decisions related to exchanges are not appealable under the rules at 36 CFR part 251, subpart C, because exchange does not involve occupancy and use of National Forest System lands. Rejections of exchange proposals are not subject to appeal, when such rejections are made in advance of written decisions resulting from analysis, documentation, and other requirements of the National Environmental Policy Act. Appeals pursuant to 36 CFR part 217 may be made by anyone objecting to an exchange proposal.

Section 254.13—Exchange agreement. The proposed rule would continue the provision of the existing rule, that it is desirable but not mandatory to enter into an exchange agreement, once a decision is made to proceed with an exchange proposal. Under the proposed rule, Forest Service exchanges generally would utilize exchange agreements unless in the judgment of an authorized forest officer, such a binding contract to exchange is not needed. An exchange agreement is a binding contract between the Forest Service and the non-Federal party to complete an exchange. An

exchange agreement should be made subject to certain final uncompleted exchange processes and contingencies that might occur prior to consummation of an exchange. The proposed rule contains a new requirement that certification of the absence of known hazardous substances on involved lands be made in an exchange agreement document or, in the absence of an exchange agreement, in some other suitable document. Under the proposed rule, if no exchange agreement is entered into by the parties, either party may back out of an exchange proposal at any time prior to issuance of the deeds, regardless of the investment of time and money in the proposal.

Section 254.14—Conveyance documents. As provided under the existing rule, exchange deeds are issued by the Forest Service in conveying acquired Federal lands, and patents or quitclaim deeds are issued by the Bureau of Land Management in conveying national forest land reserved from the public domain for national forest purposes. A new provision reflected in this proposed rule is that of simultaneous issuance of conveyance documents, as required by the Exchange Facilitation Act. Simultaneous issuance of conveyance documents is possible when the parties can comply with the instructions issued with a preliminary title opinion by the Office of the General Counsel of the Department of Agriculture. However, the rule provides that parties should be prepared to waive the requirement for simultaneous issuance of conveyance documents when such requirement is not practicable.

Section 254.15—Title evidence and approval. As provided in the current rule, the Office of the General Counsel of the Department of Agriculture has the delegated authority to approve title to lands being conveyed to the United States in Forest Service acquisitions. The non-Federal party must furnish insurable title to the lands to be conveyed to the United States in Forest Service land exchanges. The proposed rule contains a new provision that title acceptance by the Forest Service occurs after the Office of the General Counsel of the Department of Agriculture issues the final title opinion. This provision is necessary to establish the starting point for the 90-day automatic segregation of lands acquired in an exchange, as provided by the Exchange Facilitation Act.

Summary

These proposed regulations would help facilitate and expedite Forest Service land exchanges by clarifying exchange authorities, their scope, and application; determining exceptions to application of rules; defining terms used in exchanges; stating general and specific requirements of land exchanges; delineating procedures in initiating exchanges; establishing the responsibility for duties and costs associated with land exchanges and the conditions under which one party may assume those costs, responsibilities, and requirements of the other party; providing rules pertaining to land appraisals which reflect nationally recognized appraisal standards; describing conditions and limitations for approximately equal value exchanges; prescribing procedures and guidelines for resolution of appraisal disputes; stating the minimum requirements for providing public notice of an exchange; establishing the rules under which an exchange may be approved and appealed; outlining the requirements for a binding exchange agreement; and, by setting forth the legal standards and requirements for the description of the properties to be exchanged, the conveyance documents, and the title evidence and approval. The public is invited to submit written comments in opposition or support of the new or continuing provisions of this proposed rule.

Regulatory Impact

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

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

Environmental Impact

Based on experience, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an Environmental Assessment or an Environmental Impact Statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

The content of a Statement of Intent and an exchange agreement as would be required by §§ 254.4 and 254.13 of this proposed rule represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Forest Service has requested Office of Management and Budget review and approval of the information required to be addressed in a Statement of Intent or exchange agreement. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in a Statement of Intent and an exchange agreement for Forest Service review and approval.

Reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the:

Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

List of Subjects in 36 CFR Part 254

Land exchanges, National forests.

Therefore, for the reasons set forth above, it is proposed to amend Part 254 by revising Subpart A of Title 36 of the Code of Federal Regulations as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

Sec.

Subpart A—Land Exchanges

Authority: 7 U.S.C. 428a(a); 7 U.S.C. 1011; 16 U.S.C. 484a; 16 U.S.C. 485, 486; 16 U.S.C. 516; 16 U.S.C. 555a; 43 U.S.C. 1715, 1716; 43 U.S.C. 1701, 1716, 1723; and other applicable laws.

§ 254.1 Scope and applicability.

(a) These rules set forth the formal procedures for conducting exchanges of National Forest System lands. The procedures in these rules are supplemented by instructions issued to Forest Service officers in chapter 5400 of the Forest Service Manual and Forest Service Handbook 5409.13.

(b) These rules are applicable to all National Forest System land exchanges, except those made under the authority of the Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i), and as otherwise noted. However, application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those rules which do not conflict with the provisions of those Acts.

(c) The Secretary of Agriculture is not required to exchange any part of the National Forest System. Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture, acting by and through the Forest Service, and non-Federal landowners. These transactions may involve the exchange of lands or interests therein.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which an agreement to initiate an exchange was entered into prior to [*Insert effective date of final rule.*], may proceed in accordance with existing laws and regulations in effect at the time the Statement of Intent was signed.

(e) Land exchanges involving National Forest System lands are governed by the exchange statute appropriate to the particular status of the National Forest System land in question and the purpose for which an exchange is to be made.

§ 254.2 Definitions.

For the purposes of this subpart, the following terms shall have the meaning set forth in this section.

Acquisition includes the acquiring of lands or interests in lands by the Secretary of Agriculture, as delegated to the Forest Service, by exchange, purchase, donation, or eminent domain.

Approximately equal value is a comparative estimate of the value of lands involved in an exchange where the elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar.

Arbitration is a process by which exchange parties may submit disputes over valuation to an arbitrator appointed by the Forest Service from a list of arbitrators submitted by the American Arbitration Association.

An *authorized forest officer* is a Forest Service line or staff officer who has the delegated authority and responsibility to make and execute indicated decisions.

Bargaining is a process for determining an acceptable value for properties involved in an exchange, when the parties cannot agree on the initial appraised valuation.

A *brokered exchange* occurs when a party other than the present landowner, at the request or concurrence of the Forest Service, assembles and manages a land exchange acceptable to the United States, for the benefit of the present landowner.

A *determination of approximately equal value* is a statement by an authorized forest officer which documents that the Federal and non-Federal lands proposed for exchange have approximately equal values.

Fair market value is the sum of money or terms equivalent to money, for which in all probability a property would be sold by a knowledgeable owner who is willing but not obligated to sell, to a knowledgeable purchaser who is willing but not obligated to buy.

A *formal proposal* for a land exchange is written, identifies the potential Federal and non-Federal lands, and identifies the ownership or other authority of a non-Federal party to convey the non-Federal lands.

Hazardous substances are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

Highest and best use is the reasonable and probable legal use, or combination of reasonable and probable legal uses, that as of the date of valuation are most likely to produce the greatest net return.

An *interest in land* is a partial or undivided right in real property that is less than the complete fee or estate.

Lands means any land or interests held in land.

National forest land status refers to the condition or type of ownership that applies to a given parcel of land within the national forests, as determined by the method by which the land became part of the National Forest System.

National Forest System, as defined in the Act of August 17, 1974 (16 U.S.C. 1609), includes all national forest lands reserved or withdrawn from the public domain of the United States; all national forest lands acquired through purchase, exchange, donation, or other means; the national grasslands and Land Utilization Projects; and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the System.

An *outstanding interest* is a right or interest in property held by a third party other than the present landowner.

A *qualified appraiser* is an individual who, as determined by the Forest Service, has the knowledge and experience necessary to competently complete an appraisal assignment.

Relative values is a term used to describe the relationship between the values of properties on each side of an exchange transaction in which there is compensation for exchange processing costs assumed by other than the party responsible for those costs. Such values are distinguished from appraised values, which may have formed the basis for the initial valuation of the properties, but to which administrative adjustments may have occurred outside of the appraisal process, in compensation for costs of one party assumed by the other party.

A *reservation* is a right created by the grantor in an instrument of conveyance by which the grantor retains some right, interest, or profit in the estate granted.

Secretary means the Secretary of Agriculture.

Segregation means the removal for a limited period, subject to valid existing rights, of a specified area of National Forest System land reserved from the public domain for national forest purposes from the operation of the public land laws, including the mining and mineral leasing laws.

A *statement of value* is an informal appraisal report that documents an estimate of value and contains only the conclusions reached in the appraiser's investigation and analysis.

§ 254.3 Requirements.

The following requirements apply to exchanges of National Forest System lands:

(a) *Eligibility of parties.* Lands can be exchanged only with a non-Federal landowner who is a citizen of the United States or a corporation which is subject to the laws of a State or of the United States. Lands cannot be exchanged with a Member of Congress (18 U.S.C. 431).

(b) *Lands available for exchange.* The Forest Service will emphasize exchanges that implement and are consistent with land and resource management planning direction and objectives for a particular national forest. The authorized forest officer must find that the exchange will not result in an overall decrease in public values or the ability to meet National Forest System management objectives. In any exchange, the authorized forest officer must reserve such rights or retain such

interests as are needed to protect the public interest or shall otherwise restrict the use of National Forest System lands or partial interests to be exchanged, as appropriate.

(c) *Determination of public interest.* An exchange must be found to be in the overall public interest. When considering if the public interest will be served, the authorized forest officer shall give full consideration to the opportunity to achieve better Federal land management and to the needs of State and local residents, including but not limited to, such needs as a sound economy, community expansion, recreational opportunities, food, fiber, minerals, and fish and wildlife.

(d) *Same-State exchanges.* Lands transferred out of Federal ownership in an exchange must be located in the same State as the non-Federal land conveyed to the United States, unless specifically exempt by terms of an exchange authority.

(e) *Value of lands.* The lands or interests in lands involved in an exchange must be equal in value or equalized by cash payment, pursuant to paragraph (e)(1) of this section; unless a waiver of cash equalization is authorized, as provided in paragraph (e)(2) of this section; or unless the exchange is conducted under the approximately equal value provisions of § 254.8 of this subpart.

(1) *Cash equalization.* An amount not to exceed 25 percent of the value of the involved Federal lands may be paid by either party to equalize the values in a land exchange. There are no limits on the amount of cash equalization in exchanges made pursuant to the Sisk Act of December 4, 1967 (16 U.S.C. 484a).

(2) *Waiver of cash equalization.* When the Forest Service determines that the public interest would be better served and that an exchange will be expedited, the parties may agree that the authorized forest officer may waive a cash equalization payment by the United States, of up to 3 percent of the value of the involved Federal lands, not to exceed $15,000. However, the authorized forest officer shall not waive a cash equalization payment to the United States.

(f) *Future use of exchanged Federal lands.* The use or development of lands or interests in lands conveyed out of Federal ownership become subject to the laws, regulations, and zoning authorities of State and local governing bodies. Except for reservations or restrictions imposed on future uses within the conveyance document, the future use of lands conveyed into non-Federal ownership shall be determined by State and local governments responsible for regulating land use. However, the intended use must not be in conflict with management objectives on adjacent National Forest System land and must be compatible with local zoning requirements.

(g) *Encumbrances on Federal use.* Lands conveyed to the United States cannot be encumbered by reservations or outstanding interests that would unduly interfere with their use and management as part of the National Forest System.

(h) *Reserved rights.* Reservations by the non-Federal owner are subject to the appropriate rules and regulations of the Secretary as set forth in 36 CFR 251.14 through 251.19 for such reserved rights, except upon a special finding by the Forest Service.

(i) *Hazardous substances.* When hazardous substances are known to have been stored for one year or more, or are known to have been released or disposed of on Federal lands involved in an exchange, the Forest Service shall provide notice to the other parties in accordance with current Environmental Protection Agency regulations. That notice may be included in a Statement of Intent, an exchange agreement, or some other acceptable document. The Forest Service shall determine if there are deposits of hazardous substances on the non-Federal land involved in an exchange and reach an agreement on responsibility for control action with the non-Federal party prior to entering into a binding exchange agreement or accepting title to non-Federal lands. The non-Federal landowner must notify the Forest Service of any knowledge of hazardous substances on the non-Federal land pursuant to § 254.4 of this subpart, or must certify the absence of any knowledge of such materials on the land pursuant to § 254.13 of this subpart.

(j) *Automatic segregation from mining laws.* Under provisions of the Act of October 21, 1976 (43 U.S.C. 1715), as amended by the Act of August 20, 1988 (43 U.S.C. 1716), those non-Federal lands acquired in exchange for Federal lands reserved from the public domain for national forest purposes automatically shall be segregated from operation of the public land laws, including the mining and mineral leasing laws, for 90 days after acceptance of title by the United States. At the end of the 90-day period, without further action to permanently withdraw the lands, they automatically will be open to operation of the public land laws and to entry under the mining and mineral leasing laws.

(k) *Boundary extensions.* Lands acquired under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), which are near or adjoining existing national forest boundaries and total no more than 3,000 acres in each case, automatically shall be included within a Weeks Act boundary extension encompassing those lands (7 CFR 2.42).

(l) *Special review and approval.* Land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). Land acquisitions of $250,000 or more in value, made under Weeks Act authority, must also be submitted to the Secretary for approval, except as indicated in this paragraph. Minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight or approval by the Secretary. Land acquisitions specifically mandated by legislation shall be exempt from Secretarial approval or congressional oversight, unless otherwise specified.

§ 254.4 Initiating an exchange.

(a) *Proposals.* Exchanges may be initiated by a non-Federal landowner, an agent of a landowner, a broker, a third party, a non-Federal public agency, or the Forest Service. Initial exchange proposals made to the Forest Service should be directed to the District Ranger or Forest Supervisor of the National Forest System unit on which the Federal land is located. A proposal may be accepted, modified, or rejected by either party, at any time before entering into a binding written exchange agreement.

(b) *Agreement to initiate.* Only a Statement of Intent, signed by an authorized forest officer, constitutes a Forest Service agreement to initiate and pursue an exchange. Failure of an authorized forest officer to reject a proposal shall not be construed as Forest Service consent to enter into an exchange.

(c) *Statement of Intent.* When the Forest Service and the non-Federal party decide to pursue the possibility of a land exchange, they must document their intentions in a Statement of Intent.

(1) A Statement of Intent shall include, but is not limited to:

(i) Certification by the non-Federal party of United States citizenship or status as a corporation subject to the laws of a State or of the United States;

(ii) Identification of the properties and estates considered for exchange;

(iii) Identification of ownership or other authority to make such an exchange;

(iv) Identification of any known release, storage, or disposal of hazardous substances on involved non-Federal or Federal lands;

(v) Assignment of responsibility for performance of required functions and for payments associated with processing the exchange (§§ 254.3, 254.5);

(vi) The scheduled beginning date for appraisals and anticipated date for review of appraisals, unless deferred under paragraph (d) of this section;

(vii) A clear grant of permission by either party to examine and physically inspect the lands of the other party.

(2) A Statement of Intent shall be a preliminary non-binding agreement to initiate an exchange and may be amended as needed. It may be terminated at any time by any of the parties, before entering into a binding exchange agreement.

(d) *Appraisal timetable.* Within 90 days after entering into a Statement of Intent, the authorized forest officer and the other parties in an exchange shall arrange for an appraisal. If not already agreed upon in the Statement of Intent, the completion date and terms of the appraisal must be negotiated at this time. Such date and terms will be dependent upon the scope, complexity, and priority of the appraisal, and the capability of the Forest Service to process and review the proposal.

§ 254.5 Responsibilities.

(a) *General requirements.* Costs, responsibilities, and requirements associated with land exchanges may include, but are not limited to, land surveys, platting, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, curing deficiencies preventing highest and best use of the land, conducting public hearings, assemblage of brokered multiple-parcel exchanges, arbitration, or other costs to comply with laws, regulations, and policies applicable to exchange transactions. Some costs and responsibilities traditionally rest with certain parties of an exchange, some are typically shared, while others are negotiated in each case, subject to the needs of the Forest Service.

(b) *Assumption of costs without compensation.* While generally, each party will pay the expenses normally associated with processing their own lands in a land exchange, the parties in an exchange may agree that either party will assume without compensation, all or part of certain costs, responsibilities, or requirements that are ordinarily borne by the other party. However, an authorized forest officer shall decide to assume costs normally borne by the non-Federal party only on an exceptional basis, when it is clearly in the public interest and in the best interest of consummating an exchange.

(c) *Compensation for costs assumed by the non-Federal party.* The Forest Service may, in special circumstances, determine that it is in the public interest to consummate an exchange and compensate the non-Federal party for assuming costs, responsibilities, or requirements which would ordinarily be borne by the Forest Service. Such compensation shall be agreed upon in advance and shall be made by adjusting the relative values involved in an exchange.

(1) In order to compensate a non-Federal party for assuming costs, responsibilities, or requirements normally borne by the Forest Service, an authorized forest officer must find that all of the following conditions exist or will result from the compensation:

(i) Resulting landownership patterns will not be disadvantageous to the Government.

(ii) The exchange will result in exceptional public benefit.

(iii) Consummation will be expedited for a land exchange needed to protect cultural resource sites, protect adjacent National Forest System lands from external degradation, protect or enhance important recreational opportunities, protect critical wildlife or fish habitat, protect threatened, endangered, or sensitive species habitat, or protect other national forest resource values.

(iv) There will be no resultant change in the appraised values of the lands involved in the exchange.

(v) The amount of compensation is reasonable and accurately reflects the approximate value of any costs or services provided, or any responsibilities or requirements assumed.

(vi) No other means of meeting the exchange processing costs, responsibilities, or requirements of the Forest Service are available or practicable.

(2) Relative value adjustments reflecting compensation for costs may result in acreage adjustments of included Federal or non-Federal land, or cash equalization payments. Compensation shall not exceed 25 percent of the value of the involved Federal lands. Only those costs that are set forth and agreed to in the Statement of Intent will be considered for compensation.

§ 254.6 Legal description of properties.

Lands proposed for exchange must be properly described and locatable under the survey laws and standards of the United States and the State in which located. Any survey required is the responsibility of each party unless otherwise negotiated and documented in a Statement of Intent, or subsequent amendments.

§ 254.7 Appraisals.

(a) *Uniform standards.* The fundamental appraisal standards for National Forest System land exchanges are as set forth in the "Uniform Appraisal Standards for Federal Land Acquisitions," as amended, an Interagency Land Acquisition Conference publication (May, 1973). Those standards are further supplemented by Standards 1, 2, and 3 of the "Uniform Standards of Professional Appraisal Practice," as published by the Appraisal Foundation. If any parts of the latter standards conflict with the first set of standards, those parts of the latter standards shall be disregarded and the applicable parts of the "Uniform Appraisal Standards for Federal Land Acquisitions" shall govern. The same appraisal standards shall be used in appraising both the Federal and the non-Federal lands involved in an exchange.

(b) *Appraisal of Federal lands.* Federal lands shall be appraised under the assumption that they are already in non-Federal ownership and are zoned in accordance to their highest and best use.

(c) *Qualified appraisers.* Appraisals to estimate fair market value must be made by qualified Forest Service staff or private-sector fee appraisers. Criteria for qualification of private-sector fee appraisers shall be determined by the Forest Service, based on the requirements and complexity of the appraisal assignment, and listed in the contract for an appraisal. Requirements for qualification of Forest Service staff appraisers are as described in Forest Service Manual Chapter 5410.

(d) *Brokered exchanges.* Brokered exchanges shall be utilized whenever practical to facilities landownership adjustments and reduce costs. When a broker, agent, or third party proposes an exchange of two or more properties which have been assembled to meet Forest Service landownership adjustment goals, special appraisal instructions may apply. The intent of such special instruction is that the appraisal process will not penalize an agent for an assembly. Multiple-parcel Federal lands involved in brokered exchanges shall be subject to the same

valuation techniques as the non-Federal lands.

(e) *Current appraisals.* Appraisals must be current, dated no more than one year prior to entering into a binding exchange agreement. However, market conditions may indicate that a shorter period is appropriate. When an exchange agreement is executed, approved values shall remain effective until consummation of the exchange.

§ 254.8 Approximately equal value exchanges.

(a) *Requirements.* The Forest Service may make a determination of approximately equal values without a formal appraisal report only when:

(1) It is in the public interest to expedite the consummation of a particular exchange;

(2) The value of the involved Federal land does not exceed $150,000;

(3) The exchange properties have readily apparent and substantially similar elements of value;

(4) There are no significant elements of value requiring complex analysis, such as, but not limited to, high-valued minerals, high-valued improvements, or high-valued water frontage; and

(5) a qualified Forest Service staff appraiser has prepared a Statement of Value to document the Federal land value.

(b) *Determination of value.* Approximately equal values shall be determined by comparing and evaluating the elements of value on lands or interests in lands to be exchanged. Elements of value to be considered include, but are not limited to, highest and best use of the land, size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities. Findings that parcels are approximately equal in value shall be documented in a Determination of Approximately Equal Value approved by an authorized forest officer.

(c) *Appraisal standards.* Statements of Value must meet the same appraisal standards as detailed appraisal reports. It is the Forest Service staff appraiser's responsibility to maintain full documentation of the data supporting a Statement of Value and to make it available for review upon request.

(d) *Current statement of value.* A Statement of Value must be current, within one year prior to the date of entering into a binding exchange agreement. However, market conditions may indicate that a shorter period is appropriate.

§ 254.9 Arbitration of valuation.

(a) *Agreement on valuation.* The Forest Service and non-Federal exchange parties should attempt to reach agreement as to the valuation of an exchange, before resorting to arbitration. Such agreement may be reached through bargaining, pursuant to paragraph (b) of this section.

(b) *Bargaining.* If the Forest Service and other parties cannot agree to accept the findings of the initial appraisal or appraisals, they may bargain to select one of the following methods to determine the values of the properties involved in an exchange:

(1) Additional appraisals by either or both parties;

(2) Agreement on an additional appraisal to be done by a mutually acceptable qualified third appraiser;

(3) Agreement to submit the disputed appraisals to a review by a mutually acceptable qualified third appraiser; or

(4) Some other acceptable and commonly recognized practice for determining values. The final determination of value must be acceptable to the Forest Service, for an exchange to proceed.

(c) *Submission for arbitration.* If the valuation of an exchange cannot be agreed upon within 180 days after appraisals are submitted to the authorized forest officer for review and approval, the appraisals may be submitted to an arbitrator appointed by the Forest Service from a list provided by the American Arbitration Association, for arbitration in accordance with the Real Estate Valuation Arbitration Rules of that organization.

(d) *Election of arbitration.* Failure to voluntarily negotiate terms generally will be grounds to discontinue an exchange. Arbitration shall be considered as a last resort in negotiating terms of an exchange and shall be used only when the Forest Service determines that there are extenuating public interest reasons for proceeding with an exchange.

(e) *Arbitration procedures and requirements.* When arbitration is utilized, the following procedures will apply:

(1) Upon receipt of a notice of intent to arbitrate, the authorized forest officer shall appoint a single arbitrator from a list provided by the American Arbitration Association.

(2) Arbitration shall be limited to the disputed valuation of a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the nature of a proposed exchange. An award decision shall not infringe upon the authority of the Secretary to make all decisions regarding management of National Forest System lands and to make public interest determinations.

(3) An award decision reached by an arbitrator shall be the effective valuation for a period not to exceed two years from the date of the decision and shall be binding only if an exchange is consummated. Any adjustment or modification of an exchange which results in changes of the values arbitrated will nullify an arbitrator's award decision.

(4) Within 30 days after delivery of an arbitrator's award decision, each party in an exchange shall notify in writing all other parties of their intent to proceed with an exchange with the values as arbitrated, or to modify an exchange as a result of the arbitration findings or other factors, or to withdraw from an exchange. Until the parties enter into a binding exchange agreement, any party may elect to withdraw from an exchange at any time during the exchange or arbitration process.

(f) *Suspension of time limits.* Time frames and deadlines in paragraphs (c) and (e)(4) of this section, and in § 254.4(d) of this subpart, may be modified or suspended at any time, upon agreement of the parties.

(g) *Termination of exchange.* Notwithstanding the provisions of this section, if it appears at any time during the exchange process, before entering into a binding exchange agreement, that further negotiations would be futile or that it would be administratively impractical to continue, an authorized forest officer may terminate an exchange.

§ 254.10 Publication of proposed exchanges.

(a) *Publication of notice.* The Forest Service shall publish a notice for each proposed exchange once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. An exchange notice will be published at the point when the potential lands that may be included in an exchange have been identified in a Statement of Intent.

(b) *Purpose of notice.* The purposes of an exchange notice are:

(1) To apprise the public of an exchange proposal in a timely fashion;

(2) To allow anyone having a claim to the lands to notify the appropriate forest officer and present evidence supporting their claim; and

(3) To afford an opportunity for those with comments to submit their views to the Forest Service.

(c) *Response deadline.* All claims and comments must be made in writing and postmarked or delivered within 15 days of the final publication of a notice, to be assured of consideration in the environmental analysis of a proposed exchange.

(d) *Republication requirements.* If some of the lands described in a published exchange notice are excluded from the final exchange agreement, it is not necessary to republish the final land descriptions, as long as the included lands were substantially identified in the published notice. Minor corrections of legal descriptions, small additions of exchange lands, and other insignificant changes also do not require republication.

§ 254.11 Approval of exchanges.

(a) *Environmental analysis.* If preliminary negotiations result in concurrence on an exchange proposal, the Forest Service shall conduct an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the Forest Service Environmental Policy and Procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the Forest Service shall consider timely written comments received in response to the published exchange notice.

(b) *Notice of decision.* The Forest Service shall provide copies of the decision documents to the exchange parties, to all parties who filed written objections, and to all known parties with an expressed or inherent interest in an exchange.

(c) *Exchange approval.* The authorized forest officer may approve or conditionally approve an exchange, subject to any required approval by the Secretary or congressional oversight, after the remaining requirements of this section and § 254.3 of this subpart have been met. A decision to proceed constitutes the final or conditional final approval of an exchange.

§ 254.12 Appeal of exchanges.

Appeal of land exchange decisions. Written decisions to proceed or not to proceed with land exchanges, made by authorized forest officers, which result from analysis and other requirements of the National Environmental Policy Act and are documented in a Decision Memo, Decision Notice, or Record of Decision, are subject to appeal under 36 CFR Part 217.

§ 254.13 Exchange agreements.

(a) *Purpose of agreement.* To execute an exchange, the Forest Service and the non-Federal party must enter into an exchange agreement, unless an authorized forest officer determines that such an agreement is not needed. An exchange agreement shall identify the estates to be exchanged, all reservations and outstanding interests, any necessary cash equalization, and all other terms and conditions which each party agrees to perform.

(b) *Timing of agreement.* An agreement may be executed only after the Forest Service has approved or conditionally approved an exchange as provided in § 254.11 of this subpart.

(c) *Conditions of agreement.* An Exchange agreement shall be binding on both parties providing:

(1) Acceptable title can be conveyed;

(2) No loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance; and

(4) The decision to complete the exchange is upheld in event of appeal under 36 CFR Part 217.

(d) *Requirements and contingencies.* An exchange agreement shall be made subject to the conditions set forth in this section, and where required, made subject to approval by the Secretary and completion of congressional oversight. When an exchange agreement is made subject to such conditions or uncompleted processes, the exchange shall not proceed to consummation until those requirements or contingencies are discharged.

(e) *Notice or certification of hazardous substances.* An exchange agreement or other agreed upon document must include a notice of the presence of, or certification of the absence of, known hazardous substances on involved Federal and non-Federal lands.

(f) *Need for binding agreement.* In the absence of an exchange agreement, no action taken by the parties to the exchange shall create or establish any contractual or other obligations or rights against either exchange party prior to issuance of a patent or deed.

§ 254.14 Conveyance documents.

(a) *Deed form.* Deeds to the United States must be in a form that complies with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) *Conveyance document types.* Conveyances from the United States shall be by exchange deed from the Department of Agriculture, or by patent or quitclaim deed issued by the Department of the Interior. The type of document depends upon the status of the Federal land.

(c) *Simultaneous issuance.* Patents or deeds for conveyances out of Federal ownership in exchanges shall be issued simultaneously with deeds issued for lands or interests to be acquired by the United States. Such simultaneous issuance shall occur after the Office of the General Counsel of the Department of Agriculture has provided a preliminary title opinion which assures that the United States will receive acceptable title to the lands or interests being acquired by the United States, if the instructions in that opinion are properly complied with. Where simultaneous issuance of documents is impracticable, this requirement may be waived by agreement of the parties.

§ 254.15 Title evidence and approval.

(a) *Title evidence standards.* Evidence of title for land or interests being conveyed to the United States must be in a form acceptable to the Department of Justice, as described in the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) *Responsibility.* The non-Federal landowner shall usually bear the cost of the required title evidence, unless provided otherwise pursuant to § 254.5 of this subpart.

(c) *Title encumbrances.* Taxes, liens, and other encumbrances such as mortgages, deeds of trust, and judgments must be eliminated or released in accordance with requirements of the title opinion of the Office of the General Counsel of the Department of Agriculture.

(d) *Title approval.* Title to lands being conveyed to the United States must be approved by the Office of the General Counsel of the Department of Agriculture, prior to acceptance.

(e) *Title evidence for Federal land.* The United States does not furnish formal title evidence to its land.

(f) *Title acceptance.* Title acceptance by the Forest Service of land or interests being conveyed to the United States occurs after issuance of the final title opinion by the Office of the General Counsel of the Department of Agriculture.

Dated: June 13, 1989.

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federal register

Friday
August 18, 1989

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 2090 and 2200
Land Exchanges; General Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090, 2200

RIN 1004-AB28
[AA-320-09-4212-02]

Land Exchanges; General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises the existing exchange regulations to implement the Federal Land Exchange Facilitation Act of August 20, 1988 (Public Law 100-409) (hereafter referred to as the Act). This Act amended provisions of the Federal Land Policy and Management Act of 1976 and directed the Secretaries of the Interior and Agriculture to promulgate, within one year after enactment of the Act, new and comprehensive regulations governing exchanges of land.

DATE: Comments should be submitted by October 2, 1989. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESS; Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger Taylor or Dave Cavanaugh, (202) 343-8693 or 343-5441.

SUPPLEMENTARY INFORMATION: The land exchange regulations contained in part 2200 of title 43 of the Code of Federal Regulations are being revised to implement the Federal Land Exchange Facilitation Act. (Act) The proposed rule is intended to reflect the amendments made by that Act to section 206 of the Federal Land Policy and Management Act of 1976 by providing for:

1. Time frames and mechanisms for the resolution of disagreements concerning the values of the lands involved in an exchange, unless otherwise agreed by parties to the exchange;

2. Appraisal standards that reflect nationally recognized appraisal standards;

3. Adjustment of the relative values involved in an exchange transaction in order to compensate a party or parties to the exchange for assuming costs, or other responsibilities or requirements, which would ordinarily be borne by the other party or parties;

4. Exchanges of lands of approximately equal value when the appraised values of the public and nonfederal lands are within 5 percent, the value of the public lands to be conveyed is $150,000 or less, and when the determination of approximately equal value can be made without a formal appraisal on the basis of a statement of value prepared by a qualified appraiser, and approved by the authorized officer;

5. Waiver of cash equalization payment where the amount to be waived is no more than 3 percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less;

6. Automatic segregation of public lands proposed for exchange from the operation of the public land and mineral laws, for a period not to exceed 5 years;

7. Automatic segregation of nonfederal lands acquired in an exchange from operation of the public land and mineral laws, for 90 days from the date of acceptance of title;

8. Simultaneous transfer of titles, unless mutually agreed otherwise; and

9. Automatic transfer of jurisdiction when lands acquired by exchange are within national land systems estabished by Congress.

The proposed rule also provides for land pooling agreements with governmental agencies and other parties. These agreements would create separate pools of public and nonfederal lands from which individual tracts could be conveyed without simultaneous title transfers. A ledger would be maintained to tabulate each of the transactions and record the resulting balances. The account would be equalized every two years, or at the expiration of the agreement, whichever comes first.

Finally, to facilitate land exchanges involving minerals, the rulemaking allows the parties to an exchange to reserve the minerals, exchange minerals of equal value, or reserve a 25-year royalty.

In the interest of uniformity, the Bureau of Land Management has consulted with the U.S. Forest in developing this proposed rule. In addition, a Notice of Intent to Propose Rulemaking was published in the **Federal Register** on November 14, 1988 (53 FR 45782). The Notice of Intent requested the public to provide information or make recommendations which would assist the Bureau in developing regulations on the agreement to initiate an exchange, the bargaining process, appraisal standards, adjustment of relative values for compensation purposes, and the definitions of approximately equal value, statement of value, and qualified appraiser.

The Notice of Intent drew comments from 13 sources: two from State governments, one from local government, six from private organizations, two from public land grazing associations, one from a public land grazing advisory board and one from the Advisory Council on Historic Preservation. A summary of the comments and corresponding responses are as follows:

Agreement to Initiate an Exchange

Comments: One commenter recommended that all exchanges be initiated at the State Director level and tied to specific time frames. Another commenter stated that the agreement to initiate an exchange should be in the form of a letter of understanding that describes the land parcels to be exchanged and sets forth the terms and conditions relative to the appraisal process. It was also suggested that the exchange process be as unstructured as possible and allow the parties to an exchange maximum flexibility within the framework of the Federal Land Exchange Facilitation Act.

Response: The Bureau believes that all exchange proposals should be discussed initially with the BLM District Manager or Area Manager for the District or Resource Area in which the public lands which are the subject of the exchange are located. These are the Bureau officials most familiar with the properties involved, i.e., land status, planning and environmental considerations, would be directly responsible for coordinating and processing the exchanges.

The exchange process has been designed around a written, nonbinding statement of present intent, called in the Act an "agreement to initiate an exchange." This agreement may be terminated by either party, without cost or penalty, at any time, or it may be modified by mutual agreement during the exchange process. The purpose of this agreement is to establish a working relationship between the parties by (1) delineating various responsibilities and informational requirements, (2) identifying applicable procedures, and (3) fixing time frames and mechanisms to complete each stage of the exchange process.

Process of Bargaining

Comments: Several comments addressed the bargaining process. One

commenter believed that this "smacks of horse trading" that could lead to potential problems and should only be used sparingly at the Washington Office level. Another stated that bargaining, without some guidelines and/or restrictions relative to value, would not be in the public's best interest. It was also pointed out that the process of bargaining would serve as an important mechanism for resolving disputes when there are legitimate differences in appraisal assumptions, approaches to value, or interpretation of data that could not be resolved through the appraisal process.

Response: In lieu of arbitration, bargaining or some other process may be used to resolve disputes concerning the appraised values of the lands being considered for exchange. As indicated in § 2201.2–2(c) of this proposed rule, the parties may meet to discuss issues relating to differences in the appraised values of the lands involved in an exchange. These issues may be resolved through mutual agreement, or the parties may involve an impartial third party to either mediate or propose a solution. Any agreement, including the rationale supporting the values of the lands to be exchanged, must be in writing and made part of the administrative record.

Appraisal Standards

Comments: Several commenters recommended adoption of nationally recognized appraisal standards. One reviewer recommended that the appraisal standards should be consistent with standards of nationally recognized appraisal organizations such as the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, and the American Society of Farm Managers and Rural Appraisers.

Four comments were directed at the publication "Uniform Appraisal Standards for Federal Land Aquisitions" (Department of Justice, 1973 ed.). Two commenters were unsure that the publication was applicable to exchanges authorized under the Federal Land Policy and Management Policy Act of 1976. One State agency suggested that it not be used, or at least not be the primary standard for exchange appraisals. A private land exchange company expressed the view that the standards were primarily applicable to Federal acquisition by condemnation. They suggested that whatever standards are adopted should be equally applied to both the public and nonfederal lands.

It was also recommended that two separate appraisals be completed on both the public and nonfederal lands proposed for exchange, and that the appraisal rules of the Departments of the Interior and Agriculture be identical or at least very similar.

Response: The Act requires this rulemaking to reflect nationally recognized appraisal standards, to the extent appropriate. These standards are reflected in § 2201.4 of this proposed rule. These standards incorporate, as appropriate, the "Uniform Appraisal Standards for Federal Land Acquisitions", as amended, an Interagency Land Acquisition Conference publication (May 1973) and the "Uniform Standards of Professional Appraisal Practice", as published by the Appraisal Foundation. The standards apply to the public and nonfederal lands involved in an exchange.

The proposed rule does not require two separate appraisals of the public and nonfederal lands although, as discussed below, all appraisals are subject to review by an agency appraiser. The complexity of the appraisal assignment, the working relationship established between the exchange parties, and the preliminary estimate of the values of the lands involved, may indicate the desirability of having a second appraisal. Circumstances requiring more than one appraisal will vary with each exchange transaction. These circumstances may include lands having various encumbrances affecting title, possessing commercially developable timber or mineral resources, or instances where the highest and best use may be questionable. In addition, the uniqueness of the lands appraised or the lack of relevant market information for analysis may warrant a second appraisal.

Public comments are specifically requested as to whether and under what circumstances more than one appraisal should be required. The input provided will be helpful in the preparation of the final rule or of instructional guidance that may be developed to assist the parties involved in an exchange.

As indicated in § 2201.4–7 of this proposed rule, all appraisals prepared for an exchange transaction will be reviewed by an agency appraiser. The purpose of this review is to determine whether the appraisal report is logical and supports the estimate of market value. The authorized officer must concur in the reviewer's statement before the estimate of market value becomes the agency's approved value for the lands proposed for exchange.

The Bureau of Land Management and the U.S. Forest Service have met concerning the development of appraisal standards. There are some minor differences. These differences reflect various agency exchange authorities and procedures for developing and implementing policies. However, both the Bureau and the Forest Service have relied on the aforementioned publications to attain consistency with nationally recognized appraisal standards.

Adjustment of Relative Values

Comments: Several comments were received on Section 206(f)(2)(B)(ii) of the Federal Land Policy and Management Act. Most agreed that compensation should be allowed for various costs paid by the nonfederal parties. One commenter recommended that the costs associated with exploration, development, and marketing of coal reserves deemed no longer mineable as a result of the Surface Mining Control and Reclamation Act of 1977 should be considered part of the value of an exchange property. It was also suggested that the costs and services be limited to those specified in the Act, or that the nonfederal party be compensated for incurring extraordinary expenses unique to Federal land transactions. This would include costs associated with Federal land appraisals, environmental analyses, cultural surveys, mineral examinations or other requirements in order to comply with laws, regulations and policies applicable to Federal land exchanges.

Response: The Act and proposed rule list but do not limit the various costs that can be incurred or services that can be rendered in making adjustments to the relative values involved in an exchange transaction. Previously incurred costs associated with exploration, development, and marketing of coal reserves deemed no longer mineable under the Surface Mining Control and Reclamation Act of 1977 are not considered appropriate for value adjustment purposes. However, the information derived from these activities may be taken into account when estimating the market value of the lands involved in an exchange.

Section 2201.1(c)(7) of the rulemaking would allow the exchange parties to agree, within reason, upon the type and amount of compensation to be credited to either party. The authorized officer must ensure that the amount of each adjustment is reasonable and accurately reflects the approximate value of the costs incurred, the services provided, or any responsibility or requirements assumed. The total amount of all such adjustments and any cash equalization payment may not exceed 25 percent of the preadjustment value of the lands to be conveyed out of Federal ownership.

Approximately Equal Value

Comments: A wide range of comments was received concerning the criterion of "approximately equal value". One State agency commented that its Enabling Act would prevent the use of approximately equal value if the value of the Federal lands in the exchange was less than the value of the State lands. Another State agency commented that it is a good tool for moving small tracts of low value in a relatively short period of time. Two commenters felt that the difference in value should not exceed 10 percent while another stated that 5 percent would be reasonable for most appraisals. One reviewer recommended that approximately equal value should never be used in consummating land exchanges.

Response: The proposed rule defines "approximately equal value" as occurring when the value of the nonfederal lands is within 5 percent of the value of the public lands being exchanged. The determination of approximately equal value must be based on a statement of value prepared by a qualified appraiser and approved by the authorized officer. In addition, the criterion of approximately equal value can only be applied to exchanges in which the value of the lands to be conveyed out of Federal ownership is no more than $150,000.

This provision of the regulations would facilitate smaller exchanges involving either intermingled lands within a property ownership or land adjustments on the edges of currently blocked landholdings. Its application would be limited to those circumstances in which the qualified appraiser would appraise properties that are similar in location, use, size, and other physical attributes. For these reasons, a 5 percent difference in value is considered to be reasonable and attainable.

Statement of Value

Comments: Four comments were received concerning statement of value. One State agency commented that it could not use a statement of value if it was something less than an appraisal. Others suggested information and the minimum amount of support data that should be included in the statement. An appraiser stated he did not believe that the use of a statement of value would result in a significant savings in time or costs. Another commenter felt that the document would be highly efficient for in-house land managers to accomplish land adjustments in half the time normally required when using narrative appraisals.

Response: The statement of value would consist of a written report prepared by a qualified appraiser and approved by the authorized officer. This type of appraisal could only be requested when (1) the estimated value of the lands to be transferred from Federal ownership is not more than $150,000, and (2) the lands appraised are similar in location, acreage, use and physical attributes. The statement of value would comply with the minimum report standards for an appraisal as provided in § 2201.4–6 of this title. It would also contain the appraiser's analysis and estimate of value for both the public and nonfederal lands.

Qualified Appraiser

Comments: Several comments were received concerning the qualifications of an appraiser. One commenter suggested that the person preferably be an accredited member of a nationally recognized appraisal organization that meets the membership requirements of the Appraisal Foundation. One State agency recommended adoption of qualification standards developed by the Appraisal Foundation and included reference to proposed State legislation concerning licensing standards. Another State agency was concerned that the standards may be too high and could result in the elimination of agency appraisers. The same commenter also suggested that when minerals are involved the appraiser should have a baccalaureate in the earth sciences. Finally, one reviewer suggested that the existing qualification standards should remain in effect.

Response: As indicated in § 2201.4–1 of this rulemaking, the qualifications of an appraiser were expanded to incorporate the majority of recommendations made in the comments. Consideration was also given to ongoing efforts by State legislatures and national appraiser organizations to develop appraiser qualifications.

Resource Values

Comments: Several commenters suggested that appraised values include historic, scenic, and other intangible qualities such as recreational potential, wildlife habitat, and economic development needs for urban expansion. Although many of them agreed that it may not be feasible to set economic values on these qualities, they suggested that appraisers should, to the extent possible, consider these intangible qualities in estimating market value.

Response: Market value is the standard for estimating value. The appraiser's responsibility is to estimate what the propery would sell for in the real estate market as of the date of appraisal. To the extent that historic, wildlife, recreation, scenic qualities or economic and other resources values influence market value, these values are included in the estimates of appraised values. Appraisers would use comparable sales and analyses which reflect these qualities and attributes.

Concluding Remarks

In summary, the proposed rule prescribes an exchange process that will enhance decisionmaking and expedite viable exchanges. The process is based on a nonbinding "agreement to initiate an exchange" that can be unilaterally terminated or mutually modified. This agreement would establish an informal working relationship between the parties, and set forth time frames, responsibilities, and information requirements for exchange transactions. Other elements of the process are intended to simplify and speed up the consummation of proposed changes.

The proposed rule also allows the public to participate in the land exchange, decisionmaking process. In the early stages of the process, the authorized officer will publish a notice of initiation if the exchange proposal appears to be acceptable. After the authorized officer completes all necessary studies to determine whether the proposed exchange is in compliance with the regulations and is consistent with the Bureau of Land Management policies and programs, the authorized officer will issue a notice of realty action. Both notices will be published in the **Federal Register** and provide the opportunity for public comment.

The principal authors of this proposed rule are David Cavanaugh, Roger Taylor, and Bob Schrott of the BLM Washington Office (WO), with assistance from Herb Olson (WO), Paul McNutt (WO), Jim Binando (Montana State Office), Bob Archibald (Arizona State Office), Yolanda Vega (Albuquerque District Office), Marla Bohl (Nevada State Office), and Mike Pool of the Division of Legislation and Regulatory Management (WO).

It has been determined that this 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 certifies this document will not have

a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, the proposed rule would not cause a taking of private property under Executive Order 12630.

The provision for collection of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Division of Information Resources Management, Bureau of Land Management, 1800 C Street, NW., Premier Building, Room 208, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects

43 CFR Part 2090

Public lands-classification, Public lands-mineral resources.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

Under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1715, 1716 and 1732), part 2200, group 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2200—EXCHANGES—GENERAL PROCEDURES—[AMENDED]

1. The citation authority for Part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1715 and 1716.

Subpart 2200—Exchanges—General [Amended]

2. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.

§ 2200.0–1 Purpose.

This part 2200 sets forth procedures for the exchange of public lands for nonfederal lands.

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of public lands for nonfederal lands, found to be in the public interest, while maintaining applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) "Adjustment to relative values" means compensation for various costs, or other responsibilities or requirements assumed by one party, which ordinarily would be paid by the other party. These adjustments for costs do not alter the agreed upon appraised values of the lands involved in an exchange. The total amount of the adjustment is not to exceed the limit established under § 2201.6(c) of this title.

(b) "Agreement to initiate an exchange" means a nonbinding statement of present intent, in written form, that is signed by the parties considering an exchange proposal.

(c) "Appraisal" means an unbiased written report that supports an estimate of value.

(d) "Approximately equal value" means that the agreed upon value of the nonfederal lands to be acquired by the United States is within 5 percent of the agreed upon value of public lands to be conveyed out of Federal ownership by the United States. This criterion can only be applied to exchanges in which the value of the public lands to be conveyed is no more than $150,000.

(e) "Arbitration" means a process to resolve a disagreement among the parties as to appraised value by an arbitrator recommended by the American Arbitration Association and appointed by the Secretary.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Bargaining" is a process, other than arbitration, by which a party to a proposed exchange attempts to resolve a dispute with the other party concerning the appraised value of the lands involved in an exchange.

(h) "Cash equalization" means money payment made by either party to the other to balance the difference in the value of the lands involved in an exchange, not to exceed the limit established under § 2201.6(c) of this title.

(i) "Costs or other responsibilities or requirements" include but are not limited to the expense of conducting land surveys, appraisals, mineral examinations, title searches, archaeological surveys, mitigation and salvage, removal of encumbrances, arbitration, bargaining, or other means of value dispute resolution; of curing deficiencies preventing highest and best use, and the expense of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the public and nonfederal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(j) "Equal value exchange" means an exchange where there is no difference in the appraised value of the lands being conveyed.

(k) "Exchange" means a conveyance of lands by the United States to a party either simultaneously with or before or after a conveyance of lands by that party to the United States, the timing being agreed to beforehand.

(l) "Hazardous substance" means (1) any substance designated pursuant to 33 U.S.C. 1321(b)(2)(A), (2) any element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, (3) any hazardous waste having the characteristics identified under § 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921), but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) has been suspended by Act of Congress, (4) any toxic pollutant listed under 33 U.S.C. 1317(a), (5) any hazardous air pollutant listed under § 112 of the Clean Air Act (42 U.S.C. 7412), and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to 15 U.S.C. 2606. The term excludes petroleum,

crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and excludes natural gas, natural gas liquids, liquefied natural gas, synthetic gas (usable for fuel), and mixtures of natural and synthetic gas.

(m) "Highest and best use" means the most probable use of specific lands based upon the appraiser's analysis of relevant market information.

(n) "Land exchange pooling" means an arrangement where multiple tracts of public and nonfederal lands are consolidated into a package for exchange purposes. Lands in the pool may be exchanged in single or multiple land exchange transactions over a period of time. Each transaction is between the United States and a party owning or having the ability to provide title to a tract or multiple tracts of land that are suitable for exchange with the United States.

(o) "Lands" means any land or interest in land, including but not limited to mineral, timber, grazing, use or occupancy interest.

(p) "Market value" means the most probable price, in cash, or in terms equivalent to cash, for which specific lands would sell if offered for sale under normal, free, open market conditions, as of a specific date.

(q) "Mineral laws" means laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not necessarily limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(r) "Notice of initiation" means the publication in the **Federal Register** and a local newspaper of general distribution of a determination, made by the authorized officer, that, based upon preliminary information, an exchange proposal has been found to be acceptable for further processing. When published, a notice of initiation segregates the public lands included in the exchange proposal from the operation of the public land and mineral laws.

(s) "Notice of realty action" means publication in the **Federal Register** and a local newspaper of general distribution of a determination that certain lands are suitable for disposal by exchange under specified laws.

(t) "Party" means, in addition to the United States, any individual person or persons, or any entity or entities, that has or have the capacity and are empowered to own and convey lands, under the laws of the United States or under the laws of the State within which the lands are located, and that initiate, are asked by the United States to participate in, or that consummate a proposed exchange.

(u) "Preliminary estimate" means a written report prepared by an appraiser that sets forth an initial estimate of the range of values for which specific lands would likely sell.

(v) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(w) "Public lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf, and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(x) "Secretary" means Secretary of the Interior, or his delegate within the Secretariat.

(y) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land and mineral laws, pursuant to the exercise by the Secretary of the Interior of authority granted to him or her, in order to allow for the orderly administration of the public lands.

(z) "Significant mineral value" means an energy or mineral resource that has the potential to be economically developable in the foreseeable future.

(aa) "Statement of value" means an informal appraisal report that documents an estimate of value and contains only the conclusions reached in the appraiser's investigation and analysis.

§ 2200.0–6 Policy.

(a) Land exchanges shall comply with applicable law, regulations and executive orders issued pursuant thereto.

(b) When considering public interest, full consideration shall be given to efficient management of public lands and to secure important objectives including: protection of fish and wildlife habitats, cultural resources, wilderness and aesthetic values; enhancement of recreation opportunities; consolidation of mineral and timber holdings for more logical and efficient management; expansion of communities; promotion of multiple-use values; and fulfillment of public needs. There shall also be a finding that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the nonfederal lands or interests and the public objectives they could serve if acquired.

(c) Exchanges shall be used to improve Federal and nonfederal management of lands by establishing more efficient management units and securing important resource objectives.

(d) Exchange pooling shall be used whenever practical to facilitate land exchanges and reduce unit costs.

(e) Exchanges shall be expeditiously handled and processed to meet the goals and time frames established by the parties to an exchange.

(f) When determined to be in the public interest, exchanges may be used to consolidate or unite the surface and subsurface estates for both the United States and the nonfederal owners in split or mixed estate situations.

(g) To facilitate exchanges involving minerals, the parties to an exchange may (1) exchange minerals of equal value, (2) reserve the minerals, or (3) reserve an overriding royalty equal to the royalty the United States would receive through a lease of such minerals. Reservation of royalties shall be for a term of not more than 25 years or the period of production of such minerals, should extraction begin during the 25-year term of the reservation, whichever is the longer term.

(h) Exchanges are discretionary. Nothing in Part 2200 shall be construed to prohibit the parties from withdrawing from a proposed exchange at any time.

§ 2200.0–7 Scope.

(a) These regulations apply to all exchanges involving public lands, as defined herein, except to the extent that all or part of the regulations may be excluded under the provisions of parts 2210, 2240, 2250, and 2270 of this title.

(b) If an exchange involving public lands is authorized pursuant to an Act of Congress, other than the Federal Land Policy and Management Act of 1976, as amended, it shall be implemented in accordance with those provisions of this part that are not inconsistent with any provision of the Act of Congress.

(c) Nothing in these regulations shall be construed as altering the administration of the Alaska Native Claims Settlement Act (Public Law 92–203, as amended) or the Alaska National Interest Lands Conservation Act (Public Law 96–487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon the Secretary of the Interior by either of these Acts.

(d) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface

Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in Subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in Subpart 3436 of this title.

(e) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either public or nonfederal lands.

§ 2200.1 Lands subject to disposal by exchanges.

(a) Public lands may be disposed of by exchange under this part only if their disposal is (1) consistent with land use plans developed in accordance with the land use planning provisions contained in Part 1600 of this title, (2) in compliance the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and (3) in compliance with applicable laws, regulations, and policies concerning hazardous and controlled substances.

(b) Unless otherwise provided by statute, the public lands to be exchanged shall be located in the same State as the nonfederal lands to be acquired. Revested Oregon and California Railroad Grant Lands or reconveyed Coos Bay Wagon Road Grant lands shall be exchanged only for the nonfederal lands located within those countries in which the original grant was made.

(c) The public lands proposed for exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if special circumstances exists, by such other means as may be prescribed by law.

(d) No exchange of lands shall be consummated until a determination has been made by the authorized officer that the exchange is in the public interest and such determination and the reasons therefore are made a part of the administrative record.

(e) As part of the consideration of whether public interest would be served by acquisition of fee coal through exchange, the unsuitability of coal mining on private land as determined under Subpart 3461 of this title, shall be evaluated as a factor and basis for the exchange.

(f) Livestock permittees or lessees shall be compensated for the adjusted value of their interest in authorized permanent improvements located on public lands, as provided in subpart 4120 of this title.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Lands may be acquired by exchange under this part only if their acquisition is (1) consistent with land use plans developed in accordance with the land use planning provisions contained in Part 1600 of this title or, as the case may be, the approved and relevant land use plan of the benefitted Federal department or agency, (2) in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and (3) in compliance with applicable laws, regulations, and policies concerning hazardous and controlled substances.

(b) For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "nonfederal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(c) Nonfederal lands in an exchange proposal shall be described as part of a surveyed section or by a metes and bounds survey tied to a section, township, range, meridian, and State, or shall be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2200.3 Lands acquired by exchange.

(a) Except as otherwise provided in this section, lands acquired by an exchange within a Bureau of Land Management district shall automatically become part of that district and shall be managed in accordance with existing regulations and land use plans.

(b) Land acquired by an exchange for revested Oregon and California Railroad Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to the revested or reconveyed lands that were exchanged for the acquired lands.

(c) Subject to valid existing rights, lands that are acquired by the United States through an exchange, and that by operation of law become public lands, shall be automatically segregated from the operation of the public land and mineral laws, for 90 days after acceptance of title. At the end of the 90-day period, such lands are automatically, without further action of the Secretary, open to operation of the public land and mineral laws, to the extent set forth in a notice of title acceptance pursuant to § 2201.8-2(b) of this title.

(d) Lands acquired by an exchange that are located within the boundaries of Areas of Critical Environmental Concern, Special Management Areas or any other area having an administrative designation established through the land use planning process set forth in Part 1600 of this title shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules and regulations applicable to such unit or area.

(e) Lands acquired by an exchange that are within the boundaries of (1) any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, (2) the California Desert Conservation Area, or (3) any National Conservation or National Recreation area established by Act of Congress shall automatically become part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, and regulations applicable to such unit or area.

§ 2200.4 Qualifications of parties.

No public land may be disposed of, pursuant to the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended, to any party who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

Subpart 2201—Exchanges—Specific Requirements [Amended]

3. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Anyone interested in proposing that nonfederal lands be exchange for public lands shall contact the Bureau of Land Management District Manager or Area Manager responsible for the management of those public lands so that:

(1) Potential constraints may be identified;

(2) Public interest considerations can be explored referencing land use plans or other guidance;

(3) Actions, time frames, costs and other requirements can be discussed; and

(4) Any other questions, issues or concerns that may arise in connection with the exchange proposal can be addressed.

(b) To assess the feasibility of entertaining an exchange proposal, the parties may request a preliminary estimate of the value of any lands involved in the proposal. The preliminary estimate shall consist of a written report prepared by a qualified appraiser. The report shall establish a range of values for which the lands in question would likely sell for based on highest and best use.

(c) If the authorized officer agrees to proceed with an exchange proposal based on the information collected under paragraphs (a) and (b) of this section, a nonbinding agreement to initiate an exchange shall be executed by all interested parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The steps to be taken in processing the proposal;

(4) The parties responsible for completion of each step;

(5) A schedule to complete each step of the proposed exchange;

(6) The method to be used in resolving any value disputes as provided in § 2201.2–2 of this title;

(7) A statement as to the financial responsibility of each party for each step of the exchange and whether or not compensation is required pursuant to the provisions contained in § 2201.6 of this title;

(8) A statement that if hazardous substances are determined to be present on the public or nonfederal lands involved in an exchange, either party may terminate the proposal as to the lands on which the hazardous substances are located or which they may affect;

(9) A statement as to the manner in which documents of conveyance will be exchanged should the exchange proposal be successfully completed;

(10) A statement requiring the exchange parties to submit preliminary title evidence as prescribed in § 2201.8–1(b) of this title for the nonfederal lands involved in an exchange, unless the authorized officer agrees that the United States shall furnish such evidence;

(11) A description of the appurtenant rights proposed to be exchanged as well as a statement of any known reservations, exceptions, covenants, restrictions, title defects or encumbrances;

(12) A statement as to the livestock permittees' or lessees' right to compensation for the adjusted value of their interest in authorized permanent improvements located on public lands, as provided in Subpart 4120 of this title; and

(13) A statement by the nonfederal party that such party has not been convicted of any Federal or State offense referred to in 21 U.S.C. §§ 853a (a)(1) or (b)(1).

(d) No party to a proposed exchange shall be bound legally to proceed with the processing of or to consummate a proposed exchange, or to reimburse or pay any damages to any other party to a proposed exchange that is not consummated or to anyone doing business with the other party.

§ 2201.2 Notice of initiation.

(a) After the execution of an agreement to initiate a proposed exchange, as provided for in § 2201.1 of this title, the authorized officer will publish a notice of initiation of the proposal in the **Federal Register** and in a local newspaper of general circulation with a 30-day public comment period, and make any other distribution of the notice as appropriate including to adjoining landowners and authorized users of the lands. The notice of initiation shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The management objectives that would be achieved and the public interest that would be served by the proposed exchange;

(4) The estimated time required for completing the exchange;

(5) A statement as to the segregative effect of the notice upon its publication in the **Federal Register**; and

(6) An opportunity for public comment on the exchange proposal.

(b) When a proposed exchange of a tract of public lands requires the cancellation of a grazing permit or lease in whole or in part, written notification in accordance with § 4110.4 of this title shall be given.

(c) If additional lands are added to a proposal, the authorized officer shall publish, as appropriate, either an amendment to the notice of initiation in accordance with § 2201.3 of this title. Minor corrections of legal descriptions and other insignificant changes do not require republications.

§ 2201.2–1 Segregative effect.

(a) Publication in the **Federal Register** of a notice of initiation shall segregate, for a period not to exceed 5 years, the public lands covered by the notice from the operation of the public land and mineral laws.

(b) Any prior reserved interests of the United States in the nonfederal lands that are covered by the exchange proposal, as set out in the notice of initiation, shall be segregated by publication of the notice in the **Federal Register** to the same extent that the public lands included in the exchange proposal are segregated.

(c) Publication in the **Federal Register** of a notice that lands are being added to an exchange proposal shall segregate such lands for a period not to exceed any existing segregation period then in effect.

(d) When the notice of initiation segregates the public lands or reserved interests of the United States in the nonfederal lands, any subsequently tendered application applying for a use covered by the segregation shall not be considered as filed and shall be returned to the applicant.

(e) The segregative effect of the notice of initiation shall terminate:

(1) Upon publication of an opening order in the **Federal Register**; or

(2) Upon conveyance of the title to the affected lands; or

(3) Automatically, without further action by the authorized officer, at the end of the period not to exceed 5 years

from the date of the publication of the notice of initiation, whichever comes first.

§ 2201.2-2 Appraisal scheduling; arbitration; bargaining.

Unless the parties to an exchange agree to suspend or modify the deadlines contained in this section, the following processing schedule shall be adhered to by the parties:

(a) No later than 90 days from the date of the executed agreement, the parties shall arrange for appraisals which are to be completed as scheduled in the agreement. The appraisals shall be prepared in accordance with the standards and requirements prescribed in § 2201.4 of this title. If the parties agree on the respective appraised values of the public and nonfederal lands, those values shall be binding upon all parties for a period of 1 calendar year from the date of agreement or until the exchange is consummated, whichever occurs first.

(b) If the parties do not agree as to the respective appraised values of the lands included in the exchange within 180 days from the date of submission of the last appraisal to the authorized officer for review and approval, the parties may submit the appraisals to an arbitrator selected and appointed by the Secretary from a list of arbitrators submitted by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association.

(c) In lieu of arbitration, the parties may mutually agree to employ a process of bargaining or some other process to establish the values of the lands involved in the proposed exchange. The parties may meet to discuss issues relating to differences in the appraised values of the lands involved in an exchange. These issues may be resolved through mutual agreement, or the parties may involve an impartial third party to either mediate or propose a solution. Any agreement, including the rationale supporting the values of the lands to be exchanged, shall be in writing and made part of the administrative record.

(d) Should arbitration, bargaining or some other process be invoked, the parties shall, within 30 days after completion, determine whether to proceed with the proposed exchange, to modify the proposal to reflect the results of arbitration, the bargaining process, or any other permissible factors, or to unilaterally withdraw from the exchange proposal.

(e) The values of the lands that are established by arbitration shall be binding upon all parties for a period of 2 calendar years or until the exchange proposal is terminated or the exchange is consummated, whichever occurs first.

(f) The values of the lands that are established through bargaining or some other process shall be binding upon all parties for a period of 1 calendar year or until the exchange proposal is terminated or the exchange is consummated, whichever occurs first.

§ 2201.3 Notice of realty action.

(a) Upon completion of all required studies to determine if an exchange, as proposed, is in compliance with applicable statutory law and the regulations in this part, the authorized officer shall decide whether to proceed with the exchange proposal. If a decision is made to proceed, the authorized officer shall issue a notice of realty action. The notice shall be published in the Federal Register not less than 60 days prior to patent issuance and once a week for 3 consecutive weeks in a local newspaper of general circulation in the vicinity of the public lands included in the notice. The notice of realty action shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The management objectives that would be achieved and the public interest that would be served by the proposed exchange; and

(4) Any special terms, conditions or reservations required by the authorizing statute or that may be included in the patent or other documents of conveyance.

(b) The notice of realty action shall be mailed to the Governor of the State within which the public lands covered by the notice are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the area within which the public lands are located, and to other persons known or considered likely to be interested, including but not limited to adjoining landowners and authorized users of the lands. The notice shall be mailed not less than 60 days before patent of the land or interests in lands is issued.

(c) For a period of 45 days after issuance of a notice of realty action, interested persons may submit their written comments concerning the exchange proposal to the authorized officer issuing the notice.

§ 2201.4 Appraisal standards.

§ 2201.4-1 Appraiser qualifications.

(a) Appraisals shall be prepared by qualitified appraisers. Appraisers selected shall be competent, reputable, impartial and have experience in appraising property similar to the lands proposed to be exchanged. It is preferred, but not required, that the person have an appraisal designation from a nationally recognized appraisal organization, and if applicable, be licensed or certified under State law. At a minimum, the appraiser shall have:

(1) Two years of relevant appraisal experience, or the equivalent thereof, within the last five years;

(2) Successfully completed 150 classroom hours of courses in subjects related to real estate appraisal and 15 classroom hours related to standards of professional practice fom a nationally recognized appraisal organization, and/or an accredited college or university. Appraisal training sponsored by the government or industry can be credited towards meeting these requirements; and

(3) Successfully completed not less than 30 classroom hours of courses or seminars relating to real property appraisal within the last three years.

(b) An appraisal for land that involves significant mineral values, as determined by a mineral report, shall be prepared by a qualified appraiser that has at least a baccalaureate degree or equivalent experience in geology, mining engineering, petroleum engineering, or mineral economics. The appraiser shall, in lieu of the requirement in paragraph (a)(1) of this section, have two years of experience estimating mineral values within the last five years and meet the requirements set forth in paragraphs (a)(2) and (a)(3) of this section.

(c) In reporting their analysis and conclusions, appraisers shall:

(1) Possess the knowledge and experience necessary to complete the appraisal assignment competently;

(2) Not commit errors or withhold pertinent information that would affect the estimate of market value;

(3) Report their findings in a manner that is meaningful, and does not mislead, or confuse the exchange parties or the public;

(4) Disclose any instructions or extraordinary assumptions that may affect the estimate of market value; and

(5) Prepare reports consistent with professionally recognized appraisal standards.

§ 2201.4-2 Market value.

In estimating market value, the appraiser shall:

(a) Determine the highest and best use of the rights and interests to be conveyed;

(b) Estimate the value of the lands and interests as if they were to be offered for sale in the open market;

(c) Consider all valid existing rights, encumbrances or restrictions affecting conveyance of title;

(d) Include historic, wildlife, recreation, wilderness, scenic, cultural or other resource values that are reflected in prices paid for similar properties under normal market conditions;

(e) Consider the rights and interests to be conveyed as a whole, unless market transactions indicate they are valued separately; and

(f) Estimate the value of each property held or controlled under separate ownership by the nonfederal party for purposes of exchange.

§ 2201.4–3 Mineral valuation.

(a) A mineral report shall be prepared for all the lands included in a proposed exchange in which the Federal government owns the mineral interest. The report shall be prepared by a qualified geologist, mining engineer, petroleum engineer and/or mineral economist. The documentation of minerals, including the determination of the existence of significant mineral values, shall be included in the mineral report. The report shall be referenced, or included as an attachment to the appraisal report.

(b) The authorized officer shall use the "Methodology for an Alternative Method of Determining the Value of Lands for Exchange Containing Oil Shale and Associated Minerals", a guidance document for determining equal value in lieu of an appraisal to determine equal value only for lands containing oil shale and any associated minerals when he/she determines an appraisal to be inappropriate. The Director, Bureau of Land Management, shall review the use of this alternative methodology to determine if it has been properly applied in lieu of an appraisal. When the authorized officer uses the procedures contained in the methodology described herein to determine equal value, the notice of realty action issued in connection with the exchange shall state that the methodology procedures are being used pursuant to a determination by the Director.

§ 2201.4–4 Timber valuation.

(a) Appraisals of lands containing marketable timber shall be prepared after a timber cruise has been conducted by a qualified timber cruiser in accordance with industry standards for the area. The timber cruise report shall be referenced, or included as an attachment to the appraisal report.

(b) The appraisal of timber lands under one ownership shall be based on an appraisal of the entire property as a whole, unless there is market evidence that land with marketable timber and land with small, nonmerchantable trees are valued separately.

§ 2201.4–5 Conservation easements.

Conservation easements may be acquired for purposes of protecting biological, cultural, historical, scenic, natural or open space values from intentional or inadvertent destruction. Each provision of the easement that may affect use of the property shall be evaluated to determine to what extent the restriction would change the highest and best use, and market value of the property.

§ 2201.4–6 Appraisal report guidelines.

At a minimum, the appraisal shall be a written document that contains:

(a) A statement of the purpose and function of the appraisal;

(b) A statement of any assumptions or limiting conditions affecting the estimated values, if applicable;

(c) An accurate description of the lands being appraised, including the location of the properties, current use, and at least a 5-year sales history;

(d) A description of, or reference to, relevant market data considered;

(e) An explanation supporting the appraiser's determination of highest and best use;

(f) An explanation of the reasoning that supports the appraiser's assumptions, analyses and opinions of market value;

(g) Dates of valuation and signed appraisal report; and

(h) A statement certifying that:

(1) The lands were inspected;

(2) The appraiser has no interest in the lands appraised; and

(3) The appraisal fees paid are not contingent on the value estimated.

§ 2201.4–7 Appraisal review.

(a) All appraisals involving land exchanges shall be reviewed by an agency reviewing appraiser who meets all of the education and training requirements of the appropriate type of qualified appraiser prescribed in § 2201.4–1 of this title, have at least 5 years of continuous experience in appraising, and possess an additional 50 hours of classroom training. A reviewing appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent and supported by a reasoned market analysis;

(2) Complies with recognized and generally accepted appraisal practices and applicable appraisal standards; and

(3) Reasonably estimates the probable market value of the lands appraised.

(b) If the review leads to agreement with the values submitted in the appraisal report or an estimate of different values, a written review statement shall be prepared fully explaining and justifying such conclusions. The statement shall include a certification stating that the reviewing appraiser has no present or prospective interest in the lands appraised or personal interest in the values estimated. The authorized officer shall concur in the reviewer's statement before the estimate of market value becomes the agency's approved value for the lands proposed for exchange.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may, without cash equalization, exchange lands which are of approximately equal value when:

(1) The value of the lands to be conveyed out of Federal ownership is not more than $150,000;

(2) The public and nonfederal lands appraised are similar in location, acreage, use, and physical attributes; and

(3) A statement of value concludes that the values of the lands to be exchanged are within 5 percent of each other. The statement of value shall be prepared by a qualifed appraiser, meet minimum report standards for an appraisal as provided in § 2201.4–6 of this title, contain the analysis and estimate of value for both the public and nonfederal lands, and shall be approved by the authorized officer.

(b) Appraiser estimates based on a statement of value, which conclude that the values of the public lands exceed $150,000, or are not within 5 percent of the value of the nonfederal lands, may be used as the basis for agreement on value.

§ 2201.6 Value equalization.

(a) In the agreement to initiate a proposed exchange:

(1) One of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements which would ordinarily be borne by the other party; or

(2) The parties may make adjustments to the relative values involved in an exchange transaction in order to compensate a party for assuming costs or other responsibilities or requirements which would ordinarily be borne by the

other party. This includes but is not limited to those items listed in § 2200.0–5(i) of this title. Prior to agreeing to adjustments pursuant to this paragraph, the authorized officer shall:

(i) Determine, in writing, that each adjustment is in the public interest, and is in the best interest of consummating the exchange; and

(ii) Ensure that the amount of each adjustment is reasonable and reflects accurately the approximate value of the cost or service provided, or any responsibility and requirement assumed.

(b) To equalize the agreed upon values of the public and nonfederal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or deleting acreage; and/or

(2) Cash equalization, but the amount of the money payment shall be reduced to as small amount as possible.

(c) In no event shall the amount of any cash equalization payment plus the amount of all adjustments agreed to as compensation for costs exceed 25 percent of the appraised value of the public lands to be exchanged out of Federal ownership.

§ 2201.6–1 Waiver of cash equalization.

(a) The parties may agree to waive cash equalization, if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less.

(b) A cash equalization payment to the United States may be waived only after the authorized officer certifies, in writing, how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

(c) A waiver of cash equalization shall not be applied to reduce the amount of a cash equalization payment and/or compensation for costs pursuant to § 2201.6 of this title.

§ 2201.7 Land exchange pooling.

(a) The exchange parties may agree to the pooling of public and nonfederal lands that the parties have indicated an interest in exchanging.

(b) When a land exchange pooling arrangement has been created, the authorized officer shall establish a master exchange file and ledger account under which the public and nonfederal lands can be exchanged as necessary clearances are obtained.

(c) Values of lands conveyed from the pools shall be balanced with land and/or money at least every 2 years pursuant to § 2201.6 of this title.

(d) The authorized officer may require deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(e) The master exchange file may be terminated unilaterally by any party to the pooling agreement or upon depletion of lands in one or both of the pools. Prior to termination, values shall be equalized pursuant to § 2201.6 of this title.

§ 2201.8 Final requirements.

§ 2201.8–1 Items needed to complete an exchange.

At the end of the comment period provided in the notice of realty action, and upon a determination by the authorized officer that a particular exchange proposal is still acceptable, the owner or holder of the nonfederal lands shall provide the following:

(a) *Hazardous and controlled substances certification.* A certification that: (1) the nonfederal lands to be exchanged are free of hazardous substances, as based upon a survey conducted in accordance with the policies and requirements of the Department of the Interior, and (2) each nonfederal party has not been convicted of any Federal or State offense referred to in 21 U.S.C. §§ 853a (a)(1) or (b)(1).

(b) *Evidence of title acceptable to the authorized officer.* (1) Owners of private lands shall provide one of the types of title evidence prescribed in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.), as specified by the authorizing officer. The authorized officer, when acting in accordance with the provisions under § 2201.1(c)(10) of this title, may elect to provide the required title evidence.

(2) If State-owned lands involved in a proposed exchange were ever held in private ownership, evidence of title shall be obtained in the manner provided by paragraph (b)(1) of this section. For State-owned lands that have not been in private ownership, the statement of an authorized State official certifying, under the official seal of the State, that State-owned lands have not been sold, leased, conveyed or otherwise encumbered shall be acceptable evidence of title.

(c) *Conveyance documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1972 ed.).

(1) Owners of private lands shall submit a warranty deed, or other instrument of conveyance which meets Department of Justice title standards for realty acquired by the United States, conveying the privately-owned lands to the United States, and stating that the deed is made "for and in consideration of the exchange of certain lands and interests as authorized by the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is being made. In the absence of controlling Federal law, deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located. Revenue stamps, if required by law, shall be affixed to the deed and cancelled.

(2) A deed executed by an individual grantor shall disclose the marital status of the grantor. The spouse of a married grantor also shall execute the deed to bar any right of curtesy, dower, community interest, or any other claim to the lands conveyed, unless written evidence is submitted establishing that under the laws of the State where the conveyed lands are located the grantor's spouse has no present or prospective interest in the conveyed lands.

(3) Any deed executed by a partnership, association, or other entity other than a corporation shall certify that the deed is executed pursuant to the articles of association or partnership or other similar instrument creating the entity. If there is none or if signing authority is not provided for in the document, the deed shall be signed by each person or entity holding an ownership interest in the subject lands as certified in the title evidence required for those lands.

(4) Any deed executed by a corporation shall state that the deed is executed pursuant to its bylaws or, as the case may be, a resolution or order made by the corporation's board of directors or other governing body. A certified copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided.

(5) States shall submit a deed of conveyance for State-owned lands that includes a statement that the deed is made "for and in consideration of the exchange of certain lands and interests as authorized by the Federal Land Policy and Management Act of 1976, as

amended (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is being made. In the absence of controlling Federal law, deeds shall be executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are located. Revenue stamps, if required by law, shall be affixed to the deed and cancelled. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by the State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(d) *Taxes.* Where taxes constitute a lien on any of the nonfederal lands, the owner of those lands shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount equal to 120 percent of taxes paid on the lands for the previous year or, alternatively assure payment of the taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the nonfederal lands.

§ 2201.8-2 Acceptance of title.

(a) Unless otherwise agreed to by the parties in connection with a pooling arrangement, title to the nonfederal lands and the public lands involved in a proposed exchange shall vest unconditionally and simultaneously upon receipt by the authorized officer, acting on behalf of the United States, of a final title opinion of the Office of the Solicitor, stating that satisfactory title has vested in the United States. Such opinion shall be prepared in accordance with applicable procedures and title standards prescribed by the Attorney General. Thereafter, a confirmatory patent or other confirmatory instrument of conveyance for the public lands involved in the exchange shall be issued. Unless the parties stipulate to the contrary, the confirmatory patent or other like instrument of conveyance of the United States, on the one hand, and the recorded deed or deeds of the nonfederal party, on the other, shall be surrendered to each other simultaneously. The surrender of these documents may be conducted by approved insurance or abstract title companies or other entities that are licensed and bounded by the State containing the lands being exchanged.

(b) When the title to lands it is acquiring in an exchange vests unconditionally in the United States, such title thereupon shall be deemed to be accepted by the United States, and the authorized officer immediately shall publish in the **Federal Register** a notice of acceptance of title by the United States. Subject to valid existing rights as of the date of title acceptance, and excepting any lands withdrawn and reserved automatically under the terms of section 206(c) of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1716(c)), the newly acquired lands shall be segregated automatically from the public land and mineral laws for a period of 90 days after the date of title acceptance by the United States. At the end of the 90-day period, such segregation shall end and the lands shall be opened to the operation of the public land and mineral laws, to the extent set forth in the previously published notice of acceptance of title. As to the public lands included in an exchange that are located within their respective jurisdictions, the Governor of the State and the heads of local governments shall be notified promptly by the authorized officer of the dates of consummation of the exchange and of issuance of the confirmatory instruments of conveyance.

(c) If any buildings, fencing, or other removable improvements owned or erected by a party to an exchange on the nonfederal lands conveyed, are not a part of the exchange proposal, the party may remove such improvements upon being notified that title has been unconditionally accepted by the United States. The removal shall be accomplished within a period to be specified in the notice, or within any extension thereof that may be granted by the authorized officer, and in the manner previously agreed upon or as specified in the notice by the authorized officer. If the party fails to remove the improvements within the prescribed time, the improvements shall be deemed to be abandoned to, and shall become the property of the United States.

(d) Where public lands to be conveyed under this part contain authorized improvements or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.9 Contractual rights; return of title evidence; reconveyance.

(a) No action taken before the title to the nonfederal lands being acquired by the United States has been accepted by the United States shall establish or result in any contractual or other legally enforceable rights or obligations between the United States and any party to an exchange proposal or any person doing business with any such party.

(b) If a party has submitted title evidence in connection with a proposed exchange and processing of the proposed exchange is terminated and the exchange will not be proposed again in the foreseeable future, the title evidence shall be returned to the exchange party. In the event a deed from the nonfederal party to the United States has been recorded and thereafter the proposed exchange is terminated, a quitclaim deed for the lands described in the deed of the nonfederal party shall be issued to that party by the United States, as authorized under Section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges: National Forest Exchange [Amended]

4. Section 2202.1 is amended by revising paragraph (b) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) The filing of a proposal for a forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from the operation of the mining and mineral leasing laws but not from the applicability of those laws governing the use of the National Forest System under leases, license or permit, or governing the disposal of mineral or vegetative resources, other than under the mining and mineral leasing laws. The segregative effect of the exchange proposal notation on the public land records shall terminate upon publication of an opening order in the **Federal Register** at the request or with concurrence of the Secretary of Agriculture, upon issuance of a patent or other instrument of title conveyance to such lands, or 5 years from the date of the notation, whichever occurs first.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits [Amended]

5. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of initiation of an exchange proposal as set forth in § 2201.2 of this title, which shall be distributed in accordance with § 2201.3(b) of this title and which shall include a request for public comment on the public interest factors of the exchange proposal.

6. Section 2203.2 is amended revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

7. Section 2203.3 is amended by removing the citation "§ 2201.1(e)" is the introductory paragraph and replacing it with the citation "§ 2201.3(b)".

PART 2090—SPECIAL LAWS AND RULES [AMENDED]

8. The authority citation for Part 2090 continues to read as follows:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 *et seq.;* 43 U.S.C. 641 *et seq.;* 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 *et seq.;* 16 U.S.C. 3101 *et seq.;* 43 U.S.C. 1701 *et seq.;* 30 U.S.C. 189; 48 U.S.C. 462 note, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands [Amended]

9. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*).

10. Section 2091.2–1 is amended by revising the introductory paragraph and paragraph (c) to read as follows:

§ 2091.2–1 Segregation.

The publication of a Notice of Initiation or Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

* * * * *

(c) The exchange provisions of Section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1715 and 1716) for a period of 5 years. (See part 2200)

11. Section 2091.2–2 is amended by revising paragraphs (a), (a)(2) and (c) to read as follows:

§ 2091.2–2 Opening.

(a) The segregative effect of a Notice of Initiation or Notice of Realty Action automatically terminates either:

* * * * * *

(2) Upon publication of an opening order in the **Federal Register**; or

* * * * * *

(c) Upon a determination that satisfactory title has vested in the United States, the authorized officer shall publish a notice of title acceptance in the **Federal Register**. Subject to valid existing rights, the lands that are acquired shall be automatically segregated from the operation of the public land and mineral laws for a period of 90 days from the date of publication. At the end of the 90-day segregation period, such lands shall be open to the operation of the public land and mineral laws, to the extent set forth in a notice of title acceptance. (See § 2201.8–2(b).)

12. Section 2091.3–1 is amended by revising paragraph (b) to read as follows:

§ 2091.3–1 Segregation.

* * * * *

(b) The filing of a proposal for exchange of lands within the National Forest System and the notation of such proposal on the public land records shall segregate the lands for a period of 5 years from the date of such filing with the authorized officer. (See § 2202.1(b))

* * * * *

13. Section 2091.3–2 is amended by revising paragraphs (a), (a)(2), (a)(3) and (b) to read as follows:

§ 2091.3–2 Opening.

(a) If the application or proposal described in § 2091.3–1 of this title is not denied or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1, the segregative effect of the filing of the application or proposal terminates either:

* * * * *

(2) Upon publication of an opening order in the **Federal Register**; or

(3) Automatically upon the expiration of the segregation period commencing on the date the application or proposal is filed; whichever occurs first.

(b) If the application or proposal described in § 2091.3–1 of this title is denied or otherwise terminated prior to the end of the segregation periods, the lands are opened by publication in the **Federal Register** of an opening order.

* * * * *

Dated: July 7, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–19189 Filed 8–17–89; 8:45 am]

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federal register

Friday
August 18, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Airborne Low-Altitude Windshear Equipment Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 19110; Notice No. 89-21]

RIN: 2120-AD 18

Airborne Low-Altitude Windshear Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the airborne low-altitude windshear equipment rule to: (1) Remove the requirement that windshear flight guidance be installed on older airplanes; (2) amend the provision allowing for an extended compliance period based on a phased airplane retrofit schedule; and (3) provide for acceptance of alternative airplane equipment in the form of an approved airborne windshear detection and avoidance system.

This proposed amendment is based in part on information contained in a petition for rulemaking dated June 1, 1989, submitted by the Air Transport Association (ATA) and published in the Federal Register on June 27, 1989 (54 FR 27023). The information was not available to the FAA when it was formulating the windshear equipment rule.

This notice solicits public comments on the issues presented in ATA's petition to assist the FAA in determining the merit of this proposal.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 19110, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in Room 916 weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Project Development Branch, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the proposed rule as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date will be considered before taking action on the proposal. All comments submitted will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of comments received in response to this notice should submit a self-addressed stamped postcard which states "Comments to Docket No. 19110." All comments received on or before September 18, 1989, will be considered by the Administrator before taking final action. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for interested persons to examine.

To assist the FAA in this rulemaking proceeding, the FAA will hold a public meeting on August 16 and 17, 1989. Interested persons are invited to make oral comments concerning the scheduled retrofitting of TCAS II and windshear equipment requirements. [Federal Register, July 10, 1989, 54 FR 20978]

The Regulation

The applicable portions of current § 121.358 require that, "after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with an approved system providing airborne windshear warning with flight guidance." However, this section also states that a certificate holder may obtain an extension of this date, "for airplanes manufactured before January 2, 1989, if it obtains FAA approval of a retrofit schedule." To obtain an extended compliance date, the certificate holder would have to show that "at least 50 percent of those airplanes manufactured before January 2, 1989, will be equipped by January 2, 1991, at least 25 percent more of those airplanes will be equipped by January 2, 1992, and all of the remaining airplanes which are required to be equipped in accordance with this section by January 4, 1993."

Background

On June 1, 1987, the FAA published NPRM No. 79-11A, Airborne Low-Altitude Windshear Equipment and Training Requirements (52 FR 20560); the comment period closed September 28, 1987. The final rule was issued September 22, 1988, and published in the Federal Register on September 28, 1988 (53 FR 37688).

On March 17, 1989, the ATA submitted to the FAA comments concerning the FAA's windshear rule. Included with these comments were studies concerning the retrofit of airborne windshear warning and flight guidance equipment on older airplanes. On June 1, 1989, the ATA petitioned the FAA to amend the windshear equipment rule to repeal the requirement that older airplanes be retrofitted with the flight guidance systems. In its petition, the ATA included the studies it had submitted to the FAA on March 17, 1989.

Note: The ATA petition speaks of windshear "alerting" equipment. For the sake of consistency, this notice will use the term "warning" as is found in the windshear rule.

Discussion of the Proposals

Retrofitting older airplanes with windshear flight guidance. The ATA asserts that the studies submitted to the FAA support the premise that there may be no benefit provided from retrofitting windshear flight guidance into older airplanes. For the purpose of this proposal, older airplanes include, but are not limited to, the DC-9, B-727, and certain airplanes in the B-737 and B-747 series. This term, older airplanes, comprises about 48% of the commercial fleet. These airplanes were manufactured without the means to easily install windshear flight guidance equipment; thus, in many cases, they cannot be retrofitted without substantial installation costs. Newer airplanes, such as those listed in the proposal, are manufactured with the capability to easily install windshear flight guidance equipment without major retrofitting. ATA's petition asserts that the studies provided to the FAA show that in the case of older airplanes, windshear warning systems coupled with pilot training using the Windshear Training Aid [1] and flight simulators help pilots to avoid or recover from a windshear encounter in a manner equal to or better than piloting procedures based on windshear warning systems and escape flight guidance. Studies to which ATA makes reference conclude: (1) That training with the Windshear Training Aid is retained well; and (2) that recovery capability does not depend on the pilot's ability to precisely execute

[1] In 1985, the FAA contracted with aviation specialists from the Boeing Company, United Airlines, McDonnell Douglas, Lockheed-California, Aviation Weather Associates, and Helliwell, Inc. to produce a training aid on flight procedures to help pilots avoid or recover from encounters with windshear.

windshear recovery techniques. Further, ATA asserts that, because certain windshear warning and flight guidance systems currently in use on older aircraft require a windshear warning before providing flight guidance, pilots are likely to wait for the warning and guidance, relying completely on the windshear equipment, instead of initiating avoidance procedures immediately upon early windshear recognition.

The information included in the attachment to the ATA petition represents a substantial effort to study the effectiveness of the Windshear Training Aid and whether retrofitting older airplanes with windshear flight guidance is warranted. The FAA is not aware of data that refutes ATA's studies or attempts to quantify the economic benefits of the individual components of the windshear final rule, i.e., training, windshear warning, and windshear flight guidance. Therefore, the FAA concludes that the portion of ATA's petition concerning the retrofit of older airplanes may have merit.

The FAA solicits specific comments on the following issues raised in the ATA petition: (1) The claim that, because certain airborne windshear systems in older aircraft require a windshear warning before providing flight guidance, pilots are likely to wait for the warning and guidance instead of initiating avoidance procedures upon early windshear recognition as trained; (2) pilot retention of windshear escape and avoidance procedures; and (3) whether the list of airplanes in this proposal that would be required to have windshear flight guidance systems should be modified.

The above requests for specific comments are designed to solicit comments on issues raised by ATA's petition. The FAA is aware, however, that other issues may be equally important to commenters. Therefore, interested persons are invited to submit comments concerning other relevant issues.

The FAA has determined that airborne low-altitude windshear equipment provides a positive safety benefit. Concerning older airplanes, an additional issue is the appropriate means of achieving that benefit. The ATA asserts that for older airplanes windshear warning and training, without flight guidance, is more efficient, because windshear flight guidance on older airplanes does not provide a sufficient increase in safety to warrant the cost of retrofitting. The FAA recognizes that so long as the safety benefits are equal, it is in the public interest to obtain those benefits at the lowest available cost. The FAA further notes that the shorter life span and the expense and problems of upgrading and maintaining aging airplanes in general may not warrant windshear flight guidance system installations for those airplanes. This concern is reflected in the proposed NPRM, which does not require air carriers to retrofit older airplanes with windshear flight guidance. Thus, the FAA solicits public comment on whether older airplanes should be exempt from the windshear flight guidance equipment requirement.

Included in ATA's proposed amendment is a subsection concerning performance standards for the development of windshear flight guidance systems. The ATA requested approval guidelines for: (1) Automatic windshear warning and flight guidance systems that are fully integrated into flight guidance computers; and (2) windshear warning and flight guidance systems that are not integrated into flight guidance computers and that require a windshear warning or pilot action to initiate flight guidance. In addition, the FAA has determined that the development of guidelines for airborne windshear detection and avoidance systems [2] (predictive systems) should be developed.

The FAA recognizes the need for such standards and solicits specific comments on what criteria are necessary in the area of flight guidance performance. Based on these comments the FAA may issue or revise appropriate guidance material.

Compliance Schedules. The proposed rule would permit a certificate holder to obtain an extension of the windshear equipment compliance date. However, unlike the current rule, the proposal would not require certificate holders to submit schedules demonstrating that certain percentages of their fleets will be in compliance on particular dates. Rather, certificate holders would be required to be in full compliance on a specific date, and would be required to submit status reports every 6 months showing the progress made. The purpose of the proposed amendment is to allow certificate holders to retrofit required airborne windshear equipment by using the same compliance schedule established for the retrofit of Traffic Alert and Collision Avoidance System II (TCAS II) equipment.

While developing the windshear final rule, the FAA was also developing a rule requiring the installation of TCAS II equipment on large passenger carrying aircraft. The Airway Safety and Capacity Expansion Act of 1987 required that TCAS II equipment be installed on all large passenger carrying aircraft by December 30, 1991. Due to reported testing and installation problems, legislation has been introduced to extend the compliance date by allowing air carriers to install TCAS II equipment in accordance with a phased schedule. This legislation, if adopted, would also require that the Administrator consider amending the schedule for the installation of airborne windshear warning and flight guidance systems. The FAA believes that it will be more efficient if the industry were required to have only one cycle of disassembly and reassembly during which both systems are installed. This would preclude a second, out-of-service period for retrofit.

Windshear Detection and Avoidance Systems (Predictive Systems). The FAA also takes this opportunity to propose an amendment to the windshear equipment rule so that the use of approved windshear detection and avoidance systems (predictive systems) is allowed by the rule when such equipment becomes available. Therefore, the FAA proposes to amend the provisions in Section 121.358(a) so that turbine powered airplanes may be equipped with an airborne windshear warning and flight guidance system, or an approved airborne windshear detection and avoidance system (predictive system), or an approved combination of these systems. Although no predictive, look-ahead systems have been approved yet, the FAA does not want to preclude the use of predictive systems when such systems become available.

Necessity for 30-Day Comment Period

The FAA announced on July 10, 1989. [54 FR 28978] its intention to hold a public meeting on August 16 and 17, 1989, to discuss possible changes to existing requirements for the installation of collision avoidance equipment (TCAS II) and windshear flight guidance equipment. The TCAS II equipment is to be installed in the same aircraft that are covered by the windshear warning and flight guidance equipment rules which are the subject of this notice. Uniform attainment of the TCAS II phased retrofit schedule mandated by Public Law 100–223 coupled with the phased retrofit schedule for windshear equipment under Section 121.358 of the Federal Aviation Regulations appears to be difficult at this time, as noted in the 1989 Office of Technology Assessment

[2] Windshear detection and avoidance systems are expected to provide windshear warnings early enough so that a pilot can completely avoid windshear encounters. At this time, these predictive systems are not available.

Report entitled *Safer Skies with TCAS*, and affirmed by a number of witnesses at the hearings of the House Aviation Subcommittee on May 4, 1989, regarding H.R. 2151. If statutory changes are enacted and signed into law making it possible for the FAA to modify the TCAS II installation schedules, it is in the public interest to make the installation schedule for the windshear warning and flight guidance equipment compatible with the modified TCAS II installation schedule; doing so will eliminate the need for two separate out-of-service retrofit periods for each aircraft. Those schedule changes, if they are to provide the relief intended, must be made as soon as possible, because of the complexity of the TCAS II installation requirements and the urgent need for modification of that schedule. The changes proposed herein for the airborne windshear equipment installation requirements must be considered simultaneously with the changes in TCAS II installation schedules in order to be able to assess the range of costs, benefits, and scheduling implications of the various installation schedule options.

The FAA is mailing a copy of this NPRM and the ATA petition, for rulemaking to all persons who have placed their names on the Department of Transportation's Part 121 NPRM mailing list. In addition, the FAA is making the NPRM and the ATA petition, including the data in the attachment to the petition, available to all groups it could identify as having an interest in these issues, and has asked that these groups make this information available to their members.

Economic Summary

The FAA has considered the economic impact of amending the airborne low-altitude windshear equipment requirements (windshear rules) in response to certain issues raised by the ATA in its June 1, 1989, petition. The ATA petition contains an economic analysis, which maintains that the requirement for windshear flight guidance does not pass the most elemental cost/benefit analysis.

Cost

The petition indicates that industry sources agrees with the FAA's estimate of $372.2 million, in 1987 dollars, as the cost of equipping all affected airplanes with on board windshear warning and escape flight guidance systems over a 15 year period. The ATA claims however, that training and maintenance during the same 15 year period would drive total costs to over $800 million.

The petition claims that the latest research conducted by the airlines as they begin to comply with the rule indicates that the cost of windshear flight guidance, most likely, has been underestimated. ATA states that airlines and airframe manufacturers are discovering that the recertification of older airplanes after retrofitting windshear flight guidance is more difficult than expected when the FAA developed its cost analysis for the windshear final rule. The problems with recertification are twofold. First, there is concern regarding the feasibility of maintaining Category II and Category III certification (lower visibility approaches) of some older airplanes because the flight instrumentation systems may not be compatible with the windshear flight guidance systems. Second, obtaining certification of the retrofitted flight guidance systems themselves is more difficult than expected.

According to the petition, the industry estimates the incremental cost of adding windshear flight guidance along with the basic windshear alert equipment for all airplanes to be $183.4 million, in 1987 dollars, over the 15 year period. ATA does not show how it arrived at these costs nor does it estimate the number of airplanes that may need recertification of the affected associated systems.

The FAA realizes that retrofitting windshear escape flight guidance systems into older airplanes is more expensive than either retrofitting these systems into airplanes with digital flight instrumentation systems (digital airplanes) or manufacturing new airplanes with factory installed windshear flight guidance systems. This was shown in the regulatory evaluation of the final windshear rule. The FAA cannot verify the revised costs presented by the petition because ATA does not present sufficient details showing how the costs were derived. ATA does not quantify these costs nor does it estimate the number of airplanes that may need recertification of the affected associated systems. Moreover, ATA does not attempt to quantify the marginal costs of retrofitting windshear flight guidance systems into older airplanes, although it seeks relief from the requirement to retrofit only these systems.

The agency does not have sufficient data at this time to quantify ATA's costs. However, based on the information presented by ATA, the FAA acknowledges that certain certificate holders may incur substantial recertification costs. Therefore, the FAA requests additional information regarding training, maintenance, and recertification costs.

Benefits

The ATA petition points out that FAA estimated $451.6 million in benefits over 15 years, assuming that all of the requirements of the rule would eliminate windshear accidents. These benefits were predicated on an accident rate of 1.13 per year (17 windshear accidents occurred during the 15 years preceding the analysis). FAA notes that, in its regulatory evaluation of the windshear final rule, it predicated its projection of potential avoidable accidents on the basis of accidents per operation. The petition submits that, since the 1983 Academy of Sciences Study and the subsequent voluntary implementation of windshear training by 80 percent of certificate holders affected by the windshear rules, the accident rate has dropped dramatically. In fact, no accidents have occurred in 42 months, or four times longer than the previous average. Thus, in the last 6 years, since the academy study, the accident rate has fallen to 0.5 accidents per year. Scaling the benefits of the rule accordingly, reduces the 15 year benefits to $199.2 million. The petition maintains that pilot reports attribute the above reduction in accidents to the avoidance of windshear made possible by heightened awareness of clues to its existence and their significance, rather than to the use of recovery techniques.

While the FAA does not dispute ATA's assertion that no windshear accidents have occurred in the 42-month period cited in the petition or that pilot training in handling windshear conditions has significantly affected the windshear accident rate, it is unwilling to accept that the reduction in accidents over the 42-month period can be attributed solely to pilot training. Other factors, such as controller awareness and increased forecasting capabilities also could have played a role in the reduction of such accidents. These continued efforts should improve safety. For example, 1985 was the aviation industry's safest year. The exact cause for this has never been pinpointed nor has the industry been able to repeat that year's safety record. Commenters should address whether the FAA should give the 42-month period the overwhelming weight in estimating benefits that was given to it in the ATA petition. Is a longer period necessary to accurately ascertain the impact of pilot training, or any other factor, on improved safety?

The petition attempts to isolate the incremental benefit of windshear flight guidance by referring to the Windshear

Training Aid. The Windshear Training Aid compares "optimum" flight guidance, i.e., guidance methods having full knowledge of the wind field and optimized for the conditions, against alerting plus flight guidance and alerting plus training techniques. In this study optimum flight guidance is given a value of 100 percent; alerting plus flight guidance is given a value of 97 percent; and alerting plus trained techniques is given a value of 94 percent. Based on the 3 percent difference in effectiveness between alerting plus flight guidance on the one hand, and alerting plus trained techniques on the other, the petition allocates $5.8 million over the 15 year period as the benefit attributable to flight guidance alone.

According to ATA, the benefits of retrofitting older airplanes with windshear flight guidance over the 15 year period, do not justify the cost of such retrofitting. ATA points out that the FAA, in the preamble to the final windshear rules, acknowledged that the accident prevention potential attributed to these rules was uncertain. ATA asserts that this analysis does not support the requirement for escape flight guidance.

The FAA acknowledges the study ATA used as the basis for its analysis, but does not believe that the study's findings are conclusive enough to significantly influence this rulemaking action. For example, the effectiveness values may not have been allocated to each of the different combinations of windshear systems on a strictly scientific basis.

ATA's petition also claims that safety may be decreased because flight guidance on older airplanes is dependent on the issuance of a windshear warning. As the FAA understands ATA's contention, pilots who are trained to avoid windshear conditions may fail to initiate early avoidance procedures and instead wait for the warning and flight guidance. The FAA does not deny that certain pilots may rely on warning dependent flight guidance to help them recover from a windshear encounter instead of initiating early avoidance techniques; however, the FAA does not have sufficient information to determine whether this practice would result in decreased safety.

Conclusion

ATA concludes by stating that it strongly believes that too little credit has been given to the increased understanding of the windshear phenomenon and the ensuing training improvements that have resulted in reduced windshear related accidents. ATA cites various encounters with windshear conditions by pilots, without windshear devices, and how they successfully dealt with these conditions using the techniques recommended in the Windshear Training Aid. Further, ATA notes the absence of windshear related accidents during the past 3 years and asserts that this proves that the bulk of the benefits should be attributed to training rather than the devices required by the regulation, particularly the requirement to equip the older airplanes in the fleet with warning dependent escape flight guidance systems. The petition maintains that if FAA grants the relief sought, no reduction in safety would result. It reiterates that the rules have raised concerns that a warning dependent escape flight guidance system may be less safe than a pilot executed escape maneuver initiated before the issuance of a warning.

While the FAA cannot fully agree with all of the assertions in ATA's petition, it concedes that the petition raises a number of issues that merit further consideration. Based on data presented in the petition, the FAA realizes that certain certificate holders may incur recertification costs that were not taken into account in the regulatory evaluation of the final windshear rules. A degree of uncertainty still exists regarding the effect of retrofitting windshear flight guidance into certain older airplanes. Introducing flight guidance into these airplanes may result in time consuming and expensive recertification of these older airplanes. Because ATA presented insufficient data regarding these costs, the FAA cannot quantify them at this time. Nevertheless, these costs may adversely affect the cost efficiency of retrofitting windshear flight guidance into older airplanes. Therefore, this issue should be reconsidered.

The FAA disagrees with the ATA assertion that no safety benefits are provided by windshear flight guidance on older airplanes and recognizes that, if the relief sought is granted, the full safety benefits of windshear systems estimated in the regulatory evaluation of the final windshear rules may not be realized. The FAA has not quantified the extent by which these benefits would be reduced, nor has the agency quantified the extent, if any, to which safety benefits will accrue by eliminating the possibility of too much pilot reliance on warning-dependent windshear flight guidance. In addition, the FAA needs to closely study ATA's attempt to isolate the incremental benefits of retrofitting windshear escape flight guidance systems into older airplanes. Therefore, the FAA seeks comments from the public regarding these issues to help determine the extent to which the benefits obtained from windshear systems would be reduced if the requested relief is granted. The FAA notes that these reduced benefits may be further reduced by the fact that the affected airplanes are the segment of the fleet expected to be most rapidly retired because of age.

In light of the above discussion, the FAA is considering the issues raised by the petition; therefore, it requests comments on this regulatory evaluation and on the consequences of granting the relief requested by ATA.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The small entities that would be affected by the proposed rule amendments are part 121 certificate holders that own nine or fewer aircraft, which is the size threshold for small aircraft operators. The cost thresholds are $94,500 for operators of scheduled services with entire fleets having a seating capacity of over 60; $54,000 for other scheduled operators; and $3,700 for unscheduled operators.[3] A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed rule.

The FAA has determined that granting ATA's petition requesting the elimination from the windshear regulations the requirement that windshear escape flight guidance systems be retrofitted into certain older airplanes may have a significant beneficial economic impact on a substantial number of small entities.

According to FAA data for the period ending December 1, 1987, 51 certificate holder subject to part 121 operated nine

[3] Thresholds appearing in the order have been inflated from 1986 to 1989 dollars using the Consumer Price Index appearing in "FAA Aviation Forecasts, Fiscal Years 1989–2000 (FAA–APO–89–1) March 1989.

or fewer aircraft. Twenty-seven of these certificate holders conducted scheduled service and the remaining 24 engaged in unscheduled operations. These 51 certificate holders are small entities that will be affected by the proposed rule changes.

Although the FAA does not have sufficient information to accurately estimate the level of the economic impact on these small operators, it has determined that the impact may be significant by using data in the regulatory evaluation of windshear final rules. The impact of relieving small certificate holders from the requirement that windshear escape flight guidance systems be retrofitted on certain older airplanes should exceed the $3,700 cost threshold for nonscheduled part 121 certificate holders. While FAA does not have data readily available indicating how many of the affected aircraft each of these small entities has in its fleet, FAA feels secure in assuming that more than one-third of such small certificate holders have at least one of the affected aircraft in their fleet. Thus, a substantial number of nonscheduled part 121 certificate holders are expected to incur a significant beneficial economic impact as a result of the proposed amendments to the windshear regulations. On the basis of this finding a full regulatory flexibility analysis is attached as appendix A to the full regulatory evaluation.

Trade Impact Assessment

The proposed rule amendments will have little or no impact on trade by either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The proposed rules will apply only to part 121 certificate holders some of which compete internationally for passenger and cargo revenues. Granting the relief requested by ATA's petition will permit the affected certificate holders to operate aircraft equipped essentially the same as those of international air carriers, most of whose countries do not require them to install windshear equipment. In any event, the amount of relief that would be granted to these carriers is not expected to be sufficient enough to noticeably impact international trade. Therefore, the proposed amendment will not cause a competitive fare disadvantage for U.S. carriers in international operations.

Federalism Implications

Changes to the regulations proposed by this notice, if enacted, would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these proposed changes would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, the FAA has determined that this proposed amendment is not major under Executive Order 12291 and that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also for the reasons discussed above, it has been determined that the proposed amendment would have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Safety, Transportation, Windshear.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Part 121 of the Federal Aviation Regulations (14 CFR Part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS; DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–30, 1472, 1485, and 1502; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449; January 12, 1983]

2. Section 121.358 is revised to read as follows:

§ 121.358 Low-altitude windshear system equipment requirements.

(a) Except as provided in paragraphs (b) and (c) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with either an approved airborne windshear detection and avoidance system or an approved airborne windshear warning and flight guidance system or an approved combination of these systems.

(b) Notwithstanding the requirements of paragraph (a) of this section, the following exceptions apply for airplanes manufactured before January 2, 1991:

(1) Except for those airplanes listed in paragraph (b)(2) of this section, and except as provided in paragraph (c) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with, as a minimum requirement, an approved airborne windshear warning system.

(2) The following make, model, and series airplanes shall be equipped in accordance with the requirements of paragraph (a) of this section—

(i) B–737–300 and 400 series;
(ii) B–747–400;
(iii) B–757–all series;
(iv) B–767–all series;
(v) A–300–600;
(vi) A–310–all series;
(vii) A–320–all series;
(viii) F–100–all series; and
(ix) MD–80–all series equipped with a Honeywell 970 or equivalent subsequent model Digital Flight Guidance Computer.

(c) A certificate holder may obtain an extension of the compliance date in paragraph (a) of this section if it obtains FAA approval of a retrofit schedule. To obtain approval of a retrofit schedule and show continued compliance with that schedule, a certificate holder must do the following:

(1) Submit a request for approval of a retrofit schedule by June 1, 1990, to the Flight Standards Division Manager in the region of the certificate holding district office.

(2) Show that all of the certificate holder's airplanes required to be equipped in accordance with this section will be equipped by December 30, 1993 [or the final compliance date established for TCAS II retrofit].

(3) Comply with its retrofit schedule and submit status reports containing information acceptable to the Administrator. The initial report must be submitted by January 2, 1991, and subsequent reports must be submitted every 6 months thereaftar until completion of the schedule. The reports must be submitted to the certificate holder's assigned Principal Avionics Inspector.

(d) *Definitions.* For the purposes of this section the following definitions apply—

(1) "Turbine-powered airplane" includes, e.g., turbofan-, turbojet-, propfan-, and ultra-high bypass fan-powered airplanes. The definition specifically excludes turbopropeller-powered airplanes with variable pitch propellers with constant speed controls.

(2) An airplane is considered manufactured on the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data.

Issued in Washington, DC on August 15, 1989.

Daniel C. Beaudette,

Acting Director, Flight Standards Service.

[FR Doc. 89-19479 Filed 8-15-89; 1:17 pm]

BILLING CODE 4910-13-M

federal register

Friday
August 18, 1989

Part VII

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1989

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53118; FRL-3625-5]

Premanufacture Notices Monthly Status Report for April 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for APRIL 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53118]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, S.W., Washington, D.C. 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during APRIL; (b) PMNs received previous and still under review at the end of APRIL; (c) PMNs for which the notice review period has ended during APRIL; (d) chemical substances for which EPA has received a notice of comencement to manufacture during APRIL; and (e) PMNs for which the review period has been suspended. Therefore, the APRIL 1989 PMN Status Report is being published.

Dated: July 11, 1989

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

PREMANUFACTURE NOTICE MONTHLY STATUS REPORT APRIL 1989

I. 128 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.

P 89-0574	P 89-0575	P 89-0576	P 89-0577
P 89-0579	P 89-0580	P 89-0581	P 89-0582
P 89-0583	P 89-0584	P 89-0585	P 89-0586
P 89-0587	P 89-0588	P 89-0589	P 89-0590
P 89-0591	P 89-0592	P 89-0593	P 89-0594
P 89-0595	P 89-0596	P 89-0597	P 89-0598
P 89-0599	P 89-0600	P 89-0601	P 89-0602
P 89-0603	P 89-0604	P 89-0605	P 89-0606
P 89-0607	P 89-0608	P 89-0609	P 89-0610
P 89-0611	P 89-0612	P 89-0613	P 89-0614
P 89-0615	P 89-0616	P 89-0617	P 89-0618
P 89-0619	P 89-0620	P 89-0621	P 89-0622
P 89-0623	P 89-0624	P 89-0625	P 89-0626
P 89-0627	P 89-0628	P 89-0629	P 89-0630
P 89-0631	P 89-0632	P 89-0633	P 89-0634
P 89-0635	P 89-0636	P 89-0637	P 89-0638
P 89-0639	P 89-0640	P 89-0641	P 89-0642
P 89-0643	P 89-0644	P 89-0645	P 89-0646
P 89-0647	P 89-0648	P 89-0649	P 89-0650
P 89-0651	P 89-0652	P 89-0653	P 89-0654
P 89-0655	P 89-0656	P 89-0661	P 89-0662
P 89-0663	P 89-0664	P 89-0665	P 89-0666
P 89-0667	P 89-0668	P 89-0669	P 89-0670
P 89-0703	Y 89-0082	Y 89-0083	Y 89-0084
Y 89-0085	Y 89-0086	Y 89-0087	Y 89-0088
Y 89-0089	Y 89-0090	Y 89-0091	Y 89-0092
Y 89-0093	Y 89-0094	Y 89-0095	Y 89-0096
Y 89-0097	Y 89-0098	Y 89-0099	Y 89-0100
Y 89-0101	Y 89-0102	Y 89-0103	Y 89-0104
Y 89-0105	Y 89-0106	Y 89-0107	Y 89-0108
Y 89-0109	Y 89-0110	Y 89-0111	Y 89-0112
Y 89-0114	Y 89-0115	Y 89-0116	Y 89-0117

II. 256 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.

P 85-0216	P 85-0535	P 85-0536	P 85-0619
P 85-0718	P 86-0294	P 86-0295	P 86-1189
P 86-1602	P 86-1603	P 86-1604	P 86-1607
P 87-0057	P 87-0058	P 87-0059	P 87-0105
P 87-0197	P 87-0198	P 87-0199	P 87-0200
P 87-0201	P 87-0323	P 87-0770	P 87-0794
P 87-0963	P 87-1028	P 87-1066	P 87-1104
P 87-1192	P 87-1226	P 87-1227	P 87-1273
P 87-1337	P 87-1379	P 87-1417	P 87-1542
P 87-1546	P 87-1547	P 87-1548	P 87-1549
P 87-1555	P 87-1759	P 87-1872	P 87-1881
P 87-1882	P 88-0049	P 88-0083	P 88-0156
P 88-0157	P 88-0195	P 88-0225	P 88-0275
P 88-0319	P 88-0320	P 88-0353	P 88-0387
P 88-0393	P 88-0468	P 88-0515	P 88-0522
P 88-0576	P 88-0602	P 88-0606	P 88-0622
P 88-0658	P 88-0671	P 88-0701	P 88-0726
P 88-0836	P 88-0864	P 88-0884	P 88-0888
P 88-0889	P 88-0890	P 88-0894	P 88-0898
P 88-0918	P 88-0972	P 88-0981	P 88-1005
P 88-1020	P 88-1021	P 88-1035	P 88-1063
P 88-1168	P 88-1189	P 88-1211	P 88-1212
P 88-1240	P 88-1271	P 88-1272	P 88-1273
P 88-1274	P 88-1303	P 88-1377	P 88-1443
P 88-1446	P 88-1473	P 88-1529	P 88-1543
P 88-1567	P 88-1568	P 88-1618	P 88-1619
P 88-1620	P 88-1621	P 88-1622	P 88-1630
P 88-1631	P 88-1632	P 88-1647	P 88-1648
P 88-1658	P 88-1682	P 88-1686	P 88-1690
P 88-1691	P 88-1730	P 88-1739	P 88-1740
P 88-1748	P 88-1753	P 88-1761	P 88-1763
P 88-1774	P 88-1783	P 88-1807	P 88-1809
P 88-1811	P 88-1823	P 88-1844	P 88-1850
P 88-1856	P 88-1889	P 88-1898	P 88-1937
P 88-1938	P 88-1956	P 88-1958	P 88-1980
P 88-1982	P 88-1984	P 88-1985	P 88-1995
P 88-1999	P 88-2000	P 88-2001	P 88-2002
P 88-2069	P 88-2100	P 88-2160	P 88-2169
P 88-2177	P 88-2179	P 88-2180	P 88-2181
P 88-2188	P 88-2196	P 88-2204	P 88-2210
P 88-2212	P 88-2213	P 88-2228	P 88-2229
P 88-2230	P 88-2231	P 88-2236	P 88-2237
P 88-2271	P 88-2275	P 88-2293	P 88-2341
P 88-2343	P 88-2344	P 88-2349	P 88-2367
P 88-2380	P 88-2389	P 88-2434	P 88-2435
P 88-2436	P 88-2437	P 88-2469	P 88-2470
P 88-2473	P 88-2484	P 88-2518	P 88-2529
P 88-2530	P 88-2536	P 88-2540	P 88-2562
P 88-2563	P 88-2564	P 88-2566	P 88-2568
P 88-2575	P 88-2582	P 88-2631	P 88-2632
P 89-0030	P 89-0031	P 89-0066	P 89-0073
P 89-0077	P 89-0078	P 89-0089	P 89-0090
P 89-0091	P 89-0097	P 89-0116	P 89-0122
P 89-0184	P 89-0194	P 89-0195	P 89-0225
P 89-0234	P 89-0254	P 89-0268	P 89-0279
P 89-0292	P 89-0298	P 89-0301	P 89-0303
P 89-0321	P 89-0326	P 89-0336	P 89-0344
P 89-0380	P 89-0383	P 89-0384	P 89-0385
P 89-0386	P 89-0387	P 89-0396	P 89-0413
P 89-0422	P 89-0423	P 89-0424	P 89-0426
P 89-0427	P 89-0448	P 89-0474	P 89-0475
P 89-0476	P 89-0483	P 89-0506	P 89-0507
P 89-0520	P 89-0538	P 89-0539	P 89-0540
P 89-0657	P 89-0658	P 89-0659	P 89-0660

III. 111 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.

P 86-0592	P 87-0930	P 87-0931	P 87-1436
P 88-0596	P 88-0875	P 88-0985	P 88-1220
P 88-1250	P 88-1460	P 88-1514	P 88-1657
P 88-1786	P 88-1940	P 88-2365	P 88-2463

P 89-0115	P 89-0191	P 89-0235	P 89-0236	P 89-0269	P 89-0270	P 89-0271	P 89-0272	P 89-0308	P 89-0309	P 89-0310	P 89-0311
P 89-0239	P 89-0240	P 89-0241	P 89-0242	P 89-0273	P 89-0274	P 89-0275	P 89-0276	P 89-0312	P 89-0313	P 89-0314	P 89-0315
P 89-0243	P 89-0244	P 89-0245	P 89-0246	P 89-0277	P 89-0278	P 89-0281	P 89-0282	P 89-0316	P 89-0317	P 89-0318	P 89-0320
P 89-0247	P 89-0248	P 89-0249	P 89-0250	P 89-0283	P 89-0284	P 89-0285	P 89-0286	P 89-0322	P 89-0324	P 89-0325	P 89-0327
P 89-0251	P 89-0252	P 89-0253	P 89-0255	P 89-0288	P 89-0289	P 89-0290	P 89-0291	Y 89-0074	Y 89-0075	Y 89-0076	Y 89-0077
P 89-0256	P 89-0257	P 89-0258	P 89-0259	P 89-0293	P 89-0294	P 89-0295	P 89-0296	Y 89-0078	Y 89-0079	Y 89-0080	Y 89-0081
P 89-0260	P 89-0261	P 89-0262	P 89-0263	P 89-0297	P 89-0299	P 89-0300	P 89-0302	Y 89-0082	Y 89-0083	Y 89-0084	Y 89-0085
P 89-0264	P 89-0265	P 89-0266	P 89-0267	P 89-0304	P 89-0305	P 89-0306	P 89-0307	Y 89-0086	Y 89-0087	Y 89-0088	

IV. 198 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 81-0035	G N-methylene phosphoric acids of substituted amine mixture (fractionation of crude carboheterocycle) consisting mainly of 2,2'-substituted bis-ethylamine.	Apr. 20, 1981
P 84-0313	G Poly alkylene polyol	July 7, 1984.
P 85-0391	G Copolymer of unsaturated polyester and alkyl-compounds	Apr. 17, 1989.
P 85-1374	G Amine-modified epoxy resin	Mar. 4, 1986.
P 86-0040	G Formaldehyde, reaction products with aliphatic carboxylic acid, aromatic amines, and oxygen	Oct. 14, 1987.
P 86-0539	G Substituted phenylacetamide	Mar. 18, 1989.
P 87-0206	G Acrylic polymer	Apr. 22, 1987.
P 87-0209	G Pentenenitrilo nickel (II) cyanoborate complex	Apr. 2, 1987.
P 87-0211	Aluminum, bis (2-propanolato) isooctanolato-	May 19, 1987.
P 87-0212	G Amine-functional poly dimethyl siloxane	May 27, 1987.
P 87-0213	G Alkyd polyester with coconut oil	July 15, 1987.
P 87-0218	G Acrylic resin	Mar. 7, 1987.
P 87-0220	G Substituted dicarboxylic acid	Aug. 1, 1987.
P 87-0228	G Halogenated polyester diisocyanate prepolymer	Feb. 26, 1987.
P 87-0232	G Cyclohexane carbanol acetate	Sept. 20, 1987.
P 87-0233	G Substituted acrylic polymer	May 28, 1987.
P 87-0247	G Thermoplastic elastomer	July 20, 1987.
P 87-0249	G Acrylic acid/polyol copolymer	July 7, 1987.
P 87-0253	G Aqueous acrylic latex polymer	Aug. 24, 1987.
P 87-0273	G Inert perfluorocarbon liquid	May 4, 1987.
P 87-0274	G Inert perfluorocarbon liquid	Aug. 3, 1987.
P 87-0282	G Aliphatic aromatic polyester	Aug. 11, 1987.
P 87-0286	Saturated cyclic hydrocarbons	May 6, 1987.
P 87-0296	1-Penten-3-one, 2-methyl-1-(2,6,6,-trimethyl-2-cyclohexen-yl)-	June 5, 1987.
P 87-0297	G Polymeric aromatic polyester ether	July 20, 1987.
P 87-0298	G Substituted triphenodioxazine	Sept. 9, 1987.
P 87-0301	G Substituted thioxotetrazole	June 29, 1987.
P 87-0304	G Aryl azo thiophene	Aug. 19, 1987.
P 87-0305	G Polymeric ricinoleate	Mar. 4, 1989.
P 87-0329	Butanedioic acid, (2-benzothiazolylthio)-	Apr. 25, 1987.
P 87-0346	G Polyurethane polymer	Sept. 1, 1987.
P 87-0348	G Acrylic resin	Apr. 6, 1987.
P 87-0364	Polymer of dichlorodimethylsilane and trichlorophenylsilane	Apr. 2, 1987.
P 87-0374	G Alkoxy modified grafts copolymer of a hydrocarbon resin and polysiloxane	May 25, 1987.
P 87-0375	G Alkoxyether terminated silicones	May 24, 1987.
P 87-0384	Acrylic acid 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,-hexadecafluoro-9-(trifluoro methyl) decyl ester polymers	Sept. 10, 1987.
P 87-0396	G Modified alkyd resins	Apr. 10, 1987.
P 87-0399	G Derivative of amines, polyethylenepoly-, compounds with (polybutenyl) succinic anhydride borates	July 2, 1987.
P 87-0406	G Butyl (mercapto)tin sulfide	July 26, 1987.
P 87-0422	G Alkyl amine salt	Nov. 22, 1989.
P 87-0423	....do	Do.
P 87-0424	....do	Do.
P 87-0425	....do	Do.
P 87-0426	....do	Do.
P 87-0427	....do	Do.
P 87-0429	G Substituted aromatic polymer	Aug. 31, 1987.
P 87-0433	G Copolymer of perfluoroalkylacrylate and cyclomethacrylate	Apr. 30, 1987.
P 87-0435	G Aromatic modified terpene resin	Sept. 21, 1987.
P 87-0439	G Benzenesulfonyl chloride, 3-(acetylamino)-4-methoxy	June 17, 1987.

IV. 198 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0448	C Polyether polyurethane	Apr. 20, 1988.
P 87-0450	G Oxyalkylated terephthalate polyol esters	Jan. 4, 1988.
P 87-0451	G Terephthalate polyol esters	Sept. 10, 1987.
P 87-0452	G 3,6-Dimethyl-1-octyn-3-1	Aug. 4, 1987.
P 87-0453	G Polyester resin	June 12, 1987.
P 87-0454	....do	Do.
P 87-0455	....do	Do.
P 87-0456	....do	June 6, 1987.
P 87-0461	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylidene)bis(phenol) and hydroxy arene.	May 21, 1987.
P 87-0462	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-alkylphenol.	Do.
P 87-0463	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4',-(methylethyl-idene)bis(phenol) and 4-aralkylphenol.	Do.
P 87-0464	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-arcycloalkyphenol.	Do.
P 87-0479	4,4'-Tetrathiobismorpholine	Aug. 18, 1987.
P 87-0480	G Dithiocarbamyl Substituted triazine	Aug. 20, 1987.
P 87-0481	G Salt of perfluoro fatty acids	Apr. 30, 1987.
P 87-0505	Decanedioic acid, polymer with 1,2-ethanediol	Sept. 17, 1987.
P 87-0511	Phenol, 4, 4,4"-(ethylidene) tris	Aug. 6, 1987.
P 87-0518	G Substituted benzothiazolesulfonic acid	Oct. 20, 1987.
P 87-0533	G Thermosetting polyester	May 8, 1987.
P 87-0549	G Substituted naphthylazo substituted benzene	Sept. 9, 1988.
P 87-0561	G 2-Naphtalene carboxylic acid, 4-(substituted phenyl) azo)-3-hydroxy-, metal salt	Mar. 29, 1989.
P 87-0655	G Polyether modified organopolysiloxane	Nov. 14, 1987.
P 87-0660	Polyacrylate, mixed potassium sodium salt	Oct. 1, 1987.
P 87-0666	G Dimerized fatty acids di (alkylether) ester	May 19, 1987.
P 87-0672	4,7,11-Trimethyl-4,6,10-dodecatrien-3-one	July 15, 1987.
P 87-0676	G Mixed amidoamine	Jan. 29, 1988.
P 87-0691	G Blocked aliphatic urethane polymer	Aug. 18, 1987.
P 87-0693	Escherichia coli K-12, SG-936 was transformed with a plasmid vector which contains the metsomatomedin-C/insulin-like growth factor-1 (met-SMC/IGF-1) gene from human liver cells.	May 26, 1987.
P 87-0695	G Aliphatic polyanhydride	July 11, 1987.
P 87-0698	G Alkylmethyl silicone glycol copolymer	Aug. 18, 1987.
P 87-0708	G Organo polysiloxane	Nov. 14, 1987.
P 87-0714	G Carboxyethylated complex tall oil polyalkylene polyamine	June 2, 1987.
P 87-0715	....do	Do.
P 87-0719	Polymer of epoxy resin, di-n-butylamine and di-ethanolamine	Apr. 5, 1989.
P 87-0727	G Mixture of polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol & aromatic urethane with methacriate end groups.	June 8, 1987.
P 87-0732	G Ethylene-silane copolymer	July 29, 1987.
P 87-0733	G Unsaturated fatty acid epoxy ester	June 1, 1987.
P 87-0734	G Water-reducible epoxy ester copolymer resin	Do.
P 87-0735	G Calcium aluminate alcohol ethoxylate (dispersed)	June 25, 1987.
P 87-0737	G Silicone resin	July 1, 1987.
P 87-0740	G C14–C16 dialkylbenzenes	Aug. 28, 1987.
P 87-0742	G Heteropolycyclichydraz base	Oct. 22, 1987.
P 87-0743	G Water-reducible epoxy ester copolymer resin	June 3, 1987.
P 87-0744	G Unsaturated fatty acid epoxy ester	Do
P 87-0747	G Mixed polyester polymer	Sept. 18, 1987.
P 87-0748	G Aliphatin polycarbonate urethane	Apr. 6, 1988.
P 87-0755	G Acrylate functional organopolysiloxane	Jan. 25, 1988.
P 87-0762	2-butenal, 3-methyl-	Aug. 17, 1987.
P 87-0771	G Mixed methacrylate polymer	Sept. 18, 1987.
P 87-0774	Polymer of melamine, formaldehyde, methanol and 2-ethylhexanol	June 29, 1987.
P 87-0777	G 4, 4'-bis(substituted) stilbene	July 30, 1987.
P 87-0778	G 2,5-bis(substituted)-1,3,4-oxadiazole	Do
P 87-0779	G Pyrene derivative	Do
P 87-0780	G Phthalccyanine colorant	Do
P 87-0781	G Carbazole derivative	Do
P 87-0782	G Benzoic acid derivative	Do
P 87-0783	G 1,1'-bis(substituted)-3-substituted-1-propane	Do
P 87-0784	G 2,5-Bis(substituted)-1,3,4-oxadiazole	Do
P 87-0785	G Carbazole derivative	Do
P 87-0797	G Alkoxy functional silicon hydride silyl hydrocarbon	Nov. 9, 1987.
P 87-0798	....do	Do
P 87-0814	G Medium oil alkyd resin	Jan. 8, 1988.
P 87-0818	G Oxyalkylated terephthalate polyol ester	June 15, 1987.
P 87-0820	G Organo-platinum complex	June 17, 1987.
P 87-0827	G Silicone phenolic acid resin	Aug. 26, 1987.
P 87-0830	G Copper disalicylidine complex	July 4, 1987.
P 87-0833	G High solids soybean oil urethane polymer	June 15, 1987.
P 87-0843	G Carboxyfunctional zircoaluminate chloride hydroxide polymer	June 16, 1987.
P 87-0845	G Reaction product of epichlorohydrin and sodium phosphate	June 29, 1987.
P 87-0858	G Rosin, polymer with substituted phenols, formaldehyde and pentraerythriotol	Sept. 15, 1987.
P 87-0861	G Aliphatic polyester polyurethane	May 3, 1988.
P 87-0868	G Alkyl silicone fluid	Nov. 23, 1987.
P 87-0873	G Aromatic polyester polyurethane	Dec. 16, 1987.

IV. 198 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0880	G Amide substituted imidazolidines	Sept. 17, 1987.
P 87-0888	G Acrylated polyester	Oct. 3, 1987.
P 87-0892	G Dihydroxynaphthalene derivation	Aug. 1, 1987.
P 87-0905	G Diester of alkoxylated diol	Jan. 6, 1988.
P 87-0906	G Urethane polymer	Sept. 1, 1987.
P 87-0907	G Polyether aromatic urethane	Do.
P 87-0915	G Carbonochloridothioic acid, aryl ester	Oct. 5, 1987.
P 87-0919	G Styrenated acrylate polymer with methyl methacrylate	July 15, 1987.
P 87-0935	G Advancement product of cresol epoxy novolac	Dec. 15, 1987.
P 87-0943	G Polyurethane prepolymer	May 6, 1987.
P 87-0945	G Substitute vinyl acetate/ethylene polymer	Oct. 21, 1987.
P 87-0950	G Blocked aliphatic urethane copolymer	Aug. 18, 1987.
P 87-0956	G Comb branch poly (urethane-acrylate)	Aug. 25, 1987.
P 87-0976	G Dihydroxyalkane	Sept. 4, 1987.
P 87-0978	G Tall oil fatty acid alkyd resin	Sept. 16, 1987.
P 87-0979	2-(Hexadecylthio)-3-methylbutanoic acid	Sept. 23, 1987.
P 87-0981	2-hexadecylsulfonyl-3-methyl butanoic acid	Oct. 12, 1987.
P 87-0987	G N-(2-propyl) styrylnitrone	July 28, 1987.
P 87-0990	G Chain-stopped short oil Soya alkyd	Aug. 13, 1987.
P 87-0993	G Heteromonocycle sulfonyl aniline, salt	Nov. 19, 1987.
P 87-0994	G Monosubstituted phenylazo disubstituted naphthalene sulfonic acid, salt	Jan. 20, 1988.
P 87-1000	G Urethane acrylate with pendant carboxy groups	Aug. 17, 1987.
P 87-1004	G Sulfonated aromatic polymer	Aug. 27, 1987.
P 87-1016	G Partial metal complex of aminomethylene phosphonic acid, reaction products with potassium hydroxide	July 21, 1987.
P 87-1031	G Alkylcycloalkanoneacetic acid	May 17, 1988.
P 87-1034	G Octyl iminodipropionate	Sept. 8, 1987.
P 87-1153	G Polymer of diethylenetriamine, triethylenesmine, monobasic fatty acid, dibasic fatty acids; a lactamsubstituted phenol and substituted oxirane.	Oct. 30, 1987.
P 87-1179	G Alkylcycloalkanonemalonic acid ester	Aug. 19, 1988.
P 87-1198	1,1-Methylene bis(4-isocyanate cyclohexane), polymer w/5-amino-1,3,3-trimethyl cyclohexane methanamine & n-butylamine & (alpha-hydro-omega-hydroxy poly(oxy-1,2-ethanediyl),alpha-hydro-omega-hydroxy poly (oxy(methyl-1,2-ethanediyl))) & (hexane-dioic acid polymer w/1,4-butanediol, 1,3-butanediol, & 1,6-hexanediol).	Dec. 16, 1987.
P 87-1586	G N'-Alkyl'-N,N,N''-TETRA alkyl''-trialkyl' ''-dipropylene-quaternary ammonium trialkyl ''-sulfate	Oct. 6, 1988.
P 87-1699	Bicyclo{3.2.1}Octan-8-one, 1,5-dimethyl	Jan. 15, 1988.
P 87-1850	Butyl alcohol; methyl alcohol; acrylic acid; plus residual reactants of section b(2)(b)	Mar. 27, 1989.
P 87-1853	G Substituted polycarbonate	Mar. 29, 1989.
P 87-1866	G A-olefin-maleic acid derivatives copolymer	Apr. 26, 1988.
P 88-0158	G Cycloalkenyl substituted alkyl alkanol	Mar. 6, 1989.
P 88-0165	G Chlorinated alkyd resin	Mar. 29, 1989.
P 88-0182	G Polyurethane	Jan. 16, 1989.
P 88-0493	G 1,6-Bis (5-P-chlorophenylbiguanda)hexan diacetate; 1,6-Di(N-chlorophenyldiguanda)hexan diacetate	Mar. 15, 1989.
P 88-0560	G Polyglycol carbonate	Mar. 17, 1989.
P 88-0588	G Acrylic copolymer emulsion	Apr. 19, 1988.
P 88-0635	G Alkylated polysilanes	Mar. 10, 1989.
P 88-0765	G Waterborne urethane-acrylic copolymer	Mar. 21, 1989.
P 88-1092	G Trisubstituted naphthalenedisulfonic acid	Apr. 14, 1989.
P 88-1105	G Amine monomer grafted ethylene-propylene copolymer	Apr. 3, 1989.
P 88-1137	G Aliphatic polyester polyurethane	Mar. 1, 1989.
P 88-1161	G Short oil alkyd resin	Mar. 2, 1989.
P 88-1200	G Substituted heterocycle	Mar. 7, 1989.
P 88-1383	G Peroxide curable polymer of hexafluoropropylene, tetrafluoroethylene, and vinylidene fluoride	Feb. 22, 1989.
P 88-1677	G Heterocyclic substituted sulfon amide	Mar. 7, 1989.
P 88-1698	G Quaternary salt	Mar. 21, 1989.
P 88-1709	G Castor oil hydrogenated polymer with ethylenediamine 12, hydroxyoctadecanoic acid and adipic acid	Feb. 7, 1989.
P 88-1711	G Castor oil hydrogenated polymer with ethylenediamine 12, hydroxyoctanoic acid	Do.
P 88-1850	G Mixed alkylated diphenylamine	Mar. 27, 1989.
P 88-1853	G Nickel-azomenthine dyestuff complex	Mar. 29, 1989.
P 88-1882	G Amine salt of sulfonated heterocyclic compound	Mar. 27, 1989.
P 88-1987	G Substituted-substituted-substituted-benzene polymer, aminomethylated, chloromethane quarternized, chloride	Feb. 23, 1989.
P 88-2012	G Substituted carboxylic acid alkene diol polyester	Apr. 7, 1989.
P 88-2049	G Alcoholic polyimide urethane	Apr. 8, 1989.
P 88-2106	G Polybrominated aromatics modified with brominated epoxy resin	Mar. 17, 1989.
P 88-2128	G Alkyl amine rosinate	Mar. 2, 1989.
P 88-2331	G Amine-modified epoxy resin	Mar. 8, 1989.
P 88-2352	G Silicic acid tetraalkyl ester	Mar. 15, 1989.
P 88-2514	G Alkyl carboxylic acid ester	Apr. 9, 1989.
P 88-2559	G Octadecanoic acid, esters with alcohols, C11-14-iso-, C13-rich, ethoxylated	Mar. 18, 1989.
P 88-2560	G Octadecanoic acid, esters with alcohol, C11-14-iso-, C13-rich	Mar. 24, 1989.
P 89-0034	Trans-1,4-cyclohexanediisocyanate; polytetramethylene glycol	Apr. 4, 1989.
P 89-0065	G Polyester resin	Mar. 31, 1989.
P 89-0081	G Copolymer of acrylonitrile and 3 kinds of acrylates	Apr. 15, 1989.
P 89-0176	G Acrylic resin	Mar. 20, 1989.
P 89-0180	G Carboxylic acid, metal salt	Mar. 22, 1989.
P 89-0182	G Substituted urethane	Mar. 22, 1989.
P 89-0192	Aluminum chloride hydroxide sulfate	Mar. 20, 1989.
P 89-0218	G Guerbet alcohol ester	Apr. 4, 1989.
P 89-0219	G Guerbet diester	Do.
Y 88-0195	G Acrylic polymer	Mar. 30, 1988.

IV. 198 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
Y 89-0037	G Polyester	Mar. 14, 1989.

V. 25 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 88-0997
P 88-0998
P 88-0999
P 88-1005
P 88-1446
P 88-1763
P 88-2436
P 88-2437
P 88-2536
P 88-2568
P 88-2631
P 88-2632
P 89-0195
P 89-0234
P 89-0241
P 89-0245
P 89-0254
P 89-0268
P 89-0279
P 89-0280
P 89-0287
P 89-0292
P 89-0301
P 89-0303
P 89-0336

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Friday
August 18, 1989

Part VIII

Department of Education

34 CFR Part 425, et al.

State-Administered Adult Education Programs and Secretary's Discretionary Programs for Adult Education; Final Regulations

National Workplace Literacy Program; Invitation for Applications for New Awards To Be Made in Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 432, 433, 434, 435, 436, 437, 438, and 441

RIN 1830-AA06

State-Administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues regulations governing the Adult Education State-administered Basic Grant Program, the National Workplace Literacy Program, the State-administered Workplace Literacy Program, the State-administered English Literacy Program, the National English Literacy Demonstration Program for Individuals of Limited English Proficiency, the Adult Migrant Farmworker and Immigrant Education Program, the National Adult Literacy Volunteer Training Program, and the State Program Analysis Assistance and Policy Studies Program. These programs are authorized by the Adult Education Act and the Stewart B. McKinney Homeless Assistance Act, as revised by the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297) and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628). These regulations explain the types of activities that the Secretary may support under each program, how to apply for an award under each program, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 435.21, 436.22, and 438.21. Sections 435.21, 436.22, 437.21, and 438.21 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR ADDITIONAL INFORMATION CONTACT: Mary Hanrahan, Acting Director, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4428), 400 Maryland Avenue, SW., Washington, DC 20202-7240. Telephone: (202) 732-2270.

SUPPLEMENTARY INFORMATION:

Background

Adult Education Act

Pub. L. 100-297 was signed into law on April 28, 1988. Title II, part B of Pub. L. 100-297 revises the Adult Education Act (the Act), which continues to be set forth in 20 U.S.C. 1201 *et seq.* The revised Act continues Federal assistance for adult education through fiscal year 1993.

The primary effect of the Act is the continuance of the Adult Education State-administered Basic Grant Program. Under the revised Act States are now required to develop a systematic approach for meeting the needs of populations eligible for adult education programs. States must also expand the delivery of adult education services to reach typically underserved groups and involve a variety of public and private agencies and organizations that serve educationally disadvantaged adults in the development and implementation of the State's programs.

The Act heightens the focus of programs on "educationally disadvantaged adults"—defined by the Act generally as adults who demonstrate basic skills at or below the fifth grade level or have been placed in the lowest or beginning level of an adult education program. Special emphasis is also given to such adult populations as the incarcerated, individuals of limited English proficiency, adults with handicaps, adult immigrants, the chronically unemployed, homeless adults, the institutionalized, and minorities. The Act also encourages long-range coordinated planning, and increases requirements related to coordination with other programs and public and community involvement. Beginning with the grant from the fiscal year 1990 appropriation, States must pay an increasing share of the cost of programs.

In addition to the basic State grant program, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

At the national level, the Act authorizes a variety of national discretionary programs. These programs are intended to enhance the overall quality of the Nation's adult education system, draw upon community support, and focus on the educational needs of adults in special populations. The programs include the—

(1) National Workplace Literacy Program;

(2) National English Literacy Demonstration Programs for Adults of Limited English Proficiency;

(3) Adult Migrant Farmworker and Immigrant Education Program;

(4) National Adult Literacy Volunteer Training Program; and

(5) State Program Analysis Assistance and Policy Studies Program.

The Act also authorizes two new State-administered programs—the State-administered Workplace Literacy Program and the State-administered English Literacy Program. These programs are intended to improve the literacy skills of adult workers and of individuals of limited English proficiency, respectively.

Stewart B. McKinney Homeless Assistance Act

Title VI, part A, subpart 1 of Public Law 100-297 and title VII, subtitle A, section 701 of Public Law 100-628 amend section 702 of the McKinney Act, which authorizes the Adult Education for the Homeless Program. The amendments to section 702—

(1) Provide that State applications include "an estimate of the number of homeless adults expected to be served and the number of homeless adults within each of the school districts within the State to be served";

(2) Remove the State grant allocation formula;

(3) Provide authority for a discretionary program;

(4) Permit a State to implement the program either directly or through contracts or subgrants; and

(5) Expand the definition of "State" to include the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Analysis of Comments and Changes

On April 12, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for State-administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education in the **Federal Register** (54 FR 14740). In response to the Secretary's invitation in the NPRM, 30 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and certain suggested

changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These 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.

Intergovernmental Review

Programs covered by 34 CFR parts 426, 432, 433, 434, 435, 436, 437, 438, and 441 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested 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.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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

34 CFR Part 425

Administrative practice and procedure, Adult education, Grant programs.

34 CFR Part 426

Administrative practice and procedure, Adult education, Bilingual education, Business and industry, Colleges and universities, Day care, Education, Education of disadvantaged, Education of handicapped, Foreign persons, Grant programs, Labor unions, Libraries, Manpower training programs, Migrant labor, Minority groups, Prisoners, Public health, Reporting and recordkeeping requirements, Secondary education, Transportation, Vocational education, Volunteers.

34 CFR Parts 432 and 433

Adult education, Business and industry, Colleges and universities, Day care, Education, Grant programs, Labor unions, Manpower training programs, Reporting and recordkeeping requirements, Schools, Transportation.

34 CFR Parts 434 and 435

Adult education, Bilingual education, Education, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 436

Adult education, bilingual education, Education, Foreign persons, Grant programs, Migrant labor, Reporting and recordkeeping requirements.

34 CFR Part 437

Adult education, Elderly, Education, Grant programs, Reporting and recordkeeping requirements, Volunteers.

34 CFR Parts 438 and 441

Adult education, Education, Grant programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education State-administered Basic Grant Program; 84.192 Adult Education for the Homeless Program; 84.198 National Workplace Literacy Program; and 84.223 State-administered English Literacy Program. Catalog of Federal Domestic Assistance Numbers have not been assigned for: State-administered Workplace Literacy Program; National English Literacy Demonstration Program for Adults of Limited English Proficiency; Adult Migrant Farmworker and Immigrant Education Program; National Adult Literacy Volunteer Training Program; and State Program Analysis Assistance and Policy Studies Program.)

Dated: July 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising parts 425 and 426, and adding new parts 432, 433, 434, 435, 436, 437, 438, and 441 as follows:

1. Part 425 is revised to read as follows:

PART 425—ADULT EDUCATION—GENERAL PROVISIONS

Sec.

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

§ 425.1 What is the purpose of the Adult Education Act?

The purpose of the Adult Education Act (the Act) is to assist the States to—

(a) Improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment;

(b) Expand and improve the current system for delivering adult education services, including delivery of these services to educationally disadvantaged adults; and

(c) Encourage the establishment of adult education programs that will—

(1) Enable adults to acquire the basic educational skills necessary for literate functioning;

(2) Provide adults with sufficient basic education to enable them to benefit from job training and retraining programs and obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) Enable adults who so desire to continue their education to at least the level of completion of secondary school.

(Authority: 20 U.S.C. 1201)

§ 425.2 What programs are authorized by the Adult Education Act?

The following programs are authorized by the Act:

(a) Adult Education State-administered Basic Grant Program (34 CFR part 426).

(b) National Workplace Literacy Program (34 CFR part 432).

(c) State-administered Workplace Literacy Program (34 CFR part 433).

(d) State-administered English Literacy Program (34 CFR part 434).

(e) National English Literacy Demonstration Program for Individuals of Limited English Proficiency (34 CFR part 435).

(f) Adult Migrant Farmworker and Immigrant Education Program (34 CFR part 436).

(g) National Adult Literacy Volunteer Training Program (34 CFR part 437).

(h) State Program Analysis Assistance and Policy Studies Program (34 CFR part 438).

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.3 What regulations apply to the adult education programs?

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) for grants, including

cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 432, 435, 436, 437, and 438).

(3) 34 CFR part 76 (State-administered Programs) (applicable to parts 428, 433, and 434), except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 425.

(c) The regulations in 34 CFR parts 426, 432, 433, 434, 435, 436, 437, and 438.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.4 What definitions apply to the adult education programs?

(a) *Definitions in the Act.* The following terms used in regulations for adult education programs are defined in sections 312 and 326(b) of the Act:

Academic education
Adult
Adult education
Community-based organization
Community school program
Correctional institution
Criminal offender
Educationally disadvantaged adult
English literacy program
Institution of higher education
Local educational agency
Out-of-school youth
Private industry council
State educational agency

(b) *Definitions in EDGAR.* The following terms used in regulations for adult education programs are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget period
Contract
ED
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Subgrant
Subgrantee

(c) *Other definitions.* The following definitions also apply to regulations for adult education programs:

Act means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

Adult basic education means instruction designed for an adult who—

(1) Has minimal competence in reading, writing, and computation;

(2) Is not sufficiently competent to meet the educational requirements of adult life in the United States; or

(3) Is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with the adult's real ability.

If grade level measures are used, adult basic education includes grades 0 through 8.9.

Adult secondary education means instruction designed for an adult who—

(1) Is literate and can function in everyday life, but is not proficient; or

(2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education.

If using grade level measures, adult secondary education includes grades 9 through 12.9.

Adults with Limited English proficiency, persons with limited English proficiency, individuals of limited English proficiency, and *limited English proficient adults* mean individuals who—

(1) Were not born in the United States or whose native language is a language other than English;

(2) Come from environments where a language other than English is dominant; or

(3) Are American Indian or Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(4) Who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3283(a)(1))

Expansion means that the State educational agency (SEA) has increased during the period covered by the State's four-year plan the number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services in order to increase the number of adults served, particularly the number of typically underserved adults participating in the adult education program, such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps.

Homeless or *homeless adult:*

(1) The terms mean an adult lacking a fixed, regular, and adequate nighttime residence as well as an individual having a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The terms do not include any adult imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Authority: 42 U.S.C. 11301)

Immigrant means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(Authority: 8 U.S.C. 1101(a)(15))

Institutionalized individual means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

Migrant farmworker means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another— to enable him or her to obtain temporary or seasonal employment in any activity directly related to—

(1) The production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(2) The cultivation or harvesting of trees; or

(3) Fish farms.

Outreach means activities designed to—

(1) Inform educationally disadvantaged adult populations of the availability and benefits of the adult education program;

(2) Actively recruit these adults to participate in the adult education program; and

(3) Assist these adults to participate in the adult education program by providing reasonable and convenient access and support services to remove barriers to their participation in the program.

Program year means the twelve-month period during which a State operates its adult education program.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1201a(7) and 48 U.S.C. 1681)

State administrative costs means costs for those management and supervisory activities necessary for direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State advisory councils under section 332 of the Act, but does not include costs incurred for such additional activities as evaluation, teacher training, dissemination, technical assistance, and curriculum development.

(Authority: 20 U.S.C. 1201 *et seq.*)

2. Part 426 is revised to read as follows:

PART 426—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—How Does a State Make an Award to an Eligible Recipient?

Subpart E—What Conditions Must Be Met by a State?

Subpart F—What Are the Administrative Responsibilities of a State?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Adult Education State-administered Basic Grant Program?

The Adult Education State-administered Basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult basic and secondary education based on need and resources available.

(Authority: 20 U.S.C. 1203)

§ 426.2 Who is eligible for an award?

State Educational Agencies (SEAs) are eligible for awards under this part.

(Authority: 20 U.S.C. 1203)

§ 426.3 What are the general responsibilities of the State educational agency?

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 426.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 426.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—

(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(Authority: 20 U.S.C. 1205 (a) and (b))

§ 426.4 What regulations apply to the program?

The following regulations apply to the program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 426.5 What definitions apply to the program?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 426.10 What documents must a State submit to receive a grant?

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and the regulations in this part.

(b) A State application consisting of program assurances, signed by an authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, where necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

Cross-Reference: See § 426.42, What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information about the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary.

(Approved under OMB Control Nos. 1830-0026 and 1830-0027)

(Authority: 20 U.S.C. 1203a(b)(2), 1206a(c) (3) and (5), 1206b, 1207a, 1208, and 1209(b))

§ 426.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is established under section 332 of the Act and § 426.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of—

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements.

(Authority: 20 U.S.C. 1206a (a) (1) and (2), (b))

§ 426.12 What must the State plan contain?

(a) Consistent with the assessment described in § 426.11(c), a State plan shall, for the four-year period covered by the plan, described the following:

(1) The adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged.

(2)(i)(A) The goals the SEA intends to achieve in meeting the needs described in paragraph (a)(1) of this section for the period covered by the plan.

(B) These goals must be designed to develop a statewide program in which the adult populations in the State, especially adults who are educationally disadvantaged, are served in a manner whereby they learn most effectively; and

(ii)(A) Proposed activities, methods, and strategies for reaching each goal, including the estimated percentages of funds under the State plan to be allocated to each goal; and

(B) The expected outcomes of programs, services, and activities.

(3) The curriculum, equipment, and instruments that are being used by instructional personnel in programs and how current these elements are.

(4) The means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps) through the use of agencies, institutions, and organizations other than the public school system, such as businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations.

(5) The means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult educaton services by cooperation and collaboration with those public and private agencies, institutions, and organizations.

(6) The capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs.

(7) The outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs.

(8)(i) The manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(9) How the particular educational needs of adult immigrants, the incarcerated, adults with handicaps, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed.

(10)(i) The progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) How the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 426.46 were considered in establishing the State's goals for adult education in the plan being submitted.

(11) The progress the SEA expects to make in achieving the purposes of the Act during the four-year period of the plan.

(12) The criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients.

(13) The methods proposed for joint planning and coordination with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Educaton of the Handicapped Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services.

(14) The steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR part 437, but only to the extent that such volunteers supplement and do not supplant salaried employees.

(15) The measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by § 426.46.

CROSS-REFERENCE: See 34 CFR 426.22

(16) The SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 426.33.

(17) The SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults tht meet the reqiurements of § 426.32.

(18) The SEA's planned use of Federal funds for administrative costs under § 426.40(a), including any planned expenditures for a State advisory council under § 426.50.

(19) An SEA shall provide a summary of recommendations received and the SEA's responses to the recommendations made through the State plan development process required under § 426.11(b).

(b) A SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How public or private agencies, organizations, or institutions will otherwise be used for expanding the delivery of services.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, a SEA shall comply with the requirements in 34 CFR 433.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, a SEA shall comply with the requirements in 34 CFR 434.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR Part 436, a SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farmworkers and immigrants under section 381 of the Act.

(Approved under OMB Control No. 1830–0026)

(Authority: 20 U.S.C. 1204; 1205(c); 1206a(a)(2), (b)((1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

§ 426.13 What procedures does a State use to submit its State plan?

(a) A SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 426.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) State board or agency for vocational education.

(ii) State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's response must be included with the State plan.

(Approved under OMB Control No. 1830–0026)

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3)(A) and (B))

§ 426.14 When are amendments to a State plan required?

If an amendment to the State plan is necessary, the amendment must be submitted to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

Cross-Reference: See 34 CFR 76.140

(Approved under OMB Control No. 1830–0026)

(Authority: 20 U.S.C. 1207(a))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 426.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

§ 426.21 How does the Secretary make reallotments?

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallotted to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallotted on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallotments are made to other States in proportion to those States' original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallotted among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallotment of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

§ 426.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 426.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and effect further changes as necessary to meet those educational goals.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

§ 426.23 How does the Secretary approve State plans and amendments?

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 426.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 426.30 Who is eligible for a subgrant or contract?

The following eligible recipients may apply to the SEA for an award:

(a) A local educational agency (LEA)

(b) A public or private nonprofit agency, organization, or institution.

(c) An LEA or public or private nonprofit agency, organization, or institution apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(Authority: 20 U.S.C. 1203a(a)(1), (2))

§ 426.31 How does a State award funds?

(a) In selecting local recipients, if appropriations under this program exceed the $115,367,000 appropriated in the Fiscal Year 1988 appropriation for the basic grant program, a SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults.

(b) A SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, a SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) Any other information the SEA considers necessary.

(d) In reviewing a local application, a SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (e.g., funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(e) An SEA may not approve an application from a public or private agency, organization, or institution other than an LEA unless the applicant—

(1) Provides assurance to the State that the applicable LEA, located in the same city, county, township, school district, or other political subdivision of the State to be served by the applicant has been consulted;

(2) Provides the applicable LEA the opportunity to comment on the application; and

(3) Provides the comments of the LEA and any responses as an attachment to the application.

(f) An SEA may not approve an application from a consortium that includes a for-profit agency, organization, or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act;

(2) The LEA, or public or private nonprofit agency, organization, or institution, will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs; and

(3) The applicant, if not an LEA, has met the requirements of paragraph (f) (1) through (3) of this section.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the LEA or public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(3))

§ 426.32 What are programs for corrections education and education for other institutionalized individuals?

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

(1) Academic programs for—

(i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(ii) Special education programs as defined by State law;

(iii) Bilingual or English-as-a-second-language programs; and

(iv) Secondary school credit programs;

(2) Vocational training programs;

(3) Library development and library service programs;

(4) Corrections education programs, training for teacher personnel specializing in corrections education, particularly courses in social education, basic skills instruction, and abnormal psychology;

(5) Guidance and counseling programs;

(6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) An SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 426.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(a)(3), (b)(1) and 1204)

§ 426.33 What are special experimental demonstration projects and teacher training projects?

(a) An SEA shall use not less than 10 percent of its grant for—

(1) Special projects that will be carried out in furtherance of the purposes of the Act, that will be coordinated with other programs funded under the Act, and that—

(i) Involve the use of innovative methods (including methods for educating adults with handicaps, homeless adults, and adults of limited English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(ii) Involve programs of adult education, including education for adults with handicaps, homeless adults, and adults of limited English proficiency, which are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive or coordinated approach to the problems of adults with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(b)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

(i) The information in § 426.31(c);

(ii) Plans for continuing the activities and services under the project after completion of the project's funding under the Act; and

(iii) Any other information the SEA considers appropriate.

(Authority: 20 U.S.C. 1203a(a)(3) and 1208)

Subpart E—What Conditions Must be Met by a State?

§ 426.40 What are the State and local administrative costs requirements?

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or $50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) In cases where the administrative cost limits under paragraph (b)(2) of this section would be insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b, and 1205(c))

§ 426.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the cost of programs carried out with the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990

grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the cost of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Republic of Palau), and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 426.42 What is the maintenance of effort requirement?

(a)(1)(i) *Basic standard.* Except as provided in § 426.43, a State is eligible for a grant from appropriations for any fiscal year, only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) *Meaning of "second and third preceding fiscal years (or program years)."* For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

Example

Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation) by comparing expenditures from the second preceding fiscal year—year 1987 (October 1, 1986—September 30, 1987)—with expenditures from the third preceding fiscal year—year 1986 (October 1, 1985—September 30, 1986). If there has been decrease in expenditures from fiscal year 1986 to fiscal year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1989 grant by comparing expenditures from the second preceding program year—year 1987 (July 1, 1986–June 30, 1987)—with expenditures from the third preceding program year—year 1986 (July 1, 1985–June 30, 1986). If there has been no decrease in expenditures from program year 1986 to program year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 426.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 426.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 426.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 426.42 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request; and

(2) Any additional information the Secretary may require.

(Approved under OMB Control No. 1830–0510)

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year).

Example

Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1987 (October 1, 1986–September 30, 1987)—or in a program year 1987 running from July 1, 1986–June 30, 1987—at the level of fiscal year 1986 (October 1, 1985–September 30, 1986)—or program year 1986 (July 1, 1985–June 30, 1986), the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1990 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year)—fiscal year 1988 (October 1, 1987–September 30, 1988) or program year 1988 (July 1, 1987–June 30, 1988)—with expenditures from the fourth preceding fiscal year (or program year—year 1986. If the expenditures from fiscal year (or program year) 1988 are not less than the expenditures from fiscal year (or program year) 1986, the State has maintained effort and is eligible for its fiscal year 1990 grant.

(Authority: 20 U.S. 1209(b)(2))

§ 426.46 What requirements for program reviews and evaluations must be met by a State?

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to assist LEAs and other recipients of funds in planning and operating the best possible programs of adult education and to improve the State's programs of adult education.

(b) In reviewing programs, an SEA shall, during the four-year period of the State plan, gather and analyze data on the effectiveness of all State-administered adult education programs, services, and activities—including standardized test data—to determine the extent to which—

(1) The State's adult education programs are achieving the goals in the State plan, including the goal of serving educationally disadvantaged adults; and

(2) Grant recipients have improved their capacity to achieve the purposes of the Act.

(c)(1) An SEA shall, during the four-year period of the State plan, evaluate in qualitative and quantitative terms the effectiveness of programs, services, and activities conducted by at least one-third of the local recipients of funds.

(2) The recipients the State evaluates must be representative of all recipients in the State.

(3) An evaluation must consider the following factors:

(i) Planning and content of the programs, services, and activities.

(ii) Curriculum, instructional materials, and equipment.

(iii) Adequacy and qualifications of all personnel.

(iv) Effect of the program on the subsequent work experience of participants, completers, and graduates.

(v) Achievement of the goals set forth in the State plan.

(vi) Extent to which educationally disadvantaged adults are being served.

(vii) Extent to which local recipients of funds have improved their capacity to achieve the purposes of the Act.

(viii) Other factors that affect program operations, as determined by the SEA.

(d)(1) Within 90 days of the close of each program year, the SEA shall submit the following to the Secretary:

(i) The information in § 426.10(b)(10).

(ii) A report on the SEA's activities under paragraph (b) of this section.

(iii) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1) (ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program review and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory council, if a council has been established.

(e) If an SEA has established a State advisory council on adult education under § 426.50, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluations from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(3) of the Act.

Note to § 426.46: In addition to the Adult Education State-administered Basic Grant Program in this part 426, State-administered adult education programs include the State-administered Workplace Literacy Program (See 34 CFR part 433) and the State-administered English Literacy Program (See 34 CFR part 434).

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a(f)(3) and 1207a)

Subpart F—What are the Administrative Responsibilities of a State?

§ 426.50 What are a State's responsibilities regarding a State advisory council on adult education?

(a) A State that receives funds under section 313 of the Act may—

(1) Establish a State advisory council; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 426.51 and 426.52.

(2) The Governor appoints members to the State advisory council in accordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council must be counted as part of the allowable State-administrative costs under the Act.

(4) The Governor determines the amount of funding available to a State advisory council.

(5)(i) A State advisory council determines its own staffing needs, within the budget established by the Governor.

(ii) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a (a), (d), (e))

§ 426.51 What are the membership requirements of a State advisory council on adult education?

(a)(1) The membership of a State advisory council may broadly represent citizens and groups within the State having an interest in adult education. The council must consist of representatives of—

(i) Public education;

(ii) Private and public sector employment;

(iii) Recognized State labor organizations;

(iv) Private, voluntary, or community literacy organizations;

(v) Libraries; and

(vi) State economic development agencies.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Racial and ethnic minorities.

(b)(1) An SEA shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(c) Members must be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council must be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a (a)(1), (b), and (c))

§ 426.52 What are the responsibilities of a State advisory council on adult education?

(a)(1) The State advisory council shall, using procedures agreed upon, elect a chairperson.

(2) The State advisory council shall adopt rules that govern the number, time, place, and conduct of meetings as well as council operating procedures. The rules must provide for at least one public meeting each year at which the general public is given an opportunity to express views concerning adult education programs in the State.

(b) A State advisory council shall—

(1) Meet with the SEA or its representative during the planning year to advise on the development of the State plan;

(2) Review the State plan before it is submitted to the Secretary and, if the State advisory council has substantial disagreement with the final State plan, file timely objections with the SEA;

(3) Advise the SEA on—

(i) Policies the State should pursue to strengthen adult education; and

(ii) Initiatives and methods the private sector could undertake to assist the State's improvement of adult education programs; and

(4)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 426.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a (d) and (f), 1208a(a)(3)(B))

§ 426.53 May a State establish an advisory body other than a State advisory council?

(a) A State may establish an advisory body that is funded solely from non-Federal sources.

(b) The advisory body described in paragraph (a) of this section is not required to comply with the requirements of section 332 of the Act and this part.

(c) The non-Federal funds used to support the advisory body may not be included in the non-Federal share of expenditures under the State plan described in § 426.41(c).

(Authority: 20 U.S.C. 1205a and 1209)

3. A new part 432 is added to read as follows:

PART 432—NATIONAL WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

Subpart A—General

§ 432.1 What is the National Workplace Literacy Program?

The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(a)(1))

§ 432.2 Who is eligible for an award?

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency (SEA), local educational agency (LEA), institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership shall include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(4)(A))

§ 432.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

(Authority: 20 U.S.C. 1211(a)(3))

§ 432.4 What regulations apply?

The following regulations apply to the National Workplace Literacy Program:

(a) The regulations in this part 432.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211(a))

§ 432.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definitions also apply to this part:

Adult worker means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, and whose receipt of project services is expected to result in new employment, enhanced skills related to continued employment, career advancement, or increased productivity.

Area vocational school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally

for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and that provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition it admits as regular students both individuals who have completed high school and individuals who have left high school.

(Authority: 20 U.S.C. 2471)

Business and industry organizations include, but are not limited to—

(1) For-profit businesses or industrial concerns;

(2) Nonprofit businesses or industrial concerns, such as hospitals and nursing homes;

(3) Associations of business and industry organizations, such as local or State Chambers of Commerce;

(4) Associations of private industry councils; and

(5) Educational associations—such as the American Association for Adult and Continuing Education, the American Council on Education, the National Association for Bilingual Education, the National Association of Independent Colleges and Universities, or the National Association of Technical and Trade Schools.

Contractor means an individual or organization other than a partner that provides specific and limited services, equipment, or supplies to a partnership under a contractual agreement.

Employment and training agency includes any agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

Helping organization means an entity other than a partner that voluntarily assists a partnership by providing services, technical assistance, or cash or in-kind contributions to the project. Helping organizations may not be recipients of funds from partners or serve as contractors.

Partner means an entity included in the list of entities in § 432.2(a) (1) or (2).

Private industry council means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

Site means an entity other than a partner that participates in a project by providing adult workers to be trained and, at the site's option, space for this training. A site may not be a recipient of funds from partners or serve as a contractor.

(Authority: 20 U.S.C. 1211(a))

Subpart B—How Does One Apply for an Award?

§ 432.10 Are preapplications required?

The Secretary may require applicants to submit preapplications by including that requirement in an application notice published in the Federal Register.

(Authority: 20 U.S.C. 1211(a))

§ 432.11 How does the Secretary consider a preapplication?

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication—

(1) The Secretary—

(i) Informs the applicant that it is eligible and encourages it to apply for a grant;

(ii) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(iii) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible; and

(2) An applicant may apply for a grant even if the Secretary has not encouraged it to apply, as described in paragraph (c)(1)(ii) of this section.

(Authority: 20 U.S.C. 1211(a))

Subpart C—How Does the Secretary Make an Award?

§ 432.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects training adult workers who have inadequate basic skills and who—

(1) Are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills;

(2) Are employed in industries retooling with high technology and for whom training in basic skills is expected to result in continued employment;

(3) Require training in English-as-a-second-language in order to increase productivity, to continue employment, or to be eligible for career advancement; or

(4) Are employed in an industry adversely impacted by competitiveness in the world economy and for whom training is expected to result in the increased competitiveness of that industry in world markets.

(Authority: 20 U.S.C. 1211(a))

§ 432.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 432.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 432.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 432.22.

(Authority: 20 U.S.C. 1211(a))

§ 432.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under § 432.2(a)(2), unless transferring this activity to the partner classified under § 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (12 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Approved under OMB Control No. 1830-0507)

(Authority: 20 U.S.C. 1211(a))

§ 432.23 What additional factor does the Secretary consider?

In addition to the criteria in § 432.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1211(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 432.30 What other requirements must be met under this program?

(a) An applicant shall use funds to supplement and not supplant funds otherwise available for the purposes of this program.

(b) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(c) In partnerships in which either an SEA or an LEA is the grantee, an award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (b)(1) of this section; and

(2) 70 percent of the costs of a project during the operational period referenced in paragraph (b)(2) of this section.

(d) In partnerships in which any other entity is the grantee, an award under this program may be used to pay 70 percent of costs incurred in establishing and operating the project throughout the period of the grant.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(a)(2) and (4)(E))

§ 432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects serving adults with limited English proficiency or no English proficiency shall provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(a))

4. A new part 433 is added to read as follows:

PART 433—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

Subpart A—General

§ 433.1 What is the State-administered Workplace Literacy Program?

When the annual appropriation for workplace literacy equals or exceeds $50,000,000, the State-administered Workplace Literacy Program provides financial assistance for adult education programs that teach literacy skills needed in the workplace through education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(b))

§ 433.2 Who is eligible for an award?

(a) A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 433.10.

(b) If a State is ineligible to receive its allotment under this program, the Secretary uses the State's allotment to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace. To make those awards, the Secretary uses the procedures described for the National Workplace Literacy Program in 34 CFR part 432.

(Authority: 20 U.S.C. 1211(b) (3), (6))

§ 433.3 What kinds of activities may be assisted?

(a) Under the State-administered Workplace Literacy Program the Secretary makes allotments to an SEA to pay the Federal share of the cost of adult education programs that teach literacy skills needed in the workplace through partnerships between the entities in § 433.30(a) (1) and (2).

(b) A State shall assist partnership projects that are designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace through the activities described in 34 CFR 432.3 (a) through (f).

(Authority: 20 U.S.C. 1211(b) (4), (5))

§ 433.4 What regulations apply?

The following regulations apply to the State-administered Workplace Literacy Program:

(a) The regulations in this part 433.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211(b))

§ 433.5 What definitions apply?

(a) The definitions in 34 CFR 432.5 apply to this part.

(b) The following definition also applies to this part:

Partner means an entity included in the list of entities in § 433.30(a) (1) or (2).

(Authority: 20 U.S.C. 1211(b))

Subpart B—How Does a State Apply for a Grant?

§ 433.10 What must the State plan contain?

To receive a grant under the State-administered Workplace Literacy Program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(a) The requirements for State approval of funding of a local workplace literacy project;

(b) The procedures under which applications for that funding may be submitted; and

(c) The method by which the SEA will obtain an annual third-party evaluation of student achievement in, and the overall effectiveness of the services provided by, all projects that receive funding from the State's grant under the State-administered Workplace Literacy Program.

(Approved under OMB Control No. 1830–0026)

(Authority: 20 U.S.C. 1211(b)(3)(A))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 433.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 371(b)(7)(B) of the Act.

(Authority: 20 U.S.C. 1211(b)(7)(B))

§ 433.21 How does the Secretary make reallotments?

(a)(1) At the end of each fiscal year, the Secretary reallocates the portion of any State's allotment that—

(i) Exceeds 10 percent of the State's allotment under this program for the fiscal year; and

(ii) Was not obligated by the end of the fiscal year.

(2) A State may not obligate any portion of the excess described in paragraphs (a)(1) (i) and (ii) of this section after the end of the fiscal year.

(b) The Secretary reallots funds among the other States that themselves are not described in paragraph (a) of this section in the same proportion as each State's allocation for the fiscal year described in paragraph (a) of this section.

(c) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(d) Any amount that a State carries over from a prior year's allotment is deemed part of the State's allotment for the year into which funds are carried.

(e) In determining whether a State has obligated at least 90 percent of its allotment for a fiscal year, the Secretary considers as part of the State's allotment any funds reallotted to the State during that year or carried over from a prior year allotment.

(Authority: 20 U.S.C. 1211(b)(7)(C))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 433.30 Who is eligible to apply to a State for an award?

(a) Subgrants or contracts may be provided by the SEA to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) The State educational agency, a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) Partnerships must include at least one entity listed in paragraph (a)(1) of this seciton and one entity listed in paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 1211(b)(5))

§ 433.31 How does a State carry out the State-administered Workplace Literacy Program?

(a) An SEA carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding subgrants or contracts to eligible partnerships.

(b) The SEA may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) If an SEA awards a subgrant or contract to a partnership in which the SEA is a partner, the SEA shall—

(1) Take an active role in the partnership in addition to its administrative responsibilities under paragraph (a) of this section; and

(2) Serve as a full and equal partner with other members of the partnership.

(d) An SEA may use program funds for necessary and reasonable administrative costs incurred in performing its role as a partner in a project described in paragraph (c) of this section.

(Authority: 20 U.S.C. 1211(b))

§ 433.32 What are the local application requirements?

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain the information in section 371(a)(4) of the Act.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1211(b)(5))

Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?

§ 433.50 What other requirements must be met under this program?

(a) The Federal share of expenditures for projects funded under the State-administered Workplace Literacy Program is paid from the State's allotment under the program.

(b) A State Educational agency may reserve a portion of its allotment to pay 100 percent of the costs incurred by the SEA in obtaining evaluations required in § 433.10(c).

(c) A project funded by the SEA may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(d) An award to a partnership under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (c)(2) of this section;

(2) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (c)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (c)(1) of this section.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Partnerships shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(b)(1), (2))

§ 433.51 What are the program review and evaluation requirements?

The SEA shall provide for program reviews and evaluations in accordance with 34 CFR 426.40.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211(b))

§ 433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) An SEA shall ensure that projects serving adults with limited English proficiency or no English proficiency provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(b))

5. A new part 434 is added to read as follows:

PART 434—STATE-ADMINISTERED ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.

Subpart B—How Does A State Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must be Met After a State Receives an Award?

Subpart E—What Compliance Procedures May the Secretary Use?

Authority: 20 U.S.C. 1211a, unless otherwise noted.

Subpart A—General

§ 434.1 What is the State-administered English Literacy Program?

The State-administered English Literacy Program provides grants to States for English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(a)(1))

§ 434.2 Who is eligible for an award?

A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 343.10.

(Authority: 20 U.S.C. 1211a(a)(1), (2))

§ 434.3 What activities may the Secretary fund?

(a) The Secretary provides funds for establishing, operating, and improving English literacy programs of instruction that are designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

(b) Funds may also be used to provide support services for program participants, including child care and transportation.

(Authority: 20 U.S.C. 1201a(13) and 1211a(a)(1))

§ 434.4 What regulations apply?

The following regulations apply to the State-administered English Literacy Program:

(a) The regulations in this part 434.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211a)

§ 434.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1211a)

Subpart B—How Does A State Apply for an Award?

§ 434.10 What State plan requirements must be met?

(a) To receive a grant under this program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(1) The number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under section 372(a) of the Act and this part;

(2) The activities to be undertaken with the grant under this part and the manner in which these activities will promote English literacy and enable individuals of limited English proficiency in the State to participate fully in national life;

(3) How the activities described in paragraph (a)(2) of this section will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

(4) The resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

(5) The specific goals of the proposed activities and how achievement of these goals will be measured.

(b) An SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How community-based organizations (CBOs) with demonstrated capability to administer English proficiency programs will otherwise be fully involved in establishing and operating English literacy programs for individuals of limited English proficiency.

(Approved under OMB Control No. 1890-0026)

(Authority: 20 U.S.C. 1211a(a)(2))

Subpart C—How Does the Secretary Make an Award?

§ 434.20 How does the Secretary determine the amount of an award?

(a)(1) From the sums available for the purpose of grants to States under section 372 of the Act, the Secretary allots to—

(i) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands $10,000 each;

(ii) The Trust Territory of the Pacific Islands (Republic of Palau) an amount that bears the same ratio to $10,000 that the population of Palau ages 18 and over bears to the total population of the Trust Territory of the Pacific Islands as formally constructed (including the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) ages 18 and over; and

(iii) Puerto Rico, $25,000.

(2) From the remainder of these sums the Secretary allots to each of the 50 States and the District of Columbia an amount that bears the same ratio to that remainder as the number of persons 18 years of age and older who are limited English proficient of such State bears to the number of those persons in all States, except that no State shall receive less than $25,000. For purposes of paragraph (a)(2) of this section the term "State" does not include Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands (Republic of Palau).

(b) The Secretary relies on Census data on the number of individuals that speak English less than very well to make the determinations in paragraph (a) of this section.

(Authority: 20 U.S.C. 1211a(a))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 434.30 Who is eligible to apply to a State for a subgrant or contract?

The following entities are eligible to apply to the SEA for an award:

(a) A local educational agency (LEA).

(b) A CBO with demonstrated capability to administer English proficiency programs.

(c)(1) A public or private nonprofit agency, organization, or institution.

(2) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(3) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(d)(1) An LEA, CBO, or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(2) The LEA, CBO, or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(Authority: 20 U.S.C. 1203a(a) and 1211a(b))

§ 434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?

(a) An SEA may use not more than 5 percent of its grant for State administration, technical assistance, and training.

(b) After determining the amount to be used for State administration, technical assistance, and training under paragraph (a) of this section, the SEA shall allocate at least 50 percent of the remainder of its grant to programs operated by CBOs with demonstrated capability to administer English proficiency programs.

(Authority: 20 U.S.C. 1211a(b), (f)(3))

§ 434.32 How are awards made to eligible recipients?

(a) Except as provided in paragraph (c) of this section, an SEA shall make awards to eligible recipients using the provisions in 34 CFR 426.31.

(b) In applying the preference provisions in 34 CFR 426.31(a), the SEA shall ensure that it allocates at least 50 percent of the remainder of its grant to programs operated by CBOs, as described in § 434.31(b).

(c) An SEA may not use the consultation and comment provisions in 34 CFR 426.31(e) in making awards to CBOs.

(d) An SEA shall develop appropriate criteria for the review of an application submitted by a CBO to ensure that the applicant has demonstrated capability to administer an English proficiency program.

(Authority: 20 U.S.C. 1203a(a), 1206(c)(3), and 1211a(b))

§ 434.33 In what additional way may a State use funds under this program?

An award to an SEA under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(f)(3))

§ 434.34 What are the reporting and program review and evaluation requirements under this program?

An SEA that receives a grant under section 372 of the Act and this part shall—

(a)(1) Report information describing the activities funded under the SEA's grant for each fiscal year covered by the grant.

(2) Provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(b) Notify the Secretary if there is no longer a need in the State for the activities funded under the SEA's grant.

(Approved under OMB Control 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211a(a))

§ 434.35 What other condition applies to this program?

(a) An SEA shall provide for the needs of individuals of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) The programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C.1206a(d) and 1211(a)

Subpart E—What Compliance Procedures May the Secretary Use?

§ 434.40 When may the Secretary terminate a grant?

(a) The Secretary terminates a grant only if the Secretary determines that—

(1) The State has not made substantial progress in achieving the educational goals described in the State plan; or

(2) There is no longer a need in the State for the activities funded under this part.

(b) Prior to making a determination under paragraph (a) of this section, the Secretary provides the State an opportunity to change the administration of its grant in order to—

(1) Achieve substantial progress in meeting those educational goals; or

(2) Meet new needs through different activities.

(Authority: 20 U.S.C. 1211a(a)(3))

6. A new part 435 is added to read as follows:

PART 435—NATIONAL ENGLISH LITERACY DEMONSTRATION PROGRAM FOR INDIVIDUALS OF LIMITED ENGLISH PROFICIENCY

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must be Met After an Award?

Authority: 20 U.S.C. 1211a(d), unless otherwise noted.

Subpart A—General

§ 435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?

The National English Literacy Demonstration Program for individuals of limited English proficiency provides financial assistance for the development of innovative approaches and methods used in English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(d))

§ 435.2 Who is eligible for an award?

Public or private nonprofit agencies, institutions, or organizations are eligible for a grant, cooperative agreement, or contract under this program.

(Authority: 20 U.S.C. 1211a(d))

§ 435.3 What activities may the Secretary fund?

(a) The Secretary may support, directly or through awards, the development of innovative approaches and methods of English literacy education for individuals of limited English proficiency that use new instructional methods and technologies.

(b) These innovative approaches and methods must be designed to help limited English proficient adults, out-of-school youths, or both, to achieve full competence in the English language.

(Authority: 20 U.S.C. 1201a(13) and 1211a(d)(1))

§ 435.4 What regulations apply?

The following regulations apply to the National English Literacy Demonstration Program for Individuals of Limited English Proficiency:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts).

(b) The regulations in this part 435.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1221a)

§ 435.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1221a)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 435.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative

agreement on the basis of the criteria in § 435.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 435.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 435.21.

(Authority: 20 U.S.C. 1221a(d))

§ 435.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The need for the innovative approaches and methods of English literacy education for individuals of limited English proficiency that the project proposes to develop;

(2) How the needs were identified; and

(3) How the project will meet the needs.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Relate to the innovative approaches and methods of English literacy education for individuals of limited English proficiency proposed for use in the project;

(2) Are clearly stated;

(3) Are measurable; and

(4) Describe appropriate outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the project design and how it incorporates the use of new instructional methods and technologies;

(2) The extent to which the management plan is well-designed and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(4) How the applicant will select project participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Contribute to the possible replication of the project; and

(4) To the extent possible, include a third party evaluation.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project, particularly as their experience and expertise relate to English literacy and training in English-as-a-second-language for adults;

(ii) The appropriateness of the time that each person referred to in paragraph (e)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's agency, institution, or organization—

(1) Has experience in providing English literacy services for individuals of limited English proficiency;

(2) Will provide appropriate resources; and

(3) Will provide adequate facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1221a(d))

§ 435.22 What additional factor does the Secretary consider?

In addition to the criteria in § 435.21, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches and methods.

(Authority: 20 U.S.C. 1221a(d))

Subpart D—What Conditions Must be Met After an Award?

§ 435.30 How may States use funds under this program?

An award to a State educational agency under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1221a(d))

§ 435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

(a) Projects that serve individuals of limited English proficiency or no English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211a)

117. A new part 463 is added to read as follows:

PART 436—ADULT MIGRANT FARMWORKER AND IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Sec.

Authority: 20 U.S.C. 1213, unless otherwise noted.

Subpart A—General

§ 436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?

The Adult Migrant Farmworker and Immigrant Education Program provides financial assistance for adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.2 What activities may the Secretary fund?

The Secretary provides awards for planning, developing, and evaluating projects that are designed to provide adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.3 Who is eligible for an award?

(a) The following entities are eligible for a direct grant under the Adult Migrant Farmworker and Immigrant Education Program:

(1) A State educational agency (SEA).

(2) A local educational agency (LEA).

(3)(i) A public or private nonprofit agency, organization, or institution.

(ii) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(iii) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(4)(i) An LEA or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objective of the Act.

(ii) The LEA or public or private nonprofit agency, organization, or instituion shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(b)(1) To be eligible for a grant, the applicant must propose a project of the type described in the State's plan as appropriate for meeting the educational needs of adult migrant farmworkers and immigrants.

Cross-Reference: See 34 CFR 426.12(e).

(2)(i) An applicant other than an SEA shall obtain from the SEA a certification that the proposed project meets the requirements of paragraph (b)(1) of this section and forward that certification to the Secretary with the application.

(ii) An SEA that declines to issue a certification for a proposed project shall provide the applicant and the Secretary a written statement of its reasons for withholding certification.

(Authority: 20 U.S.C. 1203a(a) (1), (2), and 1213(a))

§ 436.4 What regulations apply?

The following regulations apply to the Adult Migrant Farmworker and Immigrant Education Program:

(a) The regulations in this part 436.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213(a))

§ 436.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 436.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects that meet the special needs of—

(1) Adult migrant farmworkers; or

(2) Adult migrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 436.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 436.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 436.22.

(Authority: 20 U.S.C. 1213(a))

§ 436.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine how it addresses the literacy training needs of adult migrant farmworkers, adult immigrants, or both.

(2) The Secretary looks for information that describes—

(i) The literacy training needs of adults to be served by the project; and

(ii) The number and characteristics of the adults to be served by the project.

(b) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) How the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will select participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the services to be offered;

(2) Evidence of past successful performance using the model being proposed, if appropriate;

(3) A complete description of the methodology to be used including some or all of the following components:

(i) A thorough assessment of the needs of individual students.

(ii) Recruitment strategies that are culturally appropriate.

(iii) Flexibility in the manner that services are offered, e.g., the provision of an accessible training site and schedule and the use of aides.

(iv) Individualized treatment.

(v) Counseling; and

(4) Any ongoing and planned activities in the community that will serve the same population as the project; and the extent to which coordination with those activities is planned so that a comprehensive package of services is provided for the project participants and the project does not duplicate existing activities.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured; and

(4) To the extent possible, include a third party evaluation.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1213(a))

§ 436.23 What additional factor does the Secretary consider?

In addition to the criteria in § 436.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1213(a))

Subpart D—What Conditions Must be Met After an Award?

§ 436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects that serve adults with limited English proficiency or no English proficiency shall provide for the needs for these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206(d) and 1213(a))

8. A new part 437 is added to read as follows:

PART 437—NATIONAL ADULT LITERACY VOLUNTEER TRAINING PROGRAM

Subpart A—General.

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1213a, unless otherwise noted.

Subpart A—General

§ 437.1 What is the National Adult Literacy Volunteer Training Program?

The National Adult Literacy Volunteer Training Program provides financial assistance for projects that train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.2 Who is eligible for an award?

The following entities are eligible for a direct grant or cooperative agreement under the Adult Literacy Volunteer Training Program:

(a) State educational agencies.

(b) Local educational agencies.

(c) Public or private nonprofit agencies, organizations, or institutions.

(Authority: 20 U.S.C. 1213a(a))

§ 437.3 What activities may the Secretary fund?

The Secretary supports planning, implementation, and evaluation of projects designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.4 What regulations apply?

The following regulations apply to the National Adult Literacy Volunteer Training Program:

(a) The regulations in this part 437.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213a)

§ 437.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definition also applies to this part:

Elderly means an individual 60 years of age or older.

(Authority: 20 U.S.C. 1213a(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 437.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 437.21.

(b) The Secretary may award up to 100 points, including a reserved 15

points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 437.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 437.21.

(Authority: 20 U.S.C. 1213a(a))

§ 437.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets volunteer training needs, including consideration of—

(1) The extent to which the project will train adult volunteers, especially the elderly, who can be placed in an adult education program immediately upon completion of the training program;

(2) The extent to which the project has identified specific training needs for volunteers in the geographical area to be served for which resources are not available; and

(3) How these training needs were identified.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are clearly stated;

(2) Are measurable; and

(3) Will result in appropriate project outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the training design;

(2) The extent to which the participant recruitment and selection plan is effective and is designed to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(3) The extent to which the plan of operation provides for the effective management and efficient administration of the project; and

(4) The extent to which the training program relates appropriately to any training programs in the community.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and are appropriate to the project;

(2) Include a description of the outcomes expected for participants;

(3) Include a description of how these outcomes will be measured; and

(4) Include a plan, as a part of the project, to follow up the trainees' placement as tutors in adult education programs.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualification of the project director;

(ii) The qualifications of trainers and other key personnel;

(iii) The appropriateness of, and time allotted to, each of the assigned tasks; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualification under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's agency, organization, or institution—

(1) Has experience in providing literacy services to adults;

(2) Will provide adequate training facilities; and

(3) Will provide other appropriate resources.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1213a(a))

§ 437.22 What additional factors does the Secretary consider?

In addition to the criteria in § 437.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches.

(Authority: 20 U.S.C. 1213a(a))

9. A new part 438 is added to read as follows:

PART 438—STATE PROGRAM ANALYSIS ASSISTANCE AND POLICY STUDIES PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1213b(a), unless otherwise noted.

Subpart A—General

§ 438.1 What is the State Program Analysis Assistance and Policy Studies Program?

The State Program Analysis Assistance and Policy Studies Program assists States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.2 Who is eligible for an award?

(a) Public or private nonprofit agencies, organizations, or institutions are eligible for a grant or cooperative agreement under this program.

(b) Business concerns or public or private nonprofit agencies, organizations, or institutions are eligible for a contract under this program.

(Authority: 20 U.S.C. 1213b(a))

§ 438.3 What activities may the Secretary fund?

The Secretary may support the following directly or through awards:

(a) An analysis of State plans and of the findings of evaluations conducted in accordance with section 352 of the Act, with suggestions to State educational

agencies for improvements in planning or program operation.

(b) The provision of an information network (in conjunction with the National Diffusion Network) on the results of research in adult education, the operation of model or innovative programs (including efforts to continue activities and services under the program after Federal funding has been discontinued), successful experiences in the planning, administration, and conduct of adult education programs, advances in curriculum and instructional practices, and other information useful in the improvement of adult education.

(c) Any other activities, including national policy studies, which the Secretary may designate, that assist States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.4 What regulations apply?

The following regulations apply to the State Program Analysis Assistance and Policy Studies Program:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts).

(b) The regulations in this part 438.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213b(a))

§ 438.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213b(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 438.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 438.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 438.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 438.21.

(Authority: 20 U.S.C. 1213b(a))

§ 438.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to determine how well the objectives of the proposed project will assist States in evaluating the status and progress of their adult education programs.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the proposed project meets specific needs, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs relate to project objectives; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each aplication to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed project activities; and

(2) Costs are necessary and reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials avialable; and

(3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.

(Authority: 20 U.S.C. 1213b(a))

§ 438.22 What additional factors does the Secretary consider?

In addition to the criteria in § 438.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to assisting States in evaluating the status and progress of their adult education programs.

(Authority: 20 U.S.C. 1213b(a)).

10. A new part 441 is added to read as follows:

PART 441—ADULT EDUCATION FOR THE HOMELESS PROGRAM

Subpart A—General

Sec.
441.1 What is the Adult Education for the Homeless Program?
441.2 Who may apply for an award?
441.3 What activities may the Secretary fund?
441.4 What regulations apply?
441.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

441.20 How does the Secretary evaluate an application?
441.21 What selection criteria does the Secretary use?
441.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

441.30 How may an SEA operate the program?

Authority: 42 U.S.C. 11421, unless otherwise noted.

Subpart A—General

§ 441.1 What is the Adult Education for the Homeless Program?

The Adult Education for the Homeless Program provides financial assistance to State educational agencies (SEAs) to enable them to implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their State.

(Authority: 42 U.S.C. 11421(a))

§ 441.2 Who may apply for an award?

State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may apply for an award under this program.

(Authority: 42 U.S.C. 11421(d))

§ 441.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements for projects that implement a program of literacy training and basic skills remediation for adult homeless individuals. Projects must—

(a) Include a program of outreach activities; and

(b) Coordinate with existing resources such as community-based organizations, VISTA recipients, the adult basic education program and its recipients, and nonprofit literacy-action organizations.

(Authority: 42 U.S.C. 11421(a))

§ 441.4 What regulations apply?

The following regulations apply to the Adult Education for the Homeless Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, Nonprofit Organizations) for grants, including cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal governments.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 441.

(Authority: 42 U.S.C. 11421)

§ 441.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 103 and 702(d), respectively, of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*):

Homeless or homeless individual.
State.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*).

Adult means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under the applicable State law.

Basic skills remediation and *literacy training* mean adult education for homeless adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, that is designed to help eliminate this inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

Eligible recipients means public or private agencies, institutions, or organizations, including religious or charitable organizations, eligible to apply for a contract from a State educational agency to operate projects, services, or activities.

Outreach means activities designed to—

(1) Identify and inform adult homeless individuals of the availability and benefits of the Adult Education for the Homeless Program; and

(2) Assist those homeless adults, by providing active recruitment and reasonable and convenient access, to participate in the program.

(Authority: 42 U.S.C. 11421)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 441.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 441.21.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 441.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in

the Federal Register, the Secretary may assign the reserved points among the criteria in § 441.21.

(Authority: 42 U.S.C. 11421)

§ 441.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;

(ii) Alcohol and drug abuse counseling;

(iii) Individual and group mental health counseling;

(iv) Health care;

(v) Child care;

(vi) Case management;

(vii) Job skills training;

(viii) Employment training and work experience programs; and

(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Act, including consideration of—

(1) (i) An estimate of the number of homeless persons expected to be served and the number of homeless adults to be served within each participating school district of the State.

(ii) For the purposes of the count in paragraph (b)(1)(i) of this section, an eligible homeless adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) of this section were determined;

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy action organizations, and existing organizations providing shelters to the homeless;

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d) (1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d) (1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e) (1) and (2) of this section.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the applicant plans to make available and the methods for making the materials available.

(Approved under OMB Control No. 1830-0506)

(Authority: 42 U.S.C. 11421)

§ 441.22 What additional factor does the Secretary consider?

In addition to the criteria in § 441.21, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 42 U.S.C. 11421)

Subpart D—What Conditions Must be Met After an Award?

§ 441.30 How may an SEA operate the program?

An SEA may operate the program directly, award subgrants, or award contracts to eligible recipients. If an SEA awards contracts, the SEA shall distribute funds on the basis of the State-approved contracting process.

(Authority: 42 U.S.C. 11421(a)).

Note: This appendix is published in the **Federal Register** with the final regulations but is not to be codified in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking for the State-Administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education published on April 12, 1989. Each comment is followed by a discussion that indicates why a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Part 425—Adult Education—General Provisions

Definitions (Section 425.4)

Comment: One commenter expressed concern about the definitions of adult basic education, adult secondary education, and adults with limited English proficiency (LEP). The commenter interpreted these definitions as requiring States to group students by "categorical definitions based on a grade level kind of achievement or implied ability level." The commenter also thought that the regulations precluded programs from serving LEP students if those students had attained sixth grade basic literacy. The commenter suggested that the regulations add at least an "instructional definition" relating to "functional literacy as situational achievement." The commenter stated that adding "instructional definitions" would "reduce confusion between instructional type and program category" and could "provide insight into what curriculum or pedagogy can be considered, what can be taught and how it can be taught."

Discussion: The regulations allow, but do not require, States to use grade level measures for distinguishing between adult basic and adult secondary education. Nothing in the regulations requires States to use a specific type of instruction for either adult basic or secondary education, and the Secretary believes it would be appropriate to do this. The commenter apparently misunderstood the regulations' treatment of LEP students. States have flexibility to address any particular needs these students may have at both the adult basic and secondary levels.

Changes: None.

Definition of Expansion (Section 425.4)

Comment: A commenter suggested that expansion should not be defined only as increasing the number of agencies—other than LEAs—used to provide adult education and support services in order to increase the number of adults served. The commenter sees this definition in conflict with the legislative purpose to improve educational opportunities. The commenter stated that in some instances better services could be provided by reducing the number of deliverers of services but increasing the breadth and scope of services available to more participants. The commenter, therefore, recommended that expansion be redefined to include an increase in agencies, sites, available services, or number of students served.

Discussion: The definition of expansion implements section 342(c) (3) and (4) of the Act. These provisions specifically require that agencies other than LEAs be used to expand the delivery of services. The Secretary believes that this expansion should include an increased number of agencies other than LEAs, in order to increase the number of adults served. The Secretary agrees that programs should be improved in other ways; however, these improvements should not be used in lieu of the type of expansion contemplated by the regulatory definition.

Changes: None.

Definition of State Administrative Costs (Section 425.4)

Comments: Several commenters raised questions concerning the definition of State administrative costs. Concerns centered on the exclusion of ancillary activities, such as evaluation, teacher training, dissemination, technical assistance, and curriculum development, from the definition. Some commenters interpreted the regulations as prohibiting the use of funds for these activities. One commenter supported the definition since it excludes ancillary services from the statutory cap on State administrative costs.

Discussion: The Secretary agrees with the commenters that these designated activities are vital to an effective adult education program. The exclusion of these activities from the definition is generally carried over from previous regulations. Their continued exclusion helps clarify that these activities are allowable costs that are not included in the statutory cap on State administrative costs that becomes effective July 1, 1991. The Secretary has decided to exclude the enumerated activities from the definition, and has decided to modify the definition to describe these activities as "additional" rather than "ancillary."

Change: The definition now refers to additional allowable activities that a State may conduct in addition to its administrative responsibilities.

Part 426—Adult Education State-Administered Basic Grant Program

Administrative Staff (Section 426.3(b)(5))

Comments: Several commenters, while supporting the need for the assignment of qualified personnel to administer the program, pointed out that the regulations do not define "qualified" and do not provide for Federal enforcement of personnel qualifications.

Discussion: The purpose of this provision is to emphasize the factors a State must consider in assigning personnel to carry out its responsibilities under the Act. The Secretary sees no need to prescribe the exact type of education and experience that make a State's personnel "qualified" to carry out these responsibilities.

Changes: None.

Tuition and Fees (Section 426.10(b)(7))

Comments: Several commenters took exception to the requirement that State applications include an assurance that prohibits charges or required purchases for participants in adult basic education programs. These commenters thought the tuition and fees could be used as additional revenue for matching, purchasing additional materials, or program expansion. Several other commenters endorsed the prohibition against charging adult basic education students, since fees could be construed as barriers to participation. Other commenters recommended a sliding-scale fee structure, a waiver for the indigent, or a voluntary fee. One commenter agreed with the prohibition on charges for instructional services, but recommended that participants be allowed to purchase textbooks. Another commenter favored a charge for books and a modest fee for General Education Development (GED) studies.

Discussion: Historically, the Secretary has supported a prohibition on charges for adult basic education services, or requiring participants to purchase books or other materials. This policy furthers the broad statutory purpose to reach educationally disadvantaged adults. It has been reflected in past program regulations and is continued in § 426.10(b)(7). Nothing in the legislative history of Public Law 100–297 indicates that Congress disapproved of this policy. Moreover, the Secretary believes that tuition and fees would actually undermine the statute's requirements regarding efforts to reach underserved adults and to attract and assist their meaningful participation in adult education. Undereducated adults are precisely those persons least likely to have adequate financial resources available for educational expenses.

Even if the Secretary were to modify the prohibition, States and local recipients still could not apply tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program. See 34 CFR 76.534.

With regard to the purchase of books or materials, there is nothing in the referenced program assurance to prevent an adult basic education participant from purchasing books or other materials should the participant desire to do so. The prohibition does not allow these purchases to be required. The Secretary wishes to point out that this prohibition applies only to adult basic education programs, services, and activities. Therefore, States are permitted to assess necessary and reasonable charges for adult secondary education programs, services, and activities, such as services that prepare participants for high school equivalency diplomas or GED examinations.

Changes: None.

Public Comment on State Plans (Section 426.11(b))

Comment: One commenter expressed concern that adequate notice may not be given for public meetings on the State plan. The commenter favored public notification at least three weeks in advance through invitations and the news media.

Discussion: Section 342(a)(2) of the statute requires an SEA to conduct public hearings so that all segments of the public will have an opportunity to present their views and recommendations regarding the State plan. Section 342(a)(2) also requires that these hearings be preceded by appropriate and sufficient notice. The regulatory language in § 326.11(b) is based on the statute. While the Secretary is very supportive of ensuring that appropriate and sufficient notice is given to the public, the Secretary does not believe it is necessary to be more prescriptive in this requirement, since States should be allowed to structure public participation according to local needs and circumstances.

Change: None.

State Plan (Section 426.12)

Comment: A commenter saw § 426.12 as creating redundancies in the required content of a State plan. Particular attention was directed to the descriptions required on expanding the delivery system, outreach, and providing for the needs of limited English proficient adults. The commenter suggested that these areas be consolidated and included in § 426.12(a)(2)(ii)(A). Likewise, the commenter suggested that the use of volunteers not be addressed separately but be included as a part of the § 426.12(a)(13).

Discussion: The regulations follow the general format established by the Act for the components of the State plan. Neither the statute nor the regulations require redundant information. The Secretary does not require the States to submit their plans in a particular format. However each plan must satisfy the requirements of the statute and regulations.

Changes: None.

Program Goals (Section 426.12(a)(2))

Comments: Some commenters requested clarification of the meaning of "expected outcomes" as they relate to programs, services, and activities that must be described in a State plan. One commenter asked who decides which outcomes are important.

Discussion: Neither the statute nor the regulations make any attempt to prescribe specific outcomes. The SEA has the responsibility to identify, determine the importance of, and define the expected outcomes to be derived from programs, services, and activities under its State plan. In doing so, it should design and administer a statewide program that best meets the adult education needs of all segments of the adult population, especially adults who are educationally disadvantaged. Contributing to the State's decisions are the public and private sectors through their involvement in the development of the State plan. A State advisory council, if established or designated, also makes a contribution.

Changes: None.

Addressing Needs of Special Populations (Section 426.12(a)(9))

Comment: One commenter opposed the requirement that the State plan describe how the particular educational needs of designated special populations in the State will be addressed. The commenter suggested that the provision was unnecessary and would generate needless paperwork. The commenter suggested that a better provision would simply require States to include a needs assessment of these special populations with an indication of whether the assessment suggests a programmatic emphasis on one population or another. The commenter suggested that a good needs assessment will identify those particular populations that merit a greater claim on resources.

Discussion: Section 426.12(a)(9) implements a requirement in section 342(c)(7) of the statute. In addition, both the statute and regulations require a thorough needs assessment of the spectrum of adults eligible for services as part of the formulation of a State plan. The Secretary agrees with the commenter that a needs assessment will help a State in directing its Federal, State, and local resources to those populations most in need of educational services.

Changes: None.

Review of State Plan (Section 426.13 (b) and (c))

Comments: One commenter suggested that States submit the State plan only to the State Single Point of Contact rather than to the entities in § 426.13(b) and (c).

Discussion: Section 342(a)(3)(A) of the Act requires that an SEA provide specific State entities having responsibility for vocational education, the Job Training Partnership programs, and postsecondary education an opportunity to review and comment on the State plan. That section further requires that the State plan contain the comments of those entities as well as the State's responses to the comments. Section 342(a)(3)(B) of the Act sets forth similar provisions regarding the State advisory council, if a council has been established. The regulations in § 426.13(b) and (c) implement the statutory language. States must also follow any applicable State procedures respecting the State Single Point of Contact. See § 425.3(a)(5), which references the Department's regulations on intergovernmental review.

Changes: None.

Approval of State Plan Amendments (Section 426.23)

Comment: One commenter suggested that the Secretary be allowed a shorter response time for the approval of State plan amendments. The commenter suggested a maximum of 30 days be allowed since programs may have to change quickly.

Discussion: Section 426.23 follows section 351(b) of the statute, which allows the Secretary a maximum of 60 days to take action on a State plan amendment. While it would be inappropriate to change this statutory provision, the Secretary anticipates that most amendments will be acted on in less than 60 days. The Secretary will respond to any proposed amendment as quickly as possible.

Changes: None.

Multi-Year Grants or Contracts (Section 426.31 (a) and (b))

Comment: A commenter suggested that annual awards are often redundant for established, long-term providers. The commenter further suggested that the regulations should give SEAs discretion to award multi-year grants of contracts.

Discussion: These regulations permit multi-year grants or contracts as well as annual awards. Note that States must nevertheless ensure that they generally give preference to local eligible recipients that have a demonstrated capacity to recruit and serve educationally disadvantaged adults. See § 426.31(a). Note also that these regulations strengthen a State's responsibilities to review and evaluate projects—however long their duration—in order to ensure their effectiveness. See §§ 426.22 and 426.46.

Changes: None.

Approval of Local Applications (Section 426.31(c)(1))

Comments: Several commenters suggested that the language of § 426.31(c)(1) should define more clearly the scope of one of the descriptions required of a local applicant. One commenter recommended that the language be changed to read "a description of current programs, activities, and services receiving assistance from Federal, State, and local sources that support the purposes of the State plan in the geographical area proposed to be served by the applicant." Another commenter suggested that the provision be changed to "a description of current programs, activities, and services receiving assistance from Federal, State, and local adult education sources in the geographic area proposed to be served."

Discussion: The Secretary agrees that the language needs clarification. The Secretary believes the provision is best clarified by requiring a local applicant to provide "a description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant."

Changes: The language of § 426.31(c)(1) has been clarified.

Coordination of Programs (Section 426.31(c)(3))

Comment: Section 426.31(c)(3) requires that a local application contain assurances that the adult education programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs. One commenter suggested that this assurance cover only unnecessary duplication.

Discussion: The language of section 322(a)(3) of the statute clearly states that Federally assisted adult education must not be "duplicative" of other programs. This indicates that no duplication is considered necessary.

Changes: None.

Corrections Education and Education for Other Institutionalized Individuals (Section 426.32(a)(1)(iv))

Comment: One commenter suggested adding "high school equivalency, external diploma, and GED Testing" to the term "secondary school credit programs" in § 426.32(a)(1)(iv). The commenter suggested that this would more adequately describe the universe of programs in secondary education for adults that may be provided in programs for corrections education and education for other institutionalized individuals.

Discussion: Section 326(a)(1) of the Act lists the types of educational services that may be a part of academic programs for corrections education and education for other institutionalized individuals. "Secondary school credit programs" is included in this list. The Secretary agrees that this term includes high school equivalency, external diploma, or General Education Development (GED). The Secretary also believes that it is unnecessary to specify this in regulations.

Changes: None.

Supportive Services for Criminal Offenders (Section 426.32(a)(6))

Comment: One commenter recommended that § 426.32(a)(6) include a list of the authorized support services for criminal offenders or that a definition of supportive services be provided.

Discussion: Section 326(a)(6) of the statute authorizes supportive services for criminal offenders in corrections education programs. The statute also provides for special emphasis on coordination of educational services with agencies furnishing services to criminal offenders after their release. Because the needs for these services may vary, the Secretary believes that there is no need, at this time, to provide a comprehensive definition of authorized support services. In general, these services should assist criminal offenders in the transition from education in their institutions to education in the community.

Changes: None.

Special Experimental Demonstration Projects and Teacher Training Projects (Section 426.33(b)(2))

Comment: One commenter recommended eliminating the descriptions and assurances required in local applications for special experimental demonstration projects and teacher training projects under section 353 of the statute. The commenter also called for the elimination from the regulations of the application requirement to indicate the project's continuation upon the completion of Federal assistance under the statute. The commenter suggested that the SEA be given sole responsibility for determining criteria for approval and components of applications for these projects.

Discussion: The descriptions and assurances delineated in § 426.31(c) and referenced in § 426.33(b)(2)(i) implement section 322(a)(3) of the statute. These descriptions and assurances apply to all local applications to be approved by the SEA, including applications under section 353 of the Act. The requirements relating to plans for continuation are created by section 353(b) of the Act.

Changes: None.

State Administrative Costs (Section 426.40(a))

Comments: Several commenters proposed that the five percent cap on State administrative costs be raised.

Discussion: Section 331(c) of the Act places a limitation on State administrative costs. Beginning with grants awarded on July 1, 1991, an SEA may use no more than five percent of its grant or $50,000, whichever is greater, to pay the costs of its administration of the State's program. For grants awarded prior to that date, an SEA may

determine what percent of its grant is necessary and reasonable for State administrative costs. These provisions are implemented in § 426.40(a) of the regulations.

Changes: None.

Local Administrative Costs (Section 426.40(b))

Comments: Several commenters addressed local administrative cost limits. One commenter endorsed energetic vigilance and scrutiny of requests to negotiate for greater administrative costs. Another saw the provision that permits negotiation for a higher percentage as an area for potential abuse, asked if there are guidelines on negotiating administrative costs, and suggested that the five percent limit be non-negotiable. Conversely, other commenters expressed the view that the five percent cap, although negotiable, is too low and seems almost punitive. Still another commenter indicated that good programs require strong, full-time administrative leadership, and that an SEA should have the flexibility to permit up to 20 percent for local administrative costs if justified by a local provider of service. Another commenter suggested that the five percent cap all but excludes community and volunteer organizations with low fiscal bases, and therefore proposed a higher limit of ten percent.

Discussion: Section 323 of the Act clearly imposes a five percent limitation on local administrative costs but also provides for an SEA to negotiate a higher rate. Congress principal purpose was to restrict local administrative costs in order to ensure that a maximum amount of funds be used for direct services. However, Congress also recognized that in some cases five percent would provide an insufficient amount of local administrative costs. Therefore, the statute provides for the SEA to negotiate with the local recipients in order to determine an adequate level of funds to be used for non-instructional purposes.

The Secretary does not believe that detailed, prescriptive guidance on what constitutes a need for a higher administrative cost rate is warranted at this time. The Act does not impose such a requirement and the Secretary believes that within the framework of the law and congressional intent, States should have the flexibility to develop their own guidelines.

Changes: None.

Maintenance of Effort (Section 426.42)

Comments: Several commenters addressed the maintenance of effort provisions. Two commenters questioned the omission of any provision to allow a minimal percentage variation. Other commenters expressed the concern that only State funds, or only those funds under the direct authority of the SEA, should be considered for maintenance of effort purposes. One commenter viewed the maintenance of effort requirement as a factor contributing to inaccuracies in reports of the actual non-Federal level of effort and inhibiting the expansion of programs to community-based and volunteer organizations that do not have the fiscal base of public institutions.

Discussion: Section 361(b) of the statute states that "No payment may be made to any State from its allotment for any fiscal year unless . . ." the maintenance of effort requirement is met. Section 426.42 implements this statutory provision. As described in § 426.43, the statute does make provision for a one-year waiver of the maintenance of effort requirement. A waiver may be granted only in the case of certain exceptional or uncontrollable circumstances.

With regard to the expenditures to be considered in determining a State's compliance with the maintenance of effort requirement, the statute requires broadly that a State maintain expenditures "for adult education from non-Federal sources." The Secretary believes that this phrase should be interpreted to include certain expenditures in addition to those made from State funds. All of the expenditures that the Secretary considers in determining compliance relate to adult education programs, services, and activities that receive assistance from, or are directly conducted by, the SEA or another State agency. A more restrictive definition would not accurately measure the State's non-Federal level of effort for adult education.

Changes: None.

Program Reviews and Evaluations (Section 426.46(b))

Comments: Several comments were received on the proposed provision in § 426.46(b) that would require an SEA to include standardized test data in its review of the effectiveness of adult education programs, services, and activities. One commenter recommended that the provision concerning standardized test data either be deleted or made optional. Another commenter asked whether States must obtain standardized test data for every student. Some commenters interpreted the regulations as precluding what they regarded as better or more effective assessment methods, and suggested that there are many other criteria to use in determining program effectiveness other than standardized test analyses. Commenters agreed that measures of accountability are needed, but suggested they be brief and non-threatening to learners. The commenters stated that students should be assessed in terms of skill strengths and weaknesses rather than by grade level norms. Commenters also raised questions about benchmarks to determine program effectiveness, criteria or guidelines to be used in the selection of assessment instruments for special populations in adult education, and standards for personnel who administer assessments in the field. Other commenters suggested that the Department identify a variety of standardized tests or specify which assessment instruments are appropriate for the various populations of adults.

Discussion: The requirements in § 426.46(b) for reviewing programs build on section 352 of the statute. Section 352 specifically requires use of standardized test data to determine the effectiveness of programs.

A test is standardized if it is based on a systematic sampling of behavior, has data on reliability and validity, is administered and scored according to specific instructions, and is widely used. A standardized test may be norm-referenced or criterion-based. The tests may, but need not, relate to readability levels, grade level equivalencies, or competency-based measurements.

The Secretary believes that it is inappropriate for the Department to select or approve the selection of specific standardized tests to be administered in adult education programs. SEAs must determine which standardized tests are appropriate. The Secretary wishes to underscore that States are required to gather and analyze data in addition to standardized test data in order to determine whether programs are effective. States have flexibility to determine which criteria measure effectiveness within the framework set forth for reviews and evaluations in § 426.46. Sections 426.12(a)(15) and 426.22 highlight a State's responsibilities to improve programs through reviews and evaluations. The Secretary does not believe that a State need have standardized test data for every student. However, the State must have sufficient standardized test data to determine the extent to which its programs and grant recipients meet the goals of the State plan and have improved their capacity to achieve the purposes of the Act. See § 426.46(b). Note that the Secretary may require certain data—other than standardized test data—for all students in a particular project (see, for example,

§ 426.46(c)(3)(iv)], or for all students in the State (see, for example, § 426.10(b)(10) and pertinent provisions in § 426.46).

Changes: None.

Program Reviews and Evaluations (Section 426.46(c))

Comments: Several commenters suggested eliminating the requirement to consider the "effect of the program on the subsequent work experience of participants, completers, and graduates" as a factor in evaluating programs. The commenters suggested that it is not feasible to collect these data on a systematic basis without excessive expenditures and that the requirements would place an undue burden on the States.

Discussion: Section 426.46(c)(3) builds on the requirements in section 352(2) of the statute. The Secretary sees these data relating to employment and employability of participants as valuable measures of achievements through the program. Economic achievements, along with educational and societal achievements, have been sought since the inception of the federally assisted effort on behalf of undereducated adults.

A State may choose to use a portion of its Federal allotment or State matching funds to obtain the required evaluation. Expenditures for this activity are not considered State administrative costs.

Changes: None.

Reporting (Section 426.46(d))

Comment: A commenter, while not opposing data acquisition and reporting requirements, suggested that allowing amendments to reports and a longer time period for compiling complete data would improve the system and strengthen the accuracy of the data. The commenter also suggested that reporting requirements contained in these regulations be expanded to include additional programs providing education to adults, such as those administered and funded through the Departments of Health and Human Services, Labor, and Defense. This was proposed as a means to provide a more complete and accurate understanding of adult education in the Nation.

Discussion: Historically, States have been required to submit reports within 90 days of the close of each program year. This requirement is carried over into § 426.46(b). Also see 34 CFR 80.40 and 80.41. A State may receive an extension of the due date based on a justified request to the Department. A State may also amend its reports if determined necessary.

The Secretary does not have authority to set reporting requirements for programs funded and administered through other agencies of the Federal Government.

Changes: None.

State Advisory Councils (Sections 426.50, 426.51, and 426.52)

Comments: Several commenters expressed concerns about the appointment and operation of State advisory councils. While supporting a council as an important element of the program, one commenter suggested either eliminating or making less restrictive the regulatory requirements relating to representation, responsibilities, the Governor's authority with respect to the level of funding, and use of State administrative funds to defray expenses of councils.

Discussion: The regulatory language relating to council representation, responsibilities, and the Governor's authority to determine funding levels follows the framework of the statute. In accompanying legislative history, Congress also indicated its intention that Federal funds used to support a council be considered part of State administrative costs. (See Item 17 of the Conference Report, House Report No. 100-567, 100th Cong. 2d Sess. p. 383.) Historically, a similar requirement has been included in previous program regulations.

The Secretary recognizes that a State may wish to use non-Federal funds to establish an advisory body that is not subject to the provisions in section 332 of the statute and these regulations. Nothing in the statute or regulations forbids this. However, the non-Federal funds used to support the advisory body must not be used to help meet the State's cost-sharing requirements under the State plan. Of course if a council is supported at least in part with Federal funds, it must meet the statutory and regulatory requirements.

Changes: Section 428.53 has been added to clarify that the requirements of the statute and regulations apply only to councils supported with Federal funds. This new section permits a State to establish an advisory body that is not subject to the statutory and regulatory requirements if the advisory body is wholly supported with non-Federal funds. This new section also explains that the non-Federal funds may not be used for cost-sharing.

Part 432—National Workplace Literacy Program

Definitions of Workplace Literacy and Technology (Section 432.5)

Comment: One commenter suggested that the regulations define terms such as "workplace literacy" and "technology." The commenter was particularly interested in establishing the scope of authorized activities related to technologies such as computers.

Discussion: Section 371(a)(3) of the statute broadly defines the types of activities that may be funded under this program. Section 432.3 reiterates this definition. The Secretary believes it is unnecessary to elaborate on the definition at this time. It would also be unwise to give abstract guidance on whether computers can be used in particular workplace literacy projects. As a general matter, nothing in the statute or regulations precludes use of computers as a means of providing instruction if this is necessary and reasonable under the circumstances of a project.

Changes: None.

Selection Criteria—Program Factors (Section 432.22(a)(1))

Comment: One commenter requested that limits be placed or examples be given of types of activities authorized under § 432.22(a)(1).

Discussion: Section 432.22(a)(1) is part of a selection criterion and does not attempt to define the scope of authorized activities under this program. The types of activities that are authorized under this program are listed in § 432.3.

Changes: None.

Selection Criteria—Quality of Training (Section 432.22(c))

Comment: One commenter recommended that § 432.22(c) include the additional language: "provide training resulting in demonstrated mastery of competencies needed in the workplace and in adult life." The commenter suggested that workplace literacy programs will be most effective if they teach skills related to current and emerging job requirements and to "broader adult needs."

Discussion: The commenter's concern regarding the relationship of the instruction to the requirements of the workplace is addressed in § 432.22(a). That section criterion references, among other things "a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace." The commenter's

reference to "broader adult needs" misses the focus of this program, which is specifically on workplace literacy. It would be inappropriate to encourage or fund projects including services not directly related to workplace literacy.

Changes: None.

Selection Criteria—Quality of Training (Section 432.22(c)(2))

Comment: One commenter was concerned about the selection criterion in § 432.22(c)(2). The commenter suggested that individualized educational plans (IEP) are not usually required for English-as-a-second language (ESL) students. Further, the commenter proposed that a distinction be made between requirements for ESL, basic skills remediation, and GED training.

Discussion: Section 432.22(c)(2) is the selection criterion the Secretary uses to evaluate the quality of training to be provided in proposed projects. Nothing in this criterion requires an applicant to use IEPs. However, the Secretary believes that IEPs provide benefits in all types of workplace literacy programs, including those that provide work-related ESL training. Consequently, the quality of an applicant's proposed training is regarded more favorably to the extent it uses IEPs. This increases the likelihood that the application will be selected for funding.

Changes: None.

Selection Criteria—Evaluation Plan (Section 432.22(f))

Comment: One commenter questioned whether the evaluation plans described in § 432.22(f) should include the effect of the program on the participants' job advancement and job performance in the unionized industries. The commenter felt job advancement may be based solely on factors like seniority, and that improvements in performance may have little relationship to the program provided. The commenter also felt that such information was especially difficult to obtain in unionized industries, and that the regulations inappropriately called for the establishment of a control group.

Discussion: The Secretary believes that an evaluation plan should be reviewed on a number of factors. These include the extent to which the plan will evaluate the effects of the program on the job advancement and the job performance of the participants. These effects are relevant for any industry, regardless of whether it is unionized. Section 432.22(f) neither requires nor precludes the establishment of a control group.

Changes: None.

Comment: One commenter interpreted § 432.22(f) as requiring quantifiable data on program effectiveness for the evaluation plan. The commenter suggested that the recordkeeping needed to provide the information would require excessive paperwork.

Discussion: The Secretary believes that a project should produce quantifiable data to the extent possible. The Secretary also believes that it is reasonable to regard an evaluation plan more favorably to the extent that it will produce data that are quantifiable. However, nothing in § 432.22(f) requires excessive paperwork.

Changes: None.

Rural Areas (Section 432.23)

Comment: One commenter suggested that rural areas should be specificially mentioned in § 432.23, which authorizes the Secretary to consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

Discussion: The language regarding "geographical distribution" may include consideration of rural areas, as well as other factors.

Changes: None.

Adults With Limited English Proficiency (Section 432.31)

Comment: One commenter asked whether § 432.31 permits instruction of participants exclusively in their native language so that they can progress in literacy in that language before being introduced to English.

Discussion: The purpose of the National Workplace Literacy Program is to teach literacy skills specificially needed in the workplace. Projects serving adults with limited English proficiency or no English proficiency may teach these skills, to the extent necessary, in the adults' native language, or exclusively in English. Note that this program does not permit the teaching of general literacy skills that are not directly related to the workplace either in the native language or in English.

Changes: Section 432.21 has been clarified. Parallel classifications have also been made in § 432.52, which deals with the State-administered Workplace Literacy Program.

Union Participation (Part 432)

Comment: One commenter suggested that workers, through their unions, actively participate in all stages of program planning and operation. The commenter recommended that detailed guidance requiring union participation in funded activities be included in the final rule. The commenter requested that grant applicants be required to consult with appropriate labor organizations and include the written concurrence of these organizations in their applications for funding. The commenter also recommended that the extent of worker and union participation in program planning, implementation and evaluation be included in the selection criteria for funding.

Discussion: Section 371(a)(1) of the Act permits, but does not require, a labor organization to be a partner in an application under this program. This provision is reflected in § 432.2 (a) and (b). As indicated in § 432.2(c), a labor organization, like any partner, must participate in a joint application for funding and sign a partnership agreement. The Secretary does not believe that partnerships that do not include a labor organization should be required to consult with a labor organization and obtain its written concurrence before filing an application. Nevertheless, the Secretary encourages all partnerships to involve workers and, as appropriate, labor organizations in identifying how a project can best meet needs for workplace literacy. Note that § 432.22(c)(2) encourages use of individualized educational plans developed jointly by instructors and adult learners. No changes in selection criteria are needed. This is because these criteria are used to evaluate both those applications that include labor organizations as partners and those that do not.

Changes: None.

Part 433—State-Administered Workplace Literacy Program

Reallotment of Funds for State-Administered Workplace Literacy (Section 433.21)

Comment: Three commenters requested that funds from the State-administered Workplace Literacy Program that remain unobligated at the end of each fiscal year be carried over rather than be reallocated to other States. Two of these commenters suggested that a "grace period" of six to twelve months be instituted for funds from the first year of program implementation.

Discussion: Section 371(b)(7)(C) of the Act requires the Secretary, at the end of each fiscal year, to reallocate that portion of any State's allotment that exceeds ten percent of that allotment and remains unobligated. Section 433.21 derives from this provision. The statute does not allow for a "grace period" to phase in its requirements.

Changes: None.

State Administrative Costs (Section 433.31)

Comment: One commenter requested that § 433.31(b) be revised to permit States to use funds to pay the costs of providing State administration of the grant and of awarding subgrants or contracts to eligible partnerships.

Discussion: Section 433.31 follows the framework of section 371(b) of the Act. Nothing in the Act authorizes the use of Federal funds for a State's basic responsibilities in administering the workplace literacy program. However, the regulations do allow State educational agencies to claim—for projects in which they participate fully as partners—one hundred percent of their administrative costs in establishing projects and 70 percent of the costs of these projects during their operational period.

Changes: None.

Funding Procedure (Part 433)

Comment: One commenter requested that funds for the State-administered Workplace Literacy Program be distributed under the funding formula for the State-administered Basic Grant program, rather than on the basis of competitive applications.

Discussion: As explained in § 433.20, the Secretary determines the amount of each State's allotment according to a formula in section 371(b)(7)(B) of the Act. After a State receives its allotment, it then awards funds to eligible partnerships. See subpart D of part 433.

Changes: None.

Comment: One commenter requested that the requirement to distribute appropriations of $50 million or more on a formula basis to State educational agencies be removed and these appropriations continue to be awarded directly to partnerships on a competitive basis. The commenter indicated that States and Territories have various organizations that function as the State educational agency and suggested that this form of administration was cumbersome and unnecessary.

Discussion: Section 371(b) of the Act establishes the State-administered Workplace Literacy Program for appropriations of $50 million or more. These appropriations are to be distributed on a formula basis to State educational agencies having State plans for adult education approved by the Secretary. States then make subawards to partnerships comparable to those funded directly by the National Workplace Literacy Program. Both programs fund the types of activities set forth in section 371(a)(3) of the Act.

Changes: None.

Part 434—State-Administered English Literacy Program

State Administrative Costs (Section 434.31(a))

Comments: One commenter urged that the five percent limitation on State administrative costs, technical assistance, and training be eliminated or increased to at least 20 percent. The commenter indicated that the increase is needed to meet the demand for training instructors in existing and new English-as-a-Second-Language programs. Other commenters recommended that the five percent limitation be deleted or amended to exclude technical assistance and training.

Discussion: Section 372(f)(5) of the statute limits State administration, technical assistance, and training costs to five percent. The regulations reflect this statutory requirement.

Changes: None.

Set-Side for Community-Based Organizations (Sections 434.10 and 434.31(b))

Comments: Several commenters were concerned that some States would not be able to comply with the requirement in § 434.31(b) that States allocate at least 50 percent of the remainder of their grants to programs operated by community-based organizations (CBOs) with demonstrated capability to administer English proficiency programs. The commenters suggested that some States have few or no CBOs with demonstrated capability to administer English proficiency programs, and that some States are prohibited by State law from awarding Federal funds to public or private agencies, organizations, or institutions other than local educational agencies (LEAs). Two commenters wanted the regulations to permit States to use the set-aside for CBOs to make awards to other local eligible recipients, if the State could not comply with § 434.31(b). One commenter asked whether a State would lose its eligibility for a grant under the State-administered English Literacy Program, if the State could not award funds to CBOs.

Discussion: Section 434.31(b) reflects a requirement in section 372(b) of the Act. Congress believed that CBOs are the proper parties to operate programs funded with at least half of the funds available under the State-administered English Literacy program in each State. The Secretary recognizes that some States may be prohibited by State law from awarding Federal funds to entities other than local educational agencies (LEAs). In these cases, the State must describe the legal basis for the prohibition. The State must also propose an alternative plan under which funds awarded to LEAs can be used in programs also operated by CBOs. The Secretary will review each situation on a case-by-case basis. Each State bears the burden of showing how CBOs can fully participate in establishing and operating programs in cases where CBOs cannot legally be direct recipients of funds.

With respect to other States, the Secretary observes that the Act defines the term "CBO" quite broadly. States should be able to identify a sufficient number of CBOs that can demonstrate their capacity to administer English proficiency programs. Since this is the case, it is unnecessary to speculate on whether a State would lose its grant if it contained no CBOs.

Changes: Section 434.10 has been modified to require a State to confirm the legal basis for any prohibition on making awards to entities other than LEAs and to propose an acceptable alternative plan that enables CBOs to participate fully in establishing and operating programs with the 50 percent set-aside for CBOs.

Part 437—National Adult Literacy Volunteer Training Program

Selection Criteria—Project Objectives and Evaluations (Section 437.21 (b)(2) and (d)(3))

Comment: One commenter objected to selection criteria that consider, among other things, the extent to which a project's objectives are "measurable" and its outcomes for participants "will be measured." The commenter suggested that this language may encourage an undue restriction of project objectives. The commenter recommended that the regulations speak of "observation" or "authentication."

Discussion: The selection criteria in question are intended to encourage projects that have quantifiable results. The references to measurement appropriately convey this meaning.

Changes: None.

Part 441—Adult Education for the Homeless Program

Funding Procedure (Section 441.3)

Changes: One commenter requested that funds for the Adult Education for the Homeless Program be distributed according to the formula for the State-administered Basic Grant Program rather than on competitive applications.

Discussion: Section 702 of the McKinney Homeless Assistance Act has been amended to authorize that funds for the Adult Education for the

Homeless Program be distributed on a competitive basis rather than on a formula basis.

Changes: None.

Definition of Basic Skills Remediation (Section 441.5)

Comment: One commenter suggested that the definition of "basic skills remediation" in § 441.5 appears to be inconsistent with the selection criterion in § 441.21(a)(1).

Discussion: The Secretary does not consider the two provisions to be inconsistent. Programs must be designed to meet the literacy and basic skills needs of any group of homeless adults to be served, including substance abusers and the chronically mentally ill.

Changes: None.

Counts of Homeless Adults (Section 441.21(b)(1))

Comments: Several commenters interpreted the application requirement for counts of homeless adults by school district to mean general counts of homeless adults in every school district in the applicant State. One commenter pointed out that these counts are not available in most areas. Another commenter suggested that the requirement is burdensome because of the large number of school districts to be included in the count and the mobility of the homeless. Still another commenter suggested that the counts would be more readily available by State, county, or other political subdivision.

Discussion: Section 702 of the McKinney Act requires that each application include estimates of the number of homeless adults expected to be served and the number of homeless adults expected to be served within each of the participating school districts of the State. A general count of homeless adults by school district is not required.

Changes: To clarify the intent of this provision, the word "participating" has been added to § 441.21(b)(1)(i).

Allowable Costs

Comment: One commenter requested that costs be allowed in the grants for training staff of public and private agencies in techniques and strategies for teaching homeless adults.

Discussion: Under the cost principles in the Education Department General Administrative Regulations (EDGAR), costs for this type of staff training may be charged to the grant if these costs are necessary and reasonable and the training is related to the purposes of the grant. These provisions need not be repeated in the program regulations.

Changes: None.

[FR Doc. 89-19316 Filed 8-17-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.198]

National Workplace Literacy Program; Invitation for Applications for New Awards To Be Made in Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competititon.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

Deadline for Transmittal of Applications: October 13, 1989

Deadline for Intergovernmental Review: December 13, 1989

Available Funds: $11,856,000

Estimated Range of Awards: $50,000 to $400,000

Estimated Average Size of Awards: $275,720

Estimated Number of Awards: 43

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of grants to Institutions of Higher Education, Hosptials, and Nonprofit Organizations), part 75 (Direct grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities, part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR parts 425 and 432 as published in this issue of the **Federal Register.**

Priority: The Secretary is particularly interested in applications that meet the following invitational priority: The Secretary invites applications that propose projects training adult workers who have inadequate basic skills and who are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competititon. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points reserved in 34 CFR 432.21(d) as follows: 5 points to the Selection Criterion (a)—Program Factors—in 34 CFR 432.22(a) for a total of 20 points for that criterion; 3 points to Selection Criterion (d)—Plan of Operation—in 34 CFR 432.22(d) for a total of 15 points for that criterion; 2 points to the Selection Criterion (e)—Applicant's Experience and Quality of Key Personnel—in 34 CFR 432.22(e) for a total of 12 points for that criterion; and 5 points to the Selection Criterion (f)—Evaluation Plan—in 34 CFR 432.22(f) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) Extent of need for the project: (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) Quality of training: (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under 35 CFR 432.2(a)(2), unless transferring this activity to the partner classified under 34 CFR 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) Plan of operation: (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (12 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii). The Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0507).

Additional Factor: In addition to the Selection Criteria, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program. (Authority: 20 U.S.C. 1211(a))

Intergovernmental Review of Federal Programs: The Workplace Literacy Program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an inter-governmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.198, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as the application (see 34 CFR 75.102). Recommendations or comments may be hand delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.198, Washington, DC 20202–4725,

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.198, Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number: 84.198, and title of this program: National Workplace Literacy Program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: This notice has two appendices: The Appendix A is divided into four parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 242 (Rev. 4–88)) and Instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and Instructions.

Part III: Application Narrative.

Part IV: Partners' Agreement Form and Instructions.

Additional Materials

Estimated Public Reporting Burden.

Assurance—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transaction (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

(Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department).

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application, budget, and Partners' Agreement forms, the assurances, and the certifications as printed in this notice. These documents must include original signatures. The Secretary wishes to underscore that an application will be considered incomplete unless it contains a Partners' Agreement form including each partner's original signature.

Appendix B contains questions and answers to assist potential applicants.

For Information Contact: Sarah Newcomb, Program Services Branch, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4428, Mary E. Switzer Building), Washington, DC 20202–7320. Telephone (202) 732–2390 or Nancy Smith Brooks, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 732–2269).

Program Authority: 20 U.S.C. 1211(a).

Dated: August 10, 1989.

D. Kay Wright,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BUDGET INFORMATION

SECTION

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated	
		Federal (c)	
1. Workplace	84.198	$	$
2.			
3.			
4.			
5. TOTALS		$	$

SECTION B

6 Object Class Categories	(1)	(2)
a. Personnel	$	$
b. Fringe Benefits		
c. Travel		
d. Equipment		
e. Supplies		
f. Contractual		
g. Construction		
h. Other		
i. Total Direct Charges (sum of 6a - 6h)		
j. Indirect Charges		
k. TOTALS (sum of 6i and 6j)	$	$
7. Program Income	$	$

Authorized fo

OMB Approval No. 0348-0044

TION — Non-Construction Programs

CTION A – BUDGET SUMMARY

oligated Funds		New or Revised Budget		
Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)	
$	$	$	$	
$	$	$	$	

CTION B – BUDGET CATEGORIES

GRANT PROGRAM, FUNCTION OR ACTIVITY			Total (5)
(2)	(3)	(4)	
$	$	$	$
$	$	$	$
$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDE

(a) Grant Program	(b) Appl
8. National Workplace Literacy Program	$
9.	
10.	
11.	
12. TOTALS (sum of lines 8 and 11)	$

SECTION D - FORECASTE

	Total for 1st Year	1st Quar
13. Federal	$	$
14. NonFederal		
15. TOTAL (sum of lines 13 and 14)	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUND

(a) Grant Program	(b) Fir
16.	$
17.	
18.	
19.	
20. TOTALS (sum of lines 16 -19)	$

SECTION F - OTHER BUDGE

(Attach additional Sheet

21. Direct Charges:	22.
23. Remarks	

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FEDERAL RESOURCES

(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
	$	$	$
	$	$	$

CASTED CASH NEEDS --Do Not Complete Section D

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$	$	$
	$	$	$

FUNDS NEEDED FOR BALANCE OF THE PROJECT --Do Not Complete Section E

FUTURE FUNDING PERIODS (Years)

(b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$
	$	$	$

UDGET INFORMATION
l Sheets if Necessary)

22. Indirect Charges:	

SF 424A (4-88) Page 2
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PART II -- BUDGET INFORMATION

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the National Workplace Literacy Program (CFDA No. 84.198) Sections A, B, and C should include budget estimates for the entire project period. (NOTE: Section D and E need not be completed to apply for this program). All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1, Columns (a) through (g) -- Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g), the appropriate amounts of funds needed to support the project for the entire project period.

Section B. Budget Categories

Lines 6a through 6i -- Fill in the total requirements for Federal funds by object class categories for the entire project period.

Line 6a -- Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6f.

Line 6b -- Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c -- Travel: Indicate the amount requested for travel of employees.

Line 6d -- Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $5000 or more per unit.

Line 6e -- Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5000 per unit with a useful life of less than two years.

Line 6f -- Contractual: Show the amount to be used for: (a) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants.

Line 6g -- Construction: Construction expenses are not allowable under the National Workplace Literacy Program (CFDA No. 84.198).

Line 6h -- Other: Indicate all direct costs not clearly covered by lines 6a through 6g. Trainee costs or stipends are not allowable.

Line 6i -- Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j -- Show the amount of indirect cost to be charged to the project.

Line 6k -- Enter the total of the amounts on Line 6i and 6j.

Section C. Non-Federal Resources

Line 8 -- Enter any amounts of non-Federal resources that will be used on the grant. Contributions may be in the form of cash or in-kind contributions. If any in-kind contributions are included,

provide a brief explanation of each contribution on a separate sheet.

Column (b) -- Enter the contribution to be made by the applicant. For purposes of column (b), the applicant includes all partners and not merely the applicant designated by the Partners' Agreement Form and on the SF 424. If a partner is a State agency, that partner's contribution should be included in column (b), rather than in column (c).

Column (c) -- Enter the amount of the State's cash and in-kind contribution if the applicant is not a State agency. Enter the contributions of any State agency that is not a partner. Applicants which are a State or State agencies should leave this column blank.

Column (d) -- Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) -- Enter the totals of Columns (b), (c), and (d).

(NOTE: If an SEA or LEA is designated as the grantee for a partnership, the grantee may receive 100 percent of its necessary and reasonable administrative costs incurred in establishing a project during a start-up period. Federal funds may provide no more than 70 percent of any other costs in a project: these include a cost incurred during a project's operational period by partnerships where an SEA or LEA is the designated grantee and costs incurred in both a project's start-up and operational periods by a partnership where an entity other than an SEA or LEA is the designated grantee. This means that the amount shown on Line 8, Column (e), must be at least 30 percent of the amount shown in Section A, Line 1, Column (g), unless the first amount is smaller

than 30 percent because an SEA or LEA is the designated grantee).

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project (NOTE: This section does not apply to the National Workplace Literacy Program).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Section A, B, and C. Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs), and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component;
4. What matching occurs in each budget category; and
5. For State or local education agencies claiming 100 percent Federal funding for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days, provide a breakdown of expenditures in the start-up period and in the subsequent operational period. Organizations claiming 100 percent Federal funding during start-up must meet the definitions of "LEA" and "SEA" contained in Sec. 312(5) or Sec. 312(8) of the Adult Education Act, as amended by Title II, Part B of P.L. 100-297.

INSTRUCTIONS FOR PART III -- APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the purpose of the program, the information regarding the priority, the selection criteria the Secretary uses to evaluate applications, and the applicable regulations governing

the National Workplace Literacy Program contained in 34 CFR 432 as published in this issue of the FEDERAL REGISTER.

The narrative should encompass each function or activity for which funds are being requested and should --

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include the total estimated number of persons expected to be served as well as the estimated number of persons expected to be served by each training location if more than one location is to be included.

4. If adults of limited English proficiency are to be served, describe how the proposed project will meet the provisions of 34 CFR 432.31 governing such projects designed to serve adults with limited or no English proficiency.

5. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. Please limit the Application Narrative to 30 double-spaced, typed pages (on one side only). Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as appendices to the Application Narrative. Letter of support may not be used as a substitute for the submission of the Partners' Agreement Form contained in this notice which shall be signed by all partners and which shall accompany the application when submitted. Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult

Education Act, as amended by Title II, Part B of P.L. 100-297.

INSTRUCTIONS FOR PART IV -- PARTNERS' AGREEMENT FORM

Partners must submit a signed Partners' Agreement Form and enclose it with the application. Under 34 CFR 432.2 as published in this issue of the FEDERAL REGISTER, it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1830-0507, Washington, D.C. 20503.

(Information Collection approved under OMB control number 1830-0507. Expiration date: 12/31/91).

PARTNERS' AGREEMENT

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V 198 A as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- o designate partner _____ (organization) as the applicant and grantee on behalf of the partnership;
- o are willing to be partners in this project;
- o will perform the role detailed for each of us in the application;
- o will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100 - 297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Name	Name
Title, Organization	Title, Organization
Date	Date
Name	Name
Title, Organization	Title, Organization
Date	Date
Name	Name
Title, Organization	Title, Organization
Date	Date

(add or delete signature spaces as necessary)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regardi« Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F, The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

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Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the Federal Register and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number—84.198—and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, selection criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How should my application narrative be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed if necessary and reasonable. The Secretary anticipates that representatives of the partners of funded projects, including the principal investigator or director of funded projects may be asked to attend a staff development meeting. Therefore, you may wish to include the costs of a trip to Washington, D.C. in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in § 432.2 of the program regulations. These regulations appear elsewhere in this publication of the Federal Register. A partnership requires a signed agreement between at least one entity described in § 432.2(a)(1) and at least one entity described in § 432.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city as such is not an eligible partner. No agency of the Federal government is an eligible partner. If you are not sure whether a particular entity is an eligible partner, please call one of the program officers listed as an information contact in the application notice.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is necessary both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities under the project.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in Sec. 432.5 of the regulations.

Q. What is meant by a required percent of non-Federal matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs would have to contribute $30,000 to match a Federal award of $70,000 ($30,000=30 percent of $30,000 plus $70,000). All partnerships must contribute at least 30 percent of the total program costs, unless this amount is reduced because an SEA or LEA is the partnership's designated grantee. SEAs and LEAs are eligible to receive full—not merely 70 percent—reimbursement for their neccessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period may not exceed 90 days.

Q. May a project provide vocational or job training?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and four copies will be greatly appreciated. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applications should not include foldouts, photographs, audio-

visuals, or other materials that are hard-to-duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return original copies of applications. Thus, applicants should retain at least one copy of the application.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the Federal Register, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297, title II, part B.

(2) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, or 85.

(3) 34 CFR part 432 (National Workplace Literacy Program), as published in this issue of the Federal Register.

[FR Doc. 89-19317 Filed 8-17-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
August 18, 1989

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Cheat Mountain Salamander and Endangered Status for the Shenandoah Salamander and the Roanoke Logperch; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Cheat Mountain Salamander and Endangered Status for the Shenandoah Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for the Cheat Mountain salamander (*Plethodon nettingi*) and endangered status for the Shenandoah salamander (*Plethodon shenandoah*). The latter is known only from three tiny populations on isolated talus slopes in Shenandoah National Park, Virginia. Its existence is endangered by competition with the widespread red-backed salamander (*Plethodon cinereus*). The closely related *P. nettingi* is found above 3,000 feet in an approximately 19 by 50 mile area of Pendleton, Pocahontas, Randolph and Tucker Counties, West Virginia, mostly within the Monongahela National Forest. Its populations are generally small and disjunct, probably remnants of a larger, more continuous distribution fragmented by habitat modifications, such as timbering, mining and recreational development (ski resorts, hiking trails, etc.). This rule implements protection provided by the Endagered Species Act of 1973, as amended, for these salamanders.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs at the above address or by telephone (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

The Cheat Mountain and Shenandoah salamanders are members of the family Plethodontidae, the lungless salamanders. Members of the genus *Plethodon* are also known as woodland salamanders. The Cheat Mountain salamander (*Plethodon nettingi*) was first observed on Barton Knob in Randolph County, West Virginia, in 1935 and was described as a new species by Green (1938). Highton and Grobman (1956) considered *P. nettingi* to be a subspecies of *P. richmondi*, but later, Highton (1971) re-elevated *P. nettingi* to full species status. *Plethodon shenandoah* was first described as a subspecies of *P. richmondi* (Highton and Worthington 1967), and later considered to be a subspecies of *P. nettingi* Highton (1971). Subsequent analyses of electrophoretic data resulted in a determination of full species status for *P. shenandoah* (Highton and Larson 1979).

The Cheat Mountain and Shenandoah salamanders are morphologically similar, small, slender *Plethodons*, reaching a maximum length of 11-12 cm (about 4½ inches), generally with 18 costal grooves (vertical indentations that externally mark the position of the ribs) and dark gray to black bellies. The dorsum, or back of *P. nettingi* is dark, usually with a heavy sprinkling of brassy or silvery flecks. The dorsum of *P. shenandoah* is also dark, but in this species, there are two color phases, striped and unstriped. In the unstriped phase, the dorsum is uniformly dark and may have a few brassy flecks; the striped phase is characterized by a narrow red stripe down the back.

As a general rule, woodland salamanders are found during the day under rocks and logs, or in rock crevices below the surface of the ground. At night, especially during rainy weather, they forage on the surface of the forest floor and occasionally climb trees or other plants for short distances (Pauley 1985, Jaeger 1978). The diet of the Cheat Mountain salamander, fairly typical for woodland salamanders, consists mainly of mites, springtails, small bettles, flies and other insects (Paulet 1980). There are no reported observations of mating for the Cheat Mountain or Shenandoah salamanders, but as in all other woodland salamanders, fertilization is internal and complete development takes place within the egg; in contrast with most other salamanders, there is no aquatic larval stage (Conant, 1975). Eggs are laid in damp logs, moss, etc. Cheat Mountain salamander egg masses containing 4-17 eggs have been found from May to August, with most observations in June (Brooks 1948). Timing of reproductive activity is probably similar for *P. shenandoah*.

The Cheat Mountain salamander occurs in the Allegheny Mountains of eastern West Virginia, in Pendleton, Pocahontas, Randolph and Tucker Counties, in an area approximately 19 miles wide and 50 miles long (Pauley 1985), almost entirely within the proclamation boundaries of the Monongahela National Forest. This species is found in forested areas above 3,120 feet, where red spruce (*Picea rubens*) and yellow birch (*Betula alleghaniensis*) are or were the dominant tree species. Originally, red spruce forest covered nearly half a million acres in West Virginia. Timbering operations around the turn of the century, in combination with wildfires caused by human activity, removed nearly all the red spruce in the state.

The Shenandoah salamander is known only from north-facing talus slopes on three mountains in Shenandoah National Park, Madison and Page Counties, Virginia, at elevations above 3,000 feet (Highton and Worthington 1967). It is confined to pockets of soil and/or vegetative debris within the talus, where moisture conditions are favorable. Because, like all members of the Plethodontidae, these salamanders are lungless, sufficient moisture must be present for respiratory exchange to occur directly through the skin. However, competition with the red-backed salamander (*Plethodon cinereus*), which requires moister conditions than the Shenandoah salamander, plays a major role in restricting the latter's range (Jaeger 1970, 1971, 1974, 1980). The Shenandoah salamander is classified as an endangered species under Virginia state law.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454-58460) and September 18, 1985, (50 FR 37958-37967), the U.S. Fish and Wildlife Service placed both the Cheat Mountain and Shenandoah salamanders in Category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial biological data were not then available to support such a proposal. Subsequently, the Service received a report from Dr. Thomas K. Pauley, who had been contracted by the Service to investigate the status of the Cheat Mountain salamander. The data presented in Dr. Pauley's report, along with other information assembled by the Service, including published reports by Dr. R.G. Jaeger on the Shenandoah salamander, indicated that a proposal to list both species was warranted. Accordingly, on September 28, 1988, the Service published a proposal in the **Federal Register** (53 FR 37814) to list *Plethodon nettingi* as threatened and *Plethodon shenandoah* as endangered. With the publication of this final rule, the Service now determines threatened and endangered status for these salamanders.

Summary of Comments and Recommendations

In the September 28, 1988, proposed rule (53 FR 37814) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments were requested from appropriate state agencies, county governments, scientific organizations and other interested parties. Newspaper notices inviting public comment were published on October 15, 1988, in the Daily News-Record, Harrisonburg, Virginia, and the Inter-Mountain, Elkins, West Virginia. Six comments were received. Three of these, from the Virginia Natural Heritage Program, Virginia Department of Game and Inland Fisheries and the Nature Conservancy, Eastern Regional Office, fully supported the proposed listing. Another, from the West Virginia division of Parks and Recreation, also supported the listing, but strongly recommended continued fieldwork to locate new populations and monitor existing ones. Monitoring will certainly be a component central to the recovery effort for the Cheat Mountain and the Shenandoah salamanders. Searches for new populations will also be important to the recovery of these species, particularly for *P. shenandoah*, for which only three locations are known. Oftentimes, the increased attention received by species following listing stimulates additional research, resulting in an increased knowledge of the species' life history and distribution.

Two comments from university professors, while supporting the listings, expressed concern that this action might curtail future research on these salamanders, particularly *P. shenandoah*. One respondent noted that the possibility of hybridization between *P. shenandoah* and *P. cinereus* (not fully documented) could complicate protection efforts. This writer raised the concern that legal protection might be "so rigid as to completely prevent the rational study of problems that affect the species in question." With the publication of this rule, it is not the Service's intention to obstruct the acquisition of information contributing to our understanding of factors essential to the species' survival. Permits to work on these species are already required by the State agencies, as well as by the U.S. Forest Service (for *P. nettingi*) and the National Park Service (for *P. shenandoah*). The Service recognizes that the requirement for a Fish and Wildlife Service permit, in addition to those already required, may seem burdensome to the permit applicant. However, it is likely that all of the above-mentioned agencies will use similar criteria in evaluating permit applications: i.e. the amount and types of information to be gained by the proposed research and the critical nature of this information relative to the species' recovery, weighed against the type and amount of proposed "take." Therefore Fish and Wildlife Service permit issuance decisions will very likely concur with those already required by other agencies.

This same respondent questioned whether additional U.S. tax dollars would be spent unnecessarily on *P. shenandoah*, since it is already protected by its location on Park Service land. Fish and Wildlife Service funding of recovery, research or protection efforts for *P. shenandoah* will be prioritized with the needs of other listed species and authorized only if deemed appropriate.

In summary, while questions and concerns were raised by some commentors, all were in support of the listings, and no new biological information was presented.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cheat Mountain salamander (*Plethodon nettingi*) and the Shenandoah salamander (*Plethodon shenandoah*) are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of Their Habitat or Range

Habitat modification is a primary factor threatening the continued existence of the Cheat Mountain salamander. This species prefers cool moist forests where mature red spruce (*Picea rubens*) and yellow birch (*Betula alleghaniensis*) predominate. At West Virginia's latitude, these northern forest types occur only at higher elevations. The Cheat Mountain salamander is found only at elevations above 3120 feet (Pauley 1985). Prior to the late 1800's, *P. nettingi* may have been more widely distributed in these high elevation areas. The timber boom began in West Virginia during the 1880's; forty years later, virtually all of the old-growth, high quality timber had been stripped from the mountains in the eastern part of the state. Wildfires, some set intentionally to clear pasture, others resulting from the slash left from timbering operations, or from sparks from the stacks of steam locomotives, also contributed to the demise of spruce in the state (Clarkson 1964). Only one sizeable tract of virgin spruce, encompassing some 200 acres, remains. Interestingly, one of the healthiest remaining populations of *P. nettingi* now occurs in this vicinity.

Subsequent to the lumbering operations, the Cheat Mountain salamander somehow managed to survive, perhaps in small pockets of marginally suitable habitat. High elevation forests have since regenerated, and today, spruce and mixed spruce-northern hardwood forests cover an estimated 27,000–67,000 acres in West Virginia, roughly 10% of the area covered prior to the lumbering era (Bones 1978, Zinn and Sutton 1976). Although at present only 10% to 15% of the red spruce in the state measure over 15 inches in diameter at breast-height (dbh), smaller spruce are economically valuable in today's timber market, and spruce timber sales are again occurring in West Virginia. The Cheat Mountain salamander's extirpation from one clearcut area has been documented, and seven other populations that have been impacted by timbering operations are likely to die out due to the hot, dry conditions that prevail in their habitat (T. Pauley, pers. comm.).

In addition to timber cutting, access roads, hiking trails and pipeline rights-of-way bisect or limit the expansion of many *P. nettingi* populations. Such openings decrease soil moisture and increase soil temperature, thus presenting a barrier to these salamanders, which require cool, moist conditions. Due to genetic considerations, these bisected "half-populations" may not be viable over the long term. Nearly 40% of the populations Pauley (1985) found were bisected by or adjacent to roads or pipeline rights-of-way.

Other activities that threaten Cheat Mountain salamander habitat include the construction of ski resorts and coal mining. Within the range of *P. nettingi*, four ski resorts are in operation and an additional one is presently being developed. Cutting of high-elevation forests for ski trails, lodges and condominiums is ongoing as these resorts expand. One Cheat Mountain salamander population has already been subdivided by ski slopes, and another presently healthy population is threatened by an additional proposed ski resort and development. One historical population occurred on an

area that is now developed as a ski resort (Pauley 1985).

Although high elevation coal mining in West Virginia makes up only a small percentage of the total, high elevation coal deposits consist of low-sulphur coal, which is becoming increasingly desirable, thus valuable, due to air quality considerations. Pauley (1985) reported five *P. nettingi* populations that have been severely impacted by surface or deep mining activities. One of these is likely extirpated and another is known to have been destroyed. Clearing and haul roads associated with mining activity broaden the scope of the impact of this threat of *P. nettingi*.

Habitat of the Shenandoah salamander has been timbered and burned in the past, which may have negatively impacted the species. At present, *P. shenandoah* habitat is protected from active modification, since it is located within the Shenandoah National Park. However, deterioration of the talus areas in which it occurs could promote the incursion of *Plethodon cinereus*, its chief competitor, which could ultimately lead to the extinction of *P. shenandoah* (see Factor "E" below).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

These salamanders have no known commercial utility; however, in the past, considerable numbers of both species have been collected for scientific purposes or as curiosities, by amateur collectors. It is debatable whether unlimited collection can have any long-term effect upon salamander populations (R. Highton, University of Maryland, pers. comm.). Such impacts may be assessed through use of "surrogate" species (C. Pague, pers. comm.). Permitting requirements for collection of these species were mentioned above.

C. Disease or Predation

There is no evidence that these salamanders are threatened by disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

As mentioned above, collecting these salamanders already requires a permit, thereby providing limited protection from take. The habitat of both species also receives some protection, since both Shenandoah National Park and Monongahela National Forest recognize *P. shenandoah* and *P. nettingi* respectively as species of concern. Despite this recognition, the habitat of *P. nettingi* is still threatened with destruction from a variety of sources, as specified in (A) above, and *P. shenandoah* may be declining due to natural causes, as mentioned in (E) below.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The existence of the Shenandoah salamander is threatened by a naturally-occurring phenomenon, competition with the closely related red-backed salamander, *Plethodon cinereus* one of the most abundant and common woodland salamanders. *P. shenandoah* is essentially confined to its few talus islands by competition with *P. cinereus*. The species is able to survive there due to its higher tolerance to dry conditions, relative to *P. cinereus* (Jaeger 1971). The talus in which *P. shenandoah* lives is in the process of disintegration. Organic matter and the products of erosion accumulate in the less steep talus slopes, fragmenting them, decreasing their area and ultimately creating moister conditions in which *P. cinereus* could possibly survive. As this process continues, *P. cinereus* is likely to invade the habitat now occupied by *P. shenandoah*, possibly resulting in the eventual extinction of the latter species.

The Cheat Mountain salamander also experiences competition with *Plethodon cinereus* and with the mountain dusky salamander (*Desmognathus ochrophaeus*), which may limit the ability of *P. nettingi* to expand its range or re-populate areas previously occupied. Pauley's survey work revealed one or both of these potential competitor species present at 83% of the sites where he found *P. nettingi*, and their numbers exceeded those of *P. nettingi* at half of the observed population sites. Recent evidence indicates that *P. nettingi* populations may actually be declining where these competing species are present (Pauley, in prep.).

The ability of *P. nettingi* to establish populations in unoccupied, suitable habitat appears to be limited. In an experimental effort to save a population, 53 of these salamanders were removed from an area where habitat destruction from mining activities was imminent. These animals were carefully relocated to another area of very similar habitat, soil type and temperature from which all salamanders of other species found had been removed. Follow-up studies over the past four years have as yet revealed no surviving *P. nettingi* from this transplant effort (T. Pauley, pers. comm.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by these species in determining to make this rule final. Based on this evaluation, the Service has determined to list the Cheat Mountain salamander *(Plethodon nettingi)* as threatened and the Shenandoah salamander *(Plethodon shenandoah)* as endangered. The Cheat Mountain salamander is known from numerous populations within its limited range, and the management of much of its habitat is under the jurisdiction of a Federal agency, the U.S. Forest Service. Although its habitat has already been considerably altered, proper habitat management should prevent this species from becoming endangered throughout its range. In contrast, although the Shenandoah salamander also occurs on Federal land (National Park Service), its population numbers are much lower and the management of its habitat does not appear to be the major factor contributing to its endangerment or to its recovery. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Implementing regulations at 50 CFR 424.12(a)(1) state: "A designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species." In the case of these salamanders, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species. Nearly all of the known habitat of these salamanders is under the jurisdiction of Federal agencies (U.S. Forest Service and National Park Service). Forest and park supervisors and other involved parties are already aware of the occupied range of these species. Furthermore, both the Park Service and the Forest Service have their own regulations which give high priority to protection of endangered and threatened species. Thus, no benefit would accrue from designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing encourages and results in conservation action by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperative provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions which could impact these salamanders would include land management decisions on the Monongahela National Forest or Shenandoah National Park, and possibly, Federal permitting requirement for private actions, such as mining or recreational development. Such actions will require formal consultation, unless the Sevice concurs in writing that the action has been designed in a manner that eliminates adverse effects to these salamanders.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibitied activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidential take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. As mentioned above, the Service will promote the issuance of permits for scientific research essential to the species' continued existence.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Judy Jacobs (see **ADDRESSES** section), 301/269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatend Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS							
Salamander, Cheat Mountain	*Plethodon nettingi*	U.S.A. (WV)	Entire	T	358	NA	NA
Salamander, Shenandoah	*Plethodon shenandoah*	U.S.A. (VA)	Entire	E	358	NA	NA

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-19440 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Endangered Status for the Roanoke Logperch

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Roanoke logperch (*Percina rex*) to be an endangered species. Endemic to Virginia, this fish now occurs only in four widely separated populations: In the upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. Each population is vulnerable because of its relatively low density and limited extent. The largest and most vigorous population, in the upper Roanoke River, is subject to the most serious threats: from urbanization, industrial development, water supply and flood control projects, and, in the upper basin, from agricultural runoff. The other three populations are subject to siltation resulting from agricultural activities and to potential chemical spills. The Smith River population is especially vulnerable because of its small size. This rule implements the protection of the Endangered Species Act of 1973, as amended, for this fish.

EFFECTIVE DATE: The effective date of this rule is September 18, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

The Roanoke logperch, (*Percina rex*), was discovered in the Roanoke River near Roanoke, Virginia in 1888 and described by Jordan (1889).

A large darter, *P. rex* reaches 14 centimeters (5.5 inches) total length. It is characterized by an elongate, cylindrical to slab-sided body, conical snout and complete lateral line. The back is dark green, the sides are greenish to yellowish and belly is white to yellowish. The upper sides and back have dark scrawlings and numerous small saddles. Bar markings on its sides are prominent, usually separated from the dorsal markings and typically ovoid in shape.

The species commonly lives 5 to 6 years; both sexes probably reach maturity by age four. Spawning occurs in April or May in deep runs over gravel and small cobble (Simonson and Neves 1986). *P. rex* feeds primarily on aquatic insect larvae, especially the larvae of chironomids and caddisflies (Burkhead 1983). During warm months, adults occupy gravel and cobble runs and riffles, while juveniles typically utilize slow runs and pools with clean sand substrates. Winter habitat of all individuals appears to be deep pools, under boulders (Burkhead 1983).

The Roanoke logperch is endemic to two river systems in Virginia—the Roanoke River drainage (including the Pigg and Smith Rivers) and the Notoway River drainage. Its distribution extends from the Ridge and Valley province through the Blue Ridge to the lower Piedmont. It now occurs in four disjunct populations located in widely separated segments of four rivers: the upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. It is probable that these represent remnants of a single much larger population that once occupied much of the Roanoke drainage upstream of the fall line.

All extant populations of the Roanoke logperch are in Virginia in the river reaches described below. Within the upper Roanoke River, the logperch occurs in Roanoke and Montgomery Counties from within the city limits of Roanoke upstream into the North and South Forks of the Roanoke. It also occurs in Tinker Creek, a tributary of the upper Roanoke in Roanoke County. In the Pigg River system the logperch occurs in a 32-mile reach of the mainstem Pigg River in Pittsylvania and Franklin Counties, and in Big Chestnut Creek, a Franklin County tributary of the Pigg. In the Nottoway River system the species occurs in a 32-mile reach of the mainstem in Sussex County, Virginia, and in Stony Creek, a tributary of the Nottoway in Dinwiddie and Sussex Counties. In the Smith River system, *P. rex* occurs in a 2.5-mile reach in Patrick County upstream of Philpott Reservoir, and in Town Creek, a Smith River tributary in Henry County.

Recent survey data (Simonson and Neves 1986) indicate that the largest population of *P. rex* inhabits the Upper Roanoke River. The Pigg River system is rather sparsely inhabited by the logperch, while the Nottoway River has even lower population densities of the species. The Smith River logperch population appears to be extremely small.

Threats to the upper Roanoke population of the logperch are posed by a pending Roanoke County water supply project and a proposed U.S. Army Corps of Engineers (Corps) flood control project. Results of the most recent comprehensive survey (Simonson and Neves 1986) indicate that the species has probably already declined in the North Fork of the Roanoke. Chemical spills, which have increased in frequency in the industrialized sections of the river in Salem and Roanoke, present a continuing threat. The Pigg River and North Fork of the Roanoke are heavily impacted by silt washed from agricultural lands in the watersheds.

The Roanoke logperch has been included in three Notices of Review indicating that it was a candidate for Federal listing. These were published in May 13, 1980, Federal Register (45 FR 31447), the December 30, 1982, Federal Register (47 FR 58454), and the September 18, 1985, Federal Register (50 FR 37958). The last of these Notices placed the logperch in category 1, indicating that the Service had substantial information on hand to

support listing the species as endangered or threatened. The Service was petitioned on September 29, 1983, by Mr. Noel Burkhead to list the Roanoke logperch as a threatened species. In 1985, 1986, and 1987 evaluations of this petition the Service found that the action was warranted, but precluded from immediate proposal because of other pending proposals to list, delist or reclassify species. Notice of these findings was published in the **Federal Register** on January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), and July 7, 1988 (53 FR 25511), respectively. On September 7, 1988, the Service published in the **Federal Register** (53 FR 34561) a proposed rule to list the Roanoke logperch as an endangered species.

Summary of Comments and Recommendations

In the September 7, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Roanoke Times and World News on September 21, 1988, and the Richmond Times Dispatch on September 22, 1988, which invited general public comment. No public hearing was requested or held. Fourteen comments were received and are discussed below.

Eight letters indicating support for the proposal were received from the following sources: the Forest Supervisor of the Jefferson National Forest, the Virginia Department of Game and Inland Fisheries, the Virginia Natural Heritage Program, Dr. R.J. Neves of the Virginia Polytechnic Institute's Department of Fisheries and Wildlife Science, the City of Roanoke, the Friends of the Roanoke River, the Virginia Wildlife Federation, and one private citizen.

In his letters of support, the Jefferson National Forest Supervisor indicated that the Forest's activities have minimal potential for impacting the logperch, but special consideration would, nonetheless, be given to maintenance of high quality runoff within the headwaters of the Roanoke drainage.

The City of Roanoke asked that the Federal Government share in any "additional costs for community projects addressing needs along the Roanoke River and Tinker Creek", that may result from the listing. The Fish and Wildlife Service's authority under the Endangered Species Act would limit it to assisting with projects which contribute to the recovery of the logperch or other endangered species.

The Friends of the Roanoke River (F.O.R.R.) requested that critical habitat be designated for the logperch. The F.O.R.R. argues that designation of critical habitat is necessary to provide full protection for the logperch and that the benefits of this added protection would outweigh any possible threat of vandalism. The Service believes that designation of critical habitat would result in no net benefit to the species. The Service's basis for this conclusion is explained in the critical habitat section of this rule. The Service notes that, even without critical habitat designation, the habitats of this species will receive protection under section 7 of the Act.

Letters indicating neither support nor opposition to the proposed listing of the logperch were received from: The Wilmington District of the Army Corps of Engineers, and Montgomery and Henry Counties, Virginia. Information provided by the Corps of Engineers concerning projects under study is summarized elsewhere in this rule. Henry County expressed concern over potential effects of the listing on their water supply withdrawals from the mouth of Town Creek. Based on current information on logperch distribution and the location of the county's withdrawals, it appears that they will be unaffected by the listing.

Opposition to the proposal was expressed by the Roanoke Valley Home Builders Association, and the County Administrators of Pittsylvania and Roanoke Counties, Virginia. Roanoke County had a number of specific comments on the proposal which are listed below with the Service's response to each.

Comment 1. The Corps of Engineers' flood control project and Roanoke County's water supply project are no longer threats to the species; therefore it should not be Federally listed.

Service response. It is true that both the Corps of Engineers and the County of Roanoke have taken steps to reduce impacts from their projects to the Roanoke logperch. The Service agrees that the Upper Roanoke Flood Control Project is not a serious threat to the survival of the logperch. It is, however, a threat to the Roanoke River logperch population within the City of Roanoke. It is anticipated that this project may reduce the logperch population in this segment of the river by up to 25% over several years.

In comparison with the flood control project, the water supply project affects a much longer reach of the Roanoke River containing much of the best logperch habitat in existence. Thus, it has a much greater potential for serious impacts to the species. Corps of Engineers permit conditions for this project are designed to ameliorate such impacts, but will not eliminate them. Thus, the water supply project is expected to have some adverse effects on the logperch, even if all permit conditions are conscientiously implemented.

The Service cannot agree with Roanoke County that the Roanoke logperch does not warrant Federal listing. Even without the existence of these two proposed projects, the information on population status and other threats to the species would support its listing.

Comment 2. The proposal indicates several causes for degradation or modification of habitat, one being urban growth. This can be disputed since the largest and most dense population noted in Burkhead's study is in the middle of Ronoke City, a highly urbanized area.

Service response. It is known that pollutants found in urban runoff, including excess nutrients, petroleum products and salt, adversely affect fish. Urban runoff together with effluent discharges and other effects or urbanization may account for the long river reaches within the City of Roanoke from which the logperch is absent. Although there is a dense population of logperch at a single location within the City of Roanoke, the continued existence of this population may be dependent on periodic recruitment of young from upstream populations.

Comment 3. The proposal also notes that chemical spills have resulted in fish kills; however, no evidence is presented that the logperch has been affected or taken during a fish kill.

Service response. Burkhead (1983) describes the threat presented to the logperch by chemical spills. His compilation of records of fish kills in the Roanoke River was based largely on Roanoke Times and World News reports which provided limited information on species killed. However, there is little doubt that logperch were killed during these events along with other fish species.

Comment 4. The proposal indicates that low flows resulting from the proposed water supply project would severely degrade the logperch habitat. No proof exists to indicate the proposed project would "severely" degrade the logperch habitat. The indications of exposure of riffles, decreased D.O. levels, increased temperatures during summer and increased pollution are

assumptions that are not substantiated. In fact, the June 1983 Ecological Study Report by Noel Burkhead for the Corps of Engineers indicated increased D.O. levels because of low flow. It also shows that water temperature is more related to air temperature than flow levels. The exposure of riffles also indicates a benefit for increasing D.O. Levels.

Service response. Burkhead (1986) provides the most specific prediction of adverse effects on the logperch of the low flows resulting from the proposed water supply project. Exposure of riffles and increased water temperature during summer months are expected to occur in any river when flows drop to very low levels (Tennant, 1975). Periods of decreased dissolved oxygen (D.O.) and decreased dilution of pollutants will always accompany these changes. The increased D.O. in the Roanoke River during the low flow period referred to by Burkhead (1983) occurred during an algal bloom. During algal blooms, extreme fluctuations in D.O. are to be expected, with extremely high oxygen levels occurring during sunny periods, and oxygen depressions occurring during nighttime or overcast conditions. Such D.O. fluctuations are generally symptomatic of degraded conditions and are harmful to fish life.

Comment 5. Other projects are cited that will reportedly affect the logperch habitat. However, no economic effects of the listing are presented.

Service response: Under the Act and its implementing regulations, listing determinations are to be made solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. 16 U.S.C. 1533(b)(1)(A); 50 CFR 424.11(b).

Comment 6. One of the most critical problem areas noted in the proposal was silt generated from agricultural activities. This seems to be the culprit of any reduction or modification of habitat. Without knowing the intentions of the Fish and Wildlife Service as to the plan to control these activities, no one can possibly comment on the effects it may have on the farming activities along the critical habitat areas.

Service response: Silt generated by agricultural activities is but one of many factors affecting the logperch. While the Service may recommend measures, such as filter strips along streams, to reduce agricultural runoff, it has no authority to require such modifications of private activities unless they result in taking of the species.

Comment 7. The existing and continued studies performed on this fish seem to be the only over-utilization evident. As noted in correspondence from Burkhead, over 2,000 collections were made, many of which were specifically aimed at the capture of the logperch.

Service response: There is no evidence to suggest that overutilization has been a factor in the decline of the logperch.

Comment 8. The proposal notes that Virginia state law does not protect the species' habitat from potential impacts. Roanoke County disagrees with this statement. The State of Virginia does have code sections that protect aquatic life, water quality and critical habitat of endangered species and of any outstanding State resource waters.

Service response: State programs to enforce the Clean Water Act do provide a degree of protection for all aquatic species. Federal listing will provide added protection, particularly from those impacts of Federal (or Federally regulated) projects which are not addressed by the Clean Water Act.

Comment 9. The use of chemical toxicants is prohibited in any river in Virginia. State law prohibits any discharge of these materials. Vandalism along with the suggestion of chemical toxicant use stretches the point under this heading and should not be considered.

Service response: All reference to chemical toxicants has been removed from the "Summary of Factors Affecting the Species". Although State laws prohibit such discharges, enforcement may be difficult.

Comment 10. The only significant decline in logperch populations has been in the reaches where farming activities are prominent, not where urbanization has occurred or low water levels exist. In fact, low water levels seem to be more of an optimum habitat than higher flows. Over 77 percent of the river miles occupied by the logperch are in reaches where flows are only a small portion of the flows that exist in the main stream of the Roanoke River.

Service response: See response to comments 2 and 6 regarding the threats presented by siltation and urbanization. Adverse effects of low flows are described in Burkhead (1986), Tennant (1975) and Camp Dresser and McKee (1986). The absolute flow levels in a river have little meaning in terms of the biology of aquatic species. Instead, fishery biologists generally refer to flows in terms of percentage of natural stream flow (or mean annual flow) when they are evaluating impacts on aquatic species. To date, withdrawals from the Roanoke River have been small enough that any reduction in natural flows has been minor. Thus no fish declines would be expected to result.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Roanoke logperch should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Roanoke logperch (*Percina rex*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The largest known population of the logperch, in the upper Roanoke River, is under increasing stress from urbanization and industrial development (Jenkins 1979). Urban runoff and other nonpoint-source pollution are increasing problems. Silt, oil, fertilizer and a variety of chemical pollutants in this runoff degrade habitat of the logperch. As urban development expands to the west along the Roanoke River Valley, the river reach degraded by this runoff will increase. Frequent chemical spills have occurred from the industries and transportation corridors along the upper Roanoke River. These have included fuel oil, diesel fuel, sodium cyanide, toluene, gasoline and ethyl benzeyne-creosote (Burkhead 1983). Many of these spills have resulted in fish kills, several extending over a distance of six miles or more downstream.

Additional threats in the upper Roanoke River habitat could result from the proposed West Roanoke County Water Supply Project, the Corps of Engineers' Upper Roanoke River Flood Control Project and the National Park Service's Roanoke River Parkway proposal. The water supply project is intended to supply projected future water needs of Roanoke County by withdrawal of water from the Roanoke River. As projected, it could result in long periods when a seven-mile reach of the Roanoke River would be drawn down to low flow levels. This river reach provides excellent logperch habitat (Burkhead 1986) that could be adversely affected by such extended low flows. Predicted effects of these low flow periods include exposure of riffles,

decreased dissolved oxygen, increased pollution concentrations, and increased water temperatures during the summer and early fall. Certain recent project modifications, however, lessen the expected severity of these effects.

The Corps of Engineers flood control project involves proposed channel modification of the upper Roanoke River within the city limits of Roanoke. Although the Corps has funded studies of the logperch and worked with the Service to reduce project impacts, some adverse effects on the logperch are expected. Several other smaller flood control projects in the Roanoke drainage are under study by the Corps of Engineers. Until these projects have been defined, it is not known what impacts, if any, they will have on the logperch.

The National Park Service's Roanoke River Parkway could adversely affect the logperch if it is constructed adjacent to the upper Roanoke River, but until the proposal goes beyond the conceptual stage, the significance of its impacts, if any, will remain unknown.

Most of the rivers supporting the logperch are subject to siltation resulting from agricultural activities and other developments in their watersheds. The Pigg River and the North Fork of the Roanoke, in particular, are impacted by silt generated from agriculture. This may partially account for the recently observed decline of the species in the North Fork of the Roanoke River (Simonson and Neves 1986).

B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes

There is no evidence to suggest that overutilization for any of these purposes has contributed to the decline of the logperch. Because of the species' low numbers, overcollection could adversely affect its smaller populations occurring outside the mainstem Roanoke River.

C. Disease or Predation

There is no evidence that disease is a threat to this species. Predation may constitute a significant portion of the mortality of the larval and post larval stages (Burkhead 1983), but this is not considered a significant threat so long as reproductive rates remain normal.

D. The Inadequacy of Existing Regulatory Mechanisms

Virginia State law (Sections 29.1–412 and 29.1–418) requires a permit for the scientific collection of freshwater fishes, but does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring Federal agencies to consult with the Service when projects they fund, authorize or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The logperch is vulnerable to vandalism, particularly the small populations found at locations other than the mainstem Roanoke River.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Roanoke logperch as endangered. Each of the four relatively small and widely separated populations of the logperch is susceptible to extirpation through continued adverse habitat modification. Several imminent threats are now present in the upper Roanoke River drainage, which supports the species' largest population. Furthermore, the most recent comprehensive survey for the species (Simonson and Neves 1986) indicates a sharp decline in the North Fork Roanoke population and low population densities for all populations of the fish. Although three other populations of the species are extant, two of these populations (in the Nottoway River and the Smith River) are highly vulnerable to threats because of their small size; the third, in the Pigg River, is threatened by siltation. In view of the serious problems faced by the logperch, threatened status is not appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. As outlined above under Factors "B" and "E", the species is vulnerable to overcollection and vandalism. The Service finds that designation of critical habitat is not prudent for the Roanoke logperch. No benefit to the species has been identified that would outweigh the potential threats of collection or vandalism, which would be exacerbated by publication of a detailed critical habitat description. The Corps of Engineers has conducted studies of the upper Roanoke River population of the logperch and is familiar with the species' total distribution. It is the agency that would be involved with most projects or permits affecting the species' habitat. Several other Federal agencies have also been notified of the Roanoke logperch's distribution and requested to provide data on proposed Federal projects that might adversely affect the species. The involved Federal agencies thus already have the species' distributional data needed to determine if the species may be impacted by their action.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Revised regulations implementing this interagency cooperation provision of the Act were published on June 3, 1986 (51 FR 19926). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the Roanoke logperch include, but are not limited to, the following: Issuance of permits for steam alterations, reservoir construction, wastewater facility development, flood control projects, and road and bridge construction on the river reaches supporting the logperch. Three specific proposed actions with Federal involvement that may affect the logperch are the West Roanoke County Water Supply Project, the Upper Roanoke River Flood Control Project, and the Roanoke River Parkway. These projects and potential impacts on the species are described above. Modifications of these planned activities may be necessary to protect the

Roanoke logperch. It has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Burkhead, N.M. 1983. Ecological studies of two potentially threatened fishes (the orangefin madtom, *Noturus gilberti*, and the Roanoke logperch, *Percina rex*) endemic to the Roanoke River drainage. Report to Wilmington District Corps of Engineers, Wilmington, North Carolina. 155 pp.

Burkhead, N.M. 1986. Potential impact of the West County Reservoir Project on two endemic rare fish and the aquatic biota of the upper Roanoke River, Roanoke County, Virginia. Report to Roanoke County Public Facilities Dept., Roanoke, Virginia. 15 pp.

Camp Dresser and McKee. 1986. Minimum Instream Flow Study. Commonwealth of Virginia, State Water Control Board, Richmond, Virginia. 320 pp.

Jenkins, R.E. 1979. Freshwater and Marine Fishes. *In* D.W. Linzey (ed.), Endangered and Threatened Plants and Animals of Virginia. Virg. Poly. Inst. and State Univ., Blacksburg, Virginia. pp. 319–373.

Jordan, D.S. 1889. Description of fourteen species of freshwater fishes collected by the United States Fish Commission in the summer of 1888. Proc. U.S. Natl. Mus. 11:351–362.

Simonson, T.D., and R.J. Neves. 1986. A status survey of the orangefin madtom (*Noturus gilberti*) and Roanoke logperch (*Percina rex*). Report for the Virginia Commission of Game and Inland Fisheries, Richmond, Virginia. 103 pp.

Tennant, D.L. 1975. Instream Flow Regimens for Fish, Wildlife, Recreation and Related Environmental Resources. U.S. Fish and Wildlife Service, Billings, Montana. 30 pp.

Author

The primary author of this final rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Logperch, Roanoke	*Percina rex*	U.S.A. (VA)	Entire	E	359	NA	NA

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–19439 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
August 18, 1989

Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: August 18, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: August 15, 1989

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-19570 Filed 4-17-89; 11:30 am]

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Reader Aids

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
6006.....32783
6007.....33853
6008.....33855
6009.....33857
6010.....34119
6011.....34121
6012.....34123
6013.....34125

Executive Orders:
10355 (See EO 12688).....34129
12549 (See EO 12689).....34131
12685.....31796
12686.....32629
12687.....34127
12688.....34129
12689.....34131

5 CFR

1620.....32785

7 CFR

29.....31797
58.....31646
301.....32788
319.....33665, 34133
401.....33493
406.....33493
910.....32035, 32951, 34134
917.....32794, 33667
945.....31798
947.....32433
948.....33484
989.....34134
1076.....31799
1126.....32951
1772.....34138
1864.....32953

Proposed Rules:
1e.....32985
51.....32419
401.....33557, 33566
403.....33567
800.....33702
910.....33704, 34183
911.....31843
929.....31844
931.....33706
932.....33706
945.....33707
946.....34184
967.....31845
993.....31846
1001.....33709
1002.....33709
1004.....33709
1005.....33709
1006.....33709
1007.....33709
1011.....33709
1012.....33709
1013.....33709
1030.....33709
1032.....33709
1033.....33709
1036.....33709
1040.....33709
1046.....33709
1049.....33709
1050.....33709
1064.....33709
1065.....33709
1068.....33709
1076.....33709
1079.....33709
1089.....33709
1093.....33709
1094.....33709
1096.....33709
1097.....33709
1098.....33709
1099.....33709
1106.....33709
1108.....33709
1120.....33709
1124.....33709
1126.....33709
1131.....33709
1132.....33709
1134.....33709
1135.....33709
1137.....33709
1138.....33709
1139.....33709
1900.....33906
1910.....33906
1951.....33906
1955.....33906
1956.....33917
1962.....33906
1965.....33906

8 CFR

204.....34141

Proposed Rules:
210.....31966

9 CFR

51.....32434
91.....33668
92.....31800

Proposed Rules:
94.....33918
309.....33920
310.....33920
318.....33920

10 CFR

2 ... 33168
7 ... 31646
26 ... 33148

Proposed Rules:

Ch. I ... 32653
50 ... 33568
55 ... 33568
70 ... 33570
72 ... 33570
73 ... 33570
75 ... 33570
430 ... 32349, 32744

11 CFR

100 ... 34096
102 ... 34096
110 ... 34096
114 ... 34096
9034 ... 34096

12 CFR

33 ... 31935
207 ... 31646
220 ... 31646
221 ... 31646
224 ... 31646
226 ... 32953
229 ... 32035
262 ... 33163
328 ... 33699
545 ... 32954, 33859, 34143
546 ... 34143
561 ... 34143
563 ... 33870, 34143, 34146
563b ... 34143
563c ... 34143
570 ... 34143
571 ... 34143
574 ... 32959, 33183

Proposed Rules:

4 ... 32820
5 ... 33711
7 ... 33711
12 ... 32653
226 ... 32089
328 ... 33716
563 ... 33923–33926
563b ... 33926
584 ... 33295

14 CFR

1 ... 34284
21 ... 34284
23 ... 34284
25 ... 34284
27 ... 34284
29 ... 34284
31 ... 34284
33 ... 34284
35 ... 34284
36 ... 34284
39 ... 31649, 31651–31653, 31803–31809, 31935, 32435–32437, 32796, 33186, 33873–33875
43 ... 34284
45 ... 34284
47 ... 34284
61 ... 34284
63 ... 34284
65 ... 34284
71 ... 31654, 31936, 31937, 34284
73 ... 31655, 32800
75 ... 31937
91 ... 34284
93 ... 34284
97 ... 33497
99 ... 34284
103 ... 34284
121 ... 34284
125 ... 34284
127 ... 34284
133 ... 34284
135 ... 34284
137 ... 34284
141 ... 34284
217 ... 31810
241 ... 31810
303 ... 32439, 32440, 32803, 32797–32800, 33498
1221 ... 32963

Proposed Rules:

Ch. I ... 33557
25 ... 34116
39 ... 31693, 31694, 31847, 32824, 32826, 33235, 33237, 33934–33936, 34185
43 ... 32563
65 ... 32563
71 ... 31696–31704, 31966, 32452, 32827, 33579, 33941
75 ... 31705, 31967
121 ... 34116, 34394
125 ... 34116
145 ... 32563
Ch. II ... 33577, 33578
233 ... 33580
252 ... 33580
253 ... 33580
302 ... 33580
377 ... 33582

15 CFR

773 ... 31812
799 ... 33876

16 CFR

305 ... 32631

Proposed Rules:

4 ... 32654

17 CFR

1 ... 33678
140 ... 31614
200 ... 33500
211 ... 32333, 32334
230 ... 33500
260 ... 33500
270 ... 31650, 32048
274 ... 32048
275 ... 32048, 32441
279 ... 32048

Proposed Rules:

230 ... 32226, 32993
239 ... 32226, 32993
240 ... 31850, 32229
249 ... 32226
260 ... 32226
269 ... 32226
270 ... 32993, 33027
274 ... 32993

18 CFR

35 ... 32802
270 ... 32805
271 ... 31938, 32805

Proposed Rules:

37 ... 31706
803 ... 33036

19 CFR

4 ... 33187, 33188
10 ... 33189
113 ... 33672
177 ... 32742, 32810
213 ... 33681

Proposed Rules:

12 ... 34186
355 ... 33238

20 CFR

Proposed Rules:

208 ... 32163
219 ... 31939
220 ... 32163
230 ... 32163
260 ... 32163
327 ... 31968
404 ... 33238
416 ... 31656, 33238

21 CFR

139 ... 32050
179 ... 32335
510 ... 32632, 33672
520 ... 32336, 33501, 33814
522 ... 32632
524 ... 32632
540 ... 33672, 33673
556 ... 32633
558 ... 32633–32634, 32963, 33884
573 ... 33673
1301 ... 33674
1305 ... 33674

Proposed Rules:

Ch. I ... 32610
133 ... 32091
168 ... 33582
333 ... 34186
448 ... 34188
522 ... 31949
556 ... 31949
1308 ... 31815, 31955
1310 ... 31657
1313 ... 31657
1316 ... 31669

22 CFR

60 ... 31815
61 ... 31815
62 ... 31815
63 ... 31815
64 ... 31815
65 ... 31815
514 ... 32964

23 CFR

659 ... 32967

24 CFR

200 ... 32059, 32968
203 ... 32968
204 ... 32968
206 ... 32059
213 ... 32968
220 ... 32968
221 ... 32968
222 ... 32968
226 ... 32968
227 ... 32968
235 ... 32968
237 ... 32968
240 ... 32968
570 ... 31670

Proposed Rules:

Ch. I ... 31856
200 ... 33039
205 ... 33039

25 CFR

122 ... 34154

26 CFR

1 ... 31672, 31816
602 ... 31672

Proposed Rules:

1 ... 31708, 32453

28 CFR

31 ... 32618
74 ... 34157
523 ... 32027
544 ... 32026

Proposed Rules:

551 ... 34094

29 CFR

524 ... 32920, 33814
525 ... 32920, 33814
529 ... 32920, 33814
1600 ... 32061
1601 ... 32061
1610 ... 32061
1611 ... 32061
1620 ... 32061
1626 ... 32061, 33501
1627 ... 33675
1691 ... 32061
1910 ... 31765, 31970
2589 ... 32635
2619 ... 33504
2676 ... 33505

Proposed Rules:

503 ... 32985
1910 ... 31858, 33832

30 CFR

934 ... 32063
936 ... 34166

Proposed Rules:

250 ... 31768, 32316, 32563, 33042
906 ... 32828
917 ... 32093
920 ... 33042
925 ... 32094, 34190
931 ... 32095, 32098
946 ... 32097, 32098

31 CFR

103 ... 33675
500 ... 32064

32 CFR

231 ... 33512
231a ... 33516
286 ... 33190
385 ... 33521
706 ... 31825

33 CFR

100 ... 31826, 32066, 32441–32442, 33679, 33680
110 ... 32419
117 ... 31827
146 ... 32971
162 ... 32419
165 ... 32419, 32443

Proposed Rules:

100 ... 31859, 31860, 32453, 32659

162.....32661
334.....33584

34 CFR

208.....32936
345.....32770
425.....34402
426.....34402
432.....34402
433.....34402
434.....34402
435.....34402
436.....34402
437.....34402
438.....34402
441.....34402
755.....32946

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:
254.....34368
1206.....32455

37 CFR

1.....32637, 34282
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070, 33885

Proposed Rules:
14.....34334
19.....34334
20.....34334

39 CFR

111.....32071, 33523
3001.....33525, 33681

40 CFR

52.....31953, 32072, 32073, 32637, 32971, 33526, 33528–33536, 33894
60.....32444, 32972, 34008
61.....32444
80.....33218
81.....32078, 33219, 33536
85.....32566
116.....33426
117.....33426
146.....34169
160.....34502
167.....32638
180.....31674, 31830–31836, 33690
228.....33585, 34172
261.....34175
264.....33376
265.....33376
270.....33376
271.....32973
302.....33418, 33426
792.....34034
795.....33400
796.....33148
797.....33148
799.....33148, 33400

Proposed Rules:
52.....32101, 33245, 33247, 33717
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972, 33044, 33718
185.....31836
186.....31832–31836
228.....32351–32356, 34191
261.....31675, 32320, 32662, 33942
300.....33846
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101–47.....32445

42 CFR

50.....32446
484.....33354

Proposed Rules:
5.....32459

43 CFR

Public Lands Orders:
6741.....32812
6742.....32812
6743.....33693

Proposed Rules:
2090.....34380
2200.....34380

44 CFR

59.....33541
60.....33541
64.....32813, 32814, 33220, 33222
65.....33541, 33896
67.....33693, 33897
80.....31681
83.....31681
352.....31920

Proposed Rules:
67.....33943
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

552.....34182
553.....34182

Proposed Rules:
10.....33045
15.....33045
586.....34194

47 CFR

Chapter I.....33224
2.....32339, 33898
15.....32339
22.....33551, 33898
25.....33226, 33898
73.....31685, 31686, 31838, 31960, 32340, 32639–32641, 33227, 33699, 33700, 33900, 33901, 34182
80.....31839
90.....33902

Proposed Rules:
2.....32830
64.....33585
69.....33585
73.....32361, 32362, 32672–32676, 33249, 33250, 33719–33721, 33946
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
525.....33554
801.....31961

Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424
205.....33045
970.....33251

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
210.....33227
215.....33227
216.....33227
217.....33227
225.....33227
228.....33227
229.....33227
231.....33227
232.....33227
383.....33230
571.....31687, 32345
1207.....33555
1249.....33555

Proposed Rules:
571.....32830

50 CFR

17.....32326, 34464, 34468
20.....32975
23.....33231
215.....32346
217.....32815
226.....32085, 34282
227.....32085, 32815, 34282
611.....32642, 32819
652.....33700
661.....31841
663.....31688
672.....32819, 33701
674.....33904
675.....31842, 32642

Proposed Rules:
16.....33947
18.....33949, 34201
17.....32833, 33556
20.....33721
228.....33949
263.....32362
267.....32362
611.....31861
620.....31861
649.....32834
655.....31862
672.....31861, 33737
675.....31861, 33737
Ch. VII.....33735

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Ofice of the Federal Register for inclusion in today's List of Pubic Laws.

Last List August 17, 1989